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federal register

Tuesday
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(ISSN 0097-6326)

9-22-92
Vol. 57 No. 184
Pages 43605-43884

federal register

Tuesday
September 22, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 92-055-2]

Dourine in Horses and Asses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the "Dourine in Horses and Asses" regulations, which restrict movement of horses and asses from areas quarantined for dourine and provide for the payment of compensation to the owners of animals destroyed because of dourine. We are taking this action because the United States has been free of dourine since 1946 and import requirements have proven adequate to prevent the reintroduction of the disease into this country. This action eliminates unnecessary regulations and removes the implication that dourine has not yet been eradicated in the United States.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Manuel A. Thomas, Jr., Senior Staff Veterinarian, Sheep, Goat, Equine, Poultry, and Miscellaneous Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

The "Dourine in Horses and Asses" regulations, which are contained in 9 CFR 75.1 through 75.3 (referred to below as the regulations), require that all horses and asses be inspected by a Veterinary Servicer inspector and certified as dourine-free before they may be moved interstate from an area quarantined for dourine. The regulations further require that all horses and asses pass the complement-fixation test for dourine before they may be moved interstate from a quarantined area if, within the preceding 18 months, stallions or jacks were allowed to roam at large in that quarantined area or if there has been any breeding in a herd in the quarantined area in which there is a horse or ass that has been exposed to dourine.

Section 75.3 of the regulations provides for the payment of compensation to the owners of animals destroyed because of dourine in accordance with the dourine indemnity regulations. Those indemnity regulations, which had been located at 9 CFR part 52, were removed by a final rule published in the **Federal Register** on December 31, 1981 (46 FR 63206).

In a document published in the **Federal Register** on June 24, 1992 (57 FR 28134-28135, Docket No. 92-055-1), we proposed to remove the "Dourine in Horses and Asses" regulations. We based our proposal on the fact that the United States has been free of dourine since 1946 and that the quarantine requirements contained in 9 CFR 92.308(a)(3) help ensure that dourine is not reintroduced into the United States by imported horses.

We solicited comments on the proposed rule for a 30-day period ending on July 24, 1992. We received one comment, from a veterinary medical association. The commenter supported our proposal, with the understanding that we will continue to enforce the import restrictions mentioned above in order to prevent the reintroduction of dourine into the United States.

Therefore, based on the rationale set forth in the proposed rule, we are adopting, without change, the provisions of the proposal as a final rule. This action will remove the implication that dourine has not yet been eradicated in the United States and will eliminate from the CFR an inaccurate reference to a compensation program for animals destroyed because of dourine. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Removing the "Dourine in Horses and Asses" regulations will not result in any change in the number or horses or asses moved interstate, or in any regulatory activities necessary to qualify horses or asses for interstate movement, because there are no longer any areas in the United States that are quarantined because of dourine. Therefore, there is no reason to expect any economic consequences related to our action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Does not preempt any State and local laws; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 75 is amended as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 75.1 through 75.3 [Removed]

2. Sections 75.1 through 75.3 are removed.

Done in Washington, DC, the 16th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–22947 Filed 9–21–92; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 94

[Docket No. 92–141–1]

Importation of Animal Products and Byproducts From Countries Where BSE Exists; Addition of Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations by adding Denmark to the list of countries where bovine spongiform encephalopathy (BSE) exists, because the disease has been diagnosed in cattle in that country. The effect of this action is to prohibit or restrict the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Denmark. This action is necessary to reduce the risk that BSE could be introduced into the United States.

DATES: This interim rule is effective September 22, 1992. Consideration will be given only to comments received on or before November 23, 1992.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–141–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 94 and 95 (referred to below as the regulations) govern the importation of meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

Bovine spongiform encephalopathy is a neurological disease of bovine animals and other ruminants. At the present time, BSE is not know to exist in the United States. Prior to this action, BSE was known to exist in France, Great Britain, Northern Ireland, the Republic of Ireland, Oman, and Switzerland.

The major means of spread of BSE appears to be through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in countries in which BSE exists, are imported into the United States and are fed to ruminants in the United States.

Section 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in countries in which BSE exists. These countries are listed in § 94.18 of the regulations.

The Chief Veterinary Officer of the Danish Ministry of Agriculture reported that BSE has been detected in cattle imported into Denmark from Great Britain. In order to reduce the risk of introducing BSE into the United States, we are, therefore, adding Denmark to the list of countries where BSE is known to exist in § 94.18 of the regulations. Thus, we are prohibiting or restricting the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Denmark.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment.

BSE is a serious animal disease that has caused great loss to the cattle industry of Great Britain, and the introduction of this disease into the United States would cause great harm to the U.S. cattle industry. BSE has been diagnosed in cattle in Denmark. The restrictions contained in this interim rule must be implemented immediately to reduce the risk that BSE could be introduced into the United States through importation of certain meat, animal products, and animal byproducts from ruminants from Denmark.

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

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

As an alternative to the provisions of this rule, we have considered taking no action, and enforcing the current import regulations. This alternative was rejected because it would allow meat, animal products, and animal byproducts that might spread BSE to be imported into the United States.

The provisions of this rule will not have a significant economic impact. The only businesses affected will be a small number of importers of meat, animal products, and animal byproducts of ruminants which have been in a country in which BSE exists. Alternative sources for these products are available in the United States and from certain countries where BSE has not been reported.

Placing Denmark on the list of countries in which BSE is known to exist restricts the importation of some of these products, and prohibits the importation of others. These restrictions and prohibitions will have a minor negative economic impact on U.S. importers. Denmark is not a major export source of ruminant meat. It exported 123,000 metric tons in 1991, less than 3 percent of the world total. The United States imported only 180 tons, or $345,000 worth, of ruminant meat from Denmark in 1991, representing less than three hundredths of one percent of the total U.S. import source of ruminant meat. There does not appear to be a significant amount of ruminant products or byproducts, other than meat, imported from Denmark.

At present, there are fourteen U.S. importers who import meat from Denmark. Thirteen of these would be considered small entities. Even if imports from Denmark were totally unavailable, importers could easily substitute other sources to supply their total requirement. The proportion of meat imported from Denmark is so small that there would be very little or no impact on U.S. producers and consumers. Additionally, price and competition in the United States would not be affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws, regulations, and policies that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

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

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

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

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

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.18, paragraph (a) is revised to read as follows:

§ 94.18 Ruminant meat and edible products from ruminants that have been in countries where bovine spongiform encephalopathy exists.

(a) Bovine spongiform encephalopathy exists in the following countries: Denmark, France, Great Britain, Northern Ireland, and the Republic of Ireland, Oman, and Switzerland.

* * * * *

Done in Washington, DC, this 16th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-22946 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-34-M

RESOLUTION TRUST CORPORATION

12 CFR Part 1616

RIN 3205-AA14

Privacy Act Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC or Corporation) is adopting an interim rule for the processing of requests for access to or amendment of records, other than the records of the RTC Inspector General, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). The rule also establishes administrative appeals procedures, conditions for disclosure of information from a system of records outside the Corporation and exempts certain systems of records from certain sections of the Privacy Act. Since its creation, the RTC has conducted its Privacy Act Program under the auspices of the Federal Deposit Insurance Corporation's (FDIC) Privacy Act regulations. Because the organizational and operational structure of the RTC has come to differ so greatly from that of the FDIC, this interim rule is necessary to assist the public with respect to requests submitted under the Privacy Act.

DATES: This interim rule is effective September 22, 1992, except for § 1616.12 which is effective December 21, 1992. Comments must be received by November 23, 1992.

ADDRESSES: Comments must be sent to: John M. Buckley, Jr., Secretary, Resolution Trust Corporation, Office of the Secretary, 801 17th Street, NW., Washington, DC 20434-0001. Comments may be hand delivered to room 314 on business days between 9 am and 5 pm. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., Washington, DC between 9 am and 5 pm. (The Public Reading Room's telephone number is (toll free) 1-800-842-2970 ext. 6-6940 or (202) 416-6940; and the FAX number is (202) 416-4753.)

FOR FURTHER INFORMATION CONTACT: Richard White, Privacy Act Program Officer, Office of the Secretary, FOIA/PA Branch, (703) 908-6137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Scope

This rule governs release of all Corporate records, with the exception of the Office of Inspector General of the RTC, pursuant to the Privacy Act of 1974, as amended.

This rule sets forth the procedures to be used in requesting records from the RTC, appealing the decision to deny, in whole or in part, access to Corporate records, the procedures for contesting the content of Corporate records, and the identification of systems of records that are exempt from the access, amendment, and disclosure accounting provisions of the Privacy Act. It also establishes a fee schedule for the duplication of Corporate records, and establishes a minimum amount under which fees will not be charged.

B. Requests for Information in Records

The rule provides that all written requests for Corporate records, with the exception of records created by the RTC Office of Inspector General, should be sent to the Office of the Secretary in Washington, DC. It further permits individuals, and/or their authorized representatives, to appear in person at Corporation Headquarters of field offices to inspect Corporate records pertaining to themselves which are covered by the Privacy Act. Requests for Corporate records must reasonably

describe the records desired. The rule also provides for adequate identification to be submitted for both written and personal appearance requests. Records held by financial institutions in RTC's conservatorship or receivership programs are not considered to be Corporate records; therefore, they are not subject to the provisions of the Privacy Act.

C. Initial and Final Decisions

The rule delegates to the Secretary of the RTC (or designee) authority to make initial determinations concerning requests for access to or amendment of Corporate records. Final decisions on an appeal of an initial denial of access or a determination not to amend will be made by the General Counsel (or designee) of the RTC.

D. Exemption from Disclosure

The rule recites the statutory bases for exemption from disclosure, amendment, and disclosure accounting as provided by the Privacy Act.

E. Fees

The rule provides that copies of records will be provided at $.20 per page. It also provides that fees may be waived if the total cost of complying with the request for records is less than $25.00.

Request for Public Comment

The RTC is seeking comments on all aspects of this interim rule. Comments will be carefully reviewed for the purpose of developing final regulations.

Administrative Procedure Act

The RTC is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the usual notice-and-comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause."

The RTC was created in August 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (5 U.S.C. 1441a). Since that time, the RTC has used regulations promulgated by the Federal Deposit Insurance Corporation to process requests it received under the Privacy Act. With the passage of time and establishment of separate RTC offices and files, there is a need for the RTC to have its own regulations implementing the Privacy Act.

The substance of much of the rule, including those portions concerning method and timing of release of records and exemption of records, are largely mandated by the Privacy Act, 5 U.S.C. 552a, or by the Office of Management and Budget regulations promulgated pursuant to statute and already subject to public comment. In the case of those portions of the rule the need for public comment is reduced since the RTC has little discretion in adopting those provisions. Therefore, the benefits to the public in adopting the interim regulations outweigh any harm from the delay in seeking public comment.

Regulatory Flexibility Act

The undersigned hereby certifies that the interim regulations, and any final regulations that may be adopted following comment on the interim regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

List of Subjects in 12 CFR Part 1616

Privacy.

For the reasons set out in the preamble, the Resolution Trust Corporation adds part 1616 to title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1616—PRIVACY ACT REGULATIONS

Sec.

1616.1 Purpose and scope.
1616.2 Definitions.
1616.3 Procedures for requests pertaining to individual records in a system of records.
1616.4 Times, places and requirements for identification of individuals making requests.
1616.5 Disclosure of requested information to individuals.
1616.6 Special procedures for medical records.
1616.7 Requests for amendment of records.
1616.8 Agency reviews of requests for amendment of records.
1616.9 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.
1616.10 Preservation of records.
1616.11 Disclosure of a record to a person other than the individual to whom the record pertains.
1616.12 Fees.
1616.13 Penalties.
1616.14 Exemptions.

Appendix A—RTC Field Offices

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

§ 1616.1 Purpose and scope.

This regulation sets forth the basic policies of the Resolution Trust Corporation (RTC or Corporation), with the exception of the Office of Inspector General of the RTC, that implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) regarding the protection of the privacy of individuals on whom the Corporation maintains information which is retrieved by reference to an individual's name or an identifying particular assigned to the individual. This regulation also sets forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him/her, may request amendment of such records, or may seek an accounting of disclosures of such records maintained by the Corporation.

§ 1616.2 Definitions.

For the purposes of this part:

(a) *Corporation* means the Resolution Trust Corporation operating in its Corporate capacity.

(b) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, disseminate, or control.

(d) *Record* means any item, collection or grouping of information about an individual that is maintained by the RTC in its corporate capacity and contains his/her name, or an identifying number, symbol, or other identifying particular assigned to the individual.

(e) *System of records* means a group of any records under the control of the Corporation from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

(f) *Designated system of records* means a system of records which has been listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was created.

(h) *Amend* and *amendment* mean any correction of, addition to or deletion from a record.

(i) *System manager* means the agency official responsible for a designated system of records, as denominated in the **Federal Register** publication of "Systems of Records Maintained by the Resolution Trust Corporation."

§ 1616.3 Procedures for requests pertaining to individual records in a system of records.

(a) Any present or former employee of the Federal Deposit Insurance Corporation (FDIC) who is working for or has worked for the RTC and who is seeking access to his/her official

personnel folder, or other U.S. Office of Personnel Management government-wide personnel-type record, including compensation, training, medical information, time and attendance and performance, maintained by the RTC in Corporation offices should submit his/her request in such a manner as prescribed by the U.S. Office of Personnel Management in part 297 of its rules and regulations (5 CFR 297.101–501). Such requests should be submitted to the Office of the Secretary, RTC, FOIA/PA Branch, International Place, 1735 North Lynn Street, Rosslyn, VA 22209. An FDIC employee who is presently working for the RTC may also gain access to his/her unofficial personnel folder, and other personnel-type record, by visiting, either in person or with an authorized representative, the RTC Corporate office in which the folder is maintained.

(b) Written requests by individuals for access to records pertaining to them, other than official personnel folders, and maintained within one of the Corporation's designated system of records should be submitted to the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209. Each such request should contain a reasonable description of the record(s) sought, identify the system or systems in which such records may be contained, and any additional identifying information, as specified in the Corporation's **Federal Register** "Notice of Systems of Records" for that particular system, copies of which are available upon request for the FOIA/PA Branch, Office of the Secretary.

§ 1614.4 Times, places and requirements for identification of individuals making requests.

(a) Individuals may request access to records pertaining to themselves as provided in § 1616.3 of this part by submitting a written request by mail or in person to the office in which the records are maintained or the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209. Before access to records is granted, pursuant to this part, reasonable identification, as specified in § 1616.4(b), of the person making the request is required to ensure that information is given and records are disclosed only to the proper individual.

(b) Employees appearing in person at RTC offices seeking access to or amendment of personnel records pertaining to themselves shall present two forms of reasonable identification, such as employment identification cards, driver's licenses, passports, or credit cards. One piece of identification shall contain the individual's photograph and signature.

(c) Individuals submitting written requests seeking access to or amendment of records pertaining to themselves shall include copies of two forms of identification which contain the signatures of the individuals. Except for records that must be publicly disclosed pursuant to the Freedom of Information Act (5 U.S.C. 552), where the Corporation determines it to be necessary for the individual's protection, a certification of a duly commissioned notary public, of any state or territory, attesting to the requesting individual's identity may be required before a written request seeking access to or amendment of a record will be honored. Identification, as described above, will be required of any individuals visiting RTC offices to inspect records after submission of written requests.

§ 1616.5 Disclosure of requested information to individuals.

(a) Except to the extent that Corporation records in a system of records pertaining to an individual:

(1) Are exempt from disclosure under § 1616.14 of this part; or

(2) May require special procedures for medical records under § 1616.6 of this part; or

(3) Were compiled in reasonable anticipation of a civil action or proceeding, the Corporation will make such records available upon request for purposes of inspection and copying by the individual about whom the information is maintained or, upon the individual's request and written authorization, by another person of the individual's own choosing (after proper identity verification as provided in § 1616.4 of this part).

(b) The Secretary, or designee, will acknowledge receipt of a request submitted under this rule within ten (10) working days, and notify, in writing, the individual making a request, whenever practicable within ten business days following receipt of the request, whether any specified, designated system of records maintained by the Corporation contains a record pertaining to the individual. Where such a record does exist, the Secretary, or designee, with the advice of the System Manager, will inform the individual of the decision whether to grant or deny, in whole or in part, the request for access. In the event existing records are determined not to be disclosable, the notification will inform the individual of the reason(s) for which disclosure will not be made and will provide a description of the individual's right to appeal the denial, as more fully set forth in § 1616.9 of this part.

(c) Individuals will be granted access to records disclosable under this part 1616 as is practicable. The Secretary, or designee, will give written notification of a reasonable period within which individuals may inspect disclosable records pertaining to themselves at the Office of the Secretary (FOIA/PA Branch) or the appropriate Headquarters, or field offices during normal business hours. Alternatively, the Corporation may mail copies of requested records to the individual. Fees for copying such records will be assessed as provided in § 1616.12 of this part.

§ 1616.6 Special procedures for medical records.

Medical records in a system of records shall be disclosed on request to individuals to whom they pertain, except, if in the judgment of the Corporation, the transmission of the medical information directly to the requesting individual could have an adverse effect upon such individual. In the event medical information is withheld from a requesting individual because of any possible adverse affect such information may have upon the individual, the Corporation shall transmit such information to a licensed medical doctor named by the requesting individual.

§ 1616.7 Requests for amendment of records.

The Corporation will maintain all records is uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Corporation amend any portion of a record pertaining to that individual which the Corporation maintains in a designated system of records. Such a request should be submitted in writing to the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209, and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system of records) sufficient to enable the Corporation to identify the particular record or portion thereof with respect to which amendment is sought. If an individual has a copy of the record he/she wishes to have amended, it should be attached to the request for amendment and the specific portion of

the record sought to be amended should be clearly identified. The individual making the request may be required to provide the information specified in § 1616.4 of this part to permit verification of the identity of the individual making the request for amendment.

§ 1616.8 Agency reviews of requests for amendment of records.

(a) Requests by individuals for the amendment of records will be acknowledged by the Secretary, or designee, within ten (10) business days following receipt of such requests and referred to the System Manager of the system of records in which the record is contained for an analysis of the request to amend. Promptly thereafter, the Secretary, or designee, with the advice of the System manger, will notify the individual of the decision to grant or deny the request to amend. If the request to amend is granted in whole or in part, the Secretary, or designee, will effect the appropriate amendment.

(b) If the Secretary, or designee, denies a request to amend a record, the notification of such denial shall contain the reason(s) for the denial, a description of the individual's right to appeal the denial as more fully set forth in § 1616.9 of this part, and the address of the Corporation officer to whom the appeal should be sent.

§ 1616.9 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.

(a) For RTC records contained within a system of records, the initial denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed to the RTC's General Counsel within 30 business days following receipt of notification of the denial. Such appeals should be mailed to the Office of the Secretary, FOIA/PA Branch, RTC, International Place, 1735 North Lynn Street, Rosslyn, VA 22209, and contain all the information specified for requests for access in § 1616.3 of this part or for initial requests to amend in § 1616.7 of this part, as well as any other additional information the individual deems relevant for the consideration by the General Counsel, or designee, of the appeal. Both the envelope and the appeal letter should have written on them "Privacy Act Appeal." The appeal letter should also enclose a copy of the initial denial letter.

(b) The General Counsel, or designee, will normally make a final determination with respect to an appeal made under this part within 30 business days following receipt of the appeal by the Office of the Secretary. The General Counsel, or designee may, however, extend this 30-day time period for good cause shown. When such an extension is required, the individual making the appeal will be notified of the reason for the extension and the expected date upon which a final decision will be given.

(c) If the General Counsel, or designee, affirms the initial denial of a request for access or amendment, he/she will inform the individual affected by the decision, the reason(s) therefore and the right of judicial review of the decision. With respect to a decision to sustain the initial refusal to amend a record, the General Counsel, or designee, will also inform the individual of the right to submit a Statement of Disagreement under paragraph (d) of this section.

(d) Upon receipt of a determination to affirm the initial denial of a request to amend a record, the individual may submit to the Corporation a concise statement (Statement of Disagreement) setting forth his or her reasons for disagreeing with the Corporation's determination not to amend. Such a Statement of Disagreement will be attached to the record which was the subject of the request to amend. The General Counsel, or designee may, if deemed appropriate, prepare a concise statement (Statement of Explanation) of the reason(s) why the requested amendment was not made. Any RTC Statement of Explanation will be included in the system of records in the same manner as the Statement of Disagreement. A copy of the Statement of Explanation and the notation of the dispute as marked on the original record will be provided to the individual who requested an amendment of the record.

(e) When a record has been amended or when a Statement of Disagreement has been filed, the Secretary, or designee, will provide all prior recipients of the affected record, whose identities may be determined pursuant to the disclosure accountings required by the Privacy Act (5 U.S.C. 552a(c)) or any other accounting previously made, a copy of the amended or corrected record or the Statement of Disagreement. Any disclosure of disputed information occurring after a Statement of Disagreement has been filed will clearly identify the specific information disputed and be accompanied by a copy of the Statement of Disagreement and a copy of any RTC Statement of Explanation.

§ 1616.10 Preservation of records.

The Corporation will preserve all correspondence relating to the written requests it receives under this part, and all records processed pursuant to such requests, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records. Under no circumstances will records be destroyed while they are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

1616.11 Disclosure of a record to a person other than the individual to whom the record pertains.

(a) Except as provided in paragraph (b) of this section, the Corporation will not disclose any record contained in a designated system of records to any person or agency except without the prior written consent of the individual to whom the record pertains.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to any disclosures:

(1) To those officers and employees of the Corporation who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use, as defined in § 1616.2(g) of this part, listed with respect to a designated system of records and described in **Federal Register** notice of the system;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Corporation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States, or designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Corporation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(c) Any Statement of Disagreement with the Corporation's determination not to amend a record, filed with the Corporation by an individual pursuant to § 1616.9(d) of this part, will be included in the disclosure of the record under authority of paragraph (b) of this section. The Corporation may, in its discretion, also include a copy of the Corporation's Statement of Explanation.

(d) The Corporation, with respect to each system of records under its control shall:

(1) Except for disclosures made under paragraphs (b)(1) or (b)(2) of this section, keep an accurate accounting of:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under paragraph (b) of this section; and

(ii) The name and address of the person or agency to whom the disclosure is made; and

(2) retain the accounting made under paragraph (d)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under paragraph (b)(7) of this section, make the accounting made under paragraph (d)(1) of this section available to the individual named in the record at his/her request; and

(4) inform any person or other agency about any correction or Statement of Dispute made by an individual in accordance with § 1616.9(d) of this part, of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1616.12 Fees.

The Corporation, upon a request for records disclosable pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), shall charge a fee of $0.20 per page for duplicating, except as follows:

(a) If the Corporation determines that it can grant access to a record only by providing a copy of the record, no fee will be charged for providing the first copy of the record or any portion thereof; and

(b) Whenever the aggregate fees computed under this section do not exceed $25.00 for any one request, the fee will be deemed waived by the Corporation.

§ 1616.13 Penalties.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the RTC under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

§ 1616.14 Exemptions.

The following information is exempt from disclosure: (a) Investigatory material compiled for law enforcement purposes is exempt from §§ 1616.3 through 1616.9 and § 1616.11(d)(3) of this part, *provided, however*, that if any individual is denied any right, privilege, or benefit to which he/she would otherwise be entitled under Federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence;

(b) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Corporation employment to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Corporation under an express promise that the identity of the source would be held in confidence, is exempt from §§ 1616.3 through 1616.9 and § 1616.11(d)(3) of this part; and

(c) Testing or examination material used solely to determine or assess individual qualifications for appointment or promotion in the Corporation's service, the disclosure of which would compromise the objectivity or fairness of the testing, evaluation, or examination process is exempt from §§ 1616.3 through 1616.9 and § 1616.11(d)(3) of this part.

Appendix A—RTC Field Offices

1. Atlanta Office, 100 Colony Square Building 100, suite 2300, Atlanta, GA. 30361, 1–800–628–4362; (404) 881–4840.

2. California Office, 4000 MacArthur Boulevard, Newport Beach, CA. 92660, 1–800–283–9288; (714) 631–0582.

3. Dallas Office, 3500 Maple Avenue, Dallas, TX. 75219, (214) 443–2300.

4. Denver Office, 1515 Arapahoe Street, Tower 3, suite 800, Denver, CO. 80202, 1–800–542–6135; (303) 556–6500.

5. Kansas Office, Board of Trade Building II, 4900 Main Street, Kansas City, MO. 64112, 1–800–365–3342; (816) 531–2212.

6. Valley Forge Office, 1000 Adams Avenue, Norristown, PA. 19403, (215) 650–8500.

7. Minneapolis Office, 3400 Yankee Drive, 4th Floor, Eagan, MN. 55122, 1–800–873–5815; (612) 683–4400.

8. Phoenix Office, 2910 North 44th Street, Phoenix, AZ. 85018, 1–800–937–7782; (602) 224–1796.

9. San Antonio, 10100 Reunion Place, Suite 25, San Antonio, TX. 78216, (512) 524–4700.

10. Baton Rouge Office, 100 St. James Street, Suite H, Baton Rouge, LA. 70802, (504) 339–1000.

11. Chicago Office, 25 Northwest Point Boulevard, Elk Grove Village, IL. 60007, 1–800–284–6197; (708) 806–7750.

12. Houston Office, 2223 West Loop South, Houston, TX. 77027, (713) 888–2700.

13. Somerset Office, 300 Davidson Avenue, Somerset, NJ. 08873, 1–800–542–0435; (908) 805–4000.

14. Tampa Office, 4200 West Cypress Street, Tampa, FL. 33607, 1–800–283–1241; (813) 870–7000.

15. Tulsa Office, 321 South Boston, Tulsa, OK. 74103, 1–800–456–5382; (918) 587–7600.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 16th day of September 1992.

John M. Buckley, Jr.,

Secretary, Resolution Trust Corporation.

[FR Doc. 92–22867 Filed 9–21–92; 8:45 am]

BILLING CODE 6714–01

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AA26]

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for dishwashers.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a

size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under § § 305.10, 305.11 and 305.14 of the rule, must be used on labels on dishwashers manufactured on and after December 21, 1992 and in advertising of dishwashers beginning December 21, 1992. Properly labeled dishwashers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: December 21, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Dishwashers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories, including dishwashers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all dishwashers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a dishwasher is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to Section 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1992 representative average energy costs published by DOE on January 14, 1992,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends appendix C of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of dishwashers beginning December 21, 1992.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendix C, paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

Appendices

* * * * *

Appendix C to Part 305—Dishwashers

1. Range Information: "Compact" includes countertop dishwasher models with a capacity of fewer that eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DW–1 for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

[1] Public Law 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466. On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending coverage to include central air conditioners and heat pumps.

[3] Reports for dishwashers are due by June 1.

[4] 57 FR 1461. The cost for electricity was published as 8.25 cents per kilowatt-hour; for natural gas: 58 cents per therm; for propane: 74 cents per gallon; for no. 2 heating oil: $1.03 per gallon.

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		National gas heated water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$52.00	$82.00	$29.00	$46.00

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scales are based on a national average electric rate of 8.25¢ per kilowatt hour, a national average natural gas rate of 58¢ per therm, and eight loads of dishes per week.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 92-22895 Filed 9-21-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 89F-0394]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride; ammonium chloride; calcium stearate; sodium bicarbonate; starch or dextrin, or both; and methylene blue as a colorant, as components of a sanitizing solution to be used on food-processing equipment and utensils, including food-contact surfaces in public eating places. This action responds to a petition filed by Edwards-Councilor Co., Inc.

DATES: Effective September 22, 1992; written objections and requests for a hearing by October 22, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 27, 1989 (54 FR 43861), FDA announced that a food additive petition (FAP 9B4159) had been filed by Edwards-Councilor Co., Inc., 1427 Baker Rd., Airport Industrial Park, Virginia Beach, VA 23455, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of a sanitizing solution containing *n*-alkyl(C_{12}-C_{16})benzyl-dimethylammonium chloride; calcium stearate; sodium bicarbonate; starch or dextrin, or both; and methylene blue as a colorant for use on food-processing equipment, utensils, and other food-contact articles. In a notice published in the **Federal Register** of September 11, 1991 (56 FR 46324), the filing notice was amended to also include ammonium chloride as a component of the sanitizing solution.

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are mixtures of chemicals that function together to sanitize food-contact surfaces and are regulated as mixtures. Each listed component in a sanitizing solution has a functional effect. Section 178.1010(b) permits the addition to a sanitizing solution of any component that is generally recognized as safe (GRAS). The subject sanitizing solution contains containing *n*-alkyl(C_{12}-C_{16})benzyl-dimethylammonium chloride; calcium stearate; sodium bicarbonate; starch or dextrin, or both; and methylene blue. The function of each component in the subject sanitizer and the basis for the agency's determination of each component's safety are described below.

A. N-Alkyl(C_{12}-C_{16})benzyldimethyl-ammonium chloride

The component *n*-alkyl(C_{12}-C_{16})benzyl-dimethylammonium chloride functions as the antimicrobial agent in the subject sanitizing solution. It is listed as a component in several regulated sanitizing solutions under § 178.1010. On the basis of the data submitted in support of these regulated uses and the data contained in the food additive petition submitted in support of listing this sanitizing solution, FDA finds that the use of *n*-alkyl(C_{12}-C_{16})benzyl-dimethylammonium chloride is safe in the subject sanitizing solution.

B. Ammonium Chloride

Ammonium chloride functions as a solubilizing agent in the subject sanitizing solution. Ammonium chloride is listed as GRAS under 21 CFR 184.1138. On the basis of the data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of ammonium chloride in the subject sanitizing solution is safe.

C. Calcium Stearate

Calcium stearate functions as a formulation aid for the formation of the tablet form of the components. Calcium stearate is listed as GRAS under 21 CFR 184.1229. On the basis of the data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of calcium stearate in the subject sanitizing solution is safe.

D. Sodium Bicarbonate

Sodium bicarbonate functions as a solubilizing agent in the subject sanitizing solution. Sodium bicarbonate is listed as GRAS under 21 CFR 184.1736. On the basis of data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of sodium bicarbonate in the subject sanitizing solution is safe.

E. Starch or Dextrin

Starch and dextrin function as tablet disintegrators, and may be used individually or in combination in the subject sanitizing solution. Starch is GRAS, and dextrin is listed as GRAS under 21 CFR 184.1277. On the basis of the data contained in the food additive petition submitted in support of listing this sanitizing solution and other available data, FDA finds that the use of starch and dextrin in the subject sanitizing solution, either individually or in combination, is safe.

F. Methylene Blue

Methylene blue functions as a colorant in the subject sanitizer. Methylene blue is not currently regulated for this use. On the basis of the data contained in this food additive petition submitted in support of listing this sanitizing solution, FDA finds the use of methylene blue in the subject sanitizing solution is safe.

FDA has evaluated data in the petition and other relevant information. The agency concludes that the data and information establish the safety of the level of use and the effectiveness of the additive as a sanitizing solution and that the regulations should be amended in § 178.1010 as set forth below. The agency also finds that the data in this petition support the use of the subject sanitizing solution on food-contact surfaces in public eating places as well as other food-processing equipment and utensils.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the

petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

II. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before October 22, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.1010 is amended by adding new paragraphs (b)(41) and (c)(36) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(41) An aqueous solution containing *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride, having average molecular weights ranging from 351 to 380 wherein the alkyl groups contain principally 12 to 16 carbons and not more than 1 percent each of the groups with 8 and 10 carbon atoms; ammonium chloride (CAS Reg. No. 12125-02-9); calcium stearate (CAS Reg. No. 1529-23-0); sodium bicarbonate (CAS Reg. No. 144-55-9); starch or dextrin, or both starch and dextrin (CAS Reg. No. 9004-53-9); and the optional ingredient methylene blue (CAS Reg. No. 61-73-4). In addition to use on food-processing equipment and utensils, this solution may be used on food-contact surfaces in public eating places.

(c) * * *

(36) Solutions identified in paragraph (b)(41) of this section shall provide, when ready for use, not less than 150 parts per million and not more than 200 parts per million of *n*-alkyl(C_{12}-C_{16}) benzyldimethylammonium chloride; and not more than 0.4 part per million of the colorant methylene blue. Components shall be present in the product used to prepare the solution in the following proportions: 1 part *n*-alkyl(C_{12}-C_{16})benzyldimethylammonium chloride to 0.24 part ammonium chloride to 0.08 part calcium stearate to 0.60 part sodium bicarbonate to 0.08 part starch or dextrin, or a combination of starch and dextrin.

* * * * *

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22950 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1310 and 1313

Records, Reports, and Exports of Listed Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) by including hydrochloric acid and sulfuric acid as listed essential chemicals for the purpose of imposing controls on exports to cocaine producing areas. The inclusion of these chemicals into the CDTA requires any exporter of these chemicals to targeted countries to comply with the regulated export transaction requirements specified in 21 CFR parts 1310 and 1313.

EFFECTIVE DATE: October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Introduction

On December 11, 1991, a notice of proposed rulemaking was published by the Administrator of the Drug Enforcement Administration (DEA) in the **Federal Register** (56 FR 64582-64584) to include hydrochloric acid and sulfuric acid as listed essential chemicals under the Chemical Diversion and Trafficking Act (CDTA) of 1988. The proposed rule provided the opportunity for interested parties to submit comments on or before January 10, 1992.

Two interested parties filed comments. A section by section analysis of the comments and the DEA's consideration of them are set forth below.

Substances Covered (1310.02)

One respondent suggested that the proposal, as written, did not clearly specify the forms of the acids to be regulated. It is the intent of the DEA to regulate both concentrated and diluted solutions of hydrochloric acid and sulfuric acid and anhydrous hydrochloric acid, also known as hydrogen chloride gas. The DEA does not consider aqueous solutions of regulated chemicals, including hydrochloric acid and sulfuric acid, to

be mixtures as defined under 21 U.S.C. 802(40).

Another respondent presented the viewpoint that the proposed regulation of hydrochloric acid and sulfuric acid would unfairly discriminate against U.S. exporters since other countries have not, as yet, imposed export controls on these acids to targeted areas. This proposed regulation is in agreement with the recommendations of the Chemical Action Task Force (CATF) which were endorsed by the G–7 nations and the Commission of the European Communities. In addition, hydrochloric and sulfuric acids were proposed for inclusion under Article 12 of the 1988 Vienna Convention. The Commission on Narcotic Drugs (CND), at its thirty-fifth session on April 9, 1992, voted to place sulfuric acid (excluding its salts) and hydrochloric acid (excluding its salts) into Table II of the 1988 Convention. Control under Article 12 requires all parties to the 1988 Convention to apply export control measures to hydrochloric and sulfuric acids.

Maintenance of Records (1310.04)

One respondent requested a clarification of the basis on which the acid threshold quantities were to be calculated. The reason for this comment was the proposal, as written, did not specify the acid forms to be regulated. Since the DEA is regulating all aqueous concentrations of the two acids, the threshold limit parameters for aqueous forms were revised and are based solely on volume measurements. The threshold limit for anhydrous hydrochloric acid, which was omitted from the December 11, 1991 proposal, is based solely on a weight measurement.

One respondent stated that thresholds should be increased to recognize the legitimate high volume use of both acids by the regulated community. The DEA agrees with this comment and has increased the thresholds for both acids.

This rule is necessary to comply with treaty obligations of the United States, and therefore, the countries to which export restrictions apply have been minimized. While exports to listed countries are regulated transactions requiring full application of the controls of the CDTA and its regulations, it is recognized that traffickers may attempt to place orders through third party countries to subsequently be diverted to illegal activities in listed countries. Persons exporting these chemicals should be aware of this potential and exercise due diligence to guard against becoming a party to manipulation. Even though the exports to unlisted countries are not regulated transactions, criminal penalties exist for knowingly and intentionally distributing or exporting so as to evade the provisions of the CDTA.

The Administrator hereby certifies that this action will have no significant impact on entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This amendment to the list of essential chemicals is limited to exports to specified Latin American countries. Most exports of this nature are handled by major chemical manufacturers and distributors who are not small entities as defined in 5 U.S.C. 601(6).

This is not a major rule for purposes of Executive Order (E.O.) 12291. Pursuant to E.O. 12291, this final rule has been submitted for review by the Office of Management and Budget (OMB). The Administrator certifies that these amendments to the DEA's chemical diversion regulations meet the applicable standards set forth in sections 2(a) and 2(b)(2) of E.O. 12778. These regulations, implementing the Chemical Diversion and Trafficking Act, are essential to a criminal law enforcement function of the United States.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this rule has no implications which would warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and record keeping requirements.

For reasons set out above, 21 CFR, part 1310, is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding paragraphs (b)(8) and (b)(9) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(b) * * *

(8) Hydrochloric acid

(9) Sulfuric acid

* * * * *

3. Section 1310.04 is amended by adding paragraph (f)(2)(iv) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(iv) Exports to Designated Countries

Chemical	Threshold by volume	Threshold by weight
(A) Hydrochloric acid.	50 gallons	
(1) Anhydrous hydrochloric acid.		27 kilograms.
(B) Sulfuric acid.	50 gallons	

4. A new § 1310.08 is added to read as follows:

§ 1310.08 Excluded transactions.

Pursuant to 21 U.S.C. 802(39)(A)(iii), regulation of the following transactions has been determined to be unnecessary for the enforcement of the Chemical Diversion and Trafficking Act and, therefore, they have been excluded from the definitions of regulated transactions contained in 21 CFR 1310.01(f) and 1313.02(d):

(a) Domestic and import transactions of hydrochloric and sulfuric acids.

(b) Export transactions of hydrochloric and sulfuric acids, except for exports to the following countries:

(1) Argentina
(2) Bolivia
(3) Brazil
(4) Chile
(5) Colombia
(6) Ecuador
(7) French Guiana
(8) Guyana
(9) Panama
(10) Paraguay
(11) Peru
(12) Surinam
(13) Uruguay
(14) Venezuela

Dated: June 30, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92–22933 Filed 9–21–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 165

[COTP Paducah, KY, Regulation 92–23]

Safety Zone Regulations: Cumberland River, Mile 0.0 to 10.0 and From Mile 24.0 to 30.6

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Cumberland River from mile 0.0 to 10.0 and from mile 24.0 to 30.6. The safety

zones are needed to protect larger vessels from a safety hazard associated with narrow channel conditions. Within the safety zones, vessels greater than 40 feet in length will be restricted to one way passage.

EFFECTIVE DATES: This regulation becomes effective at 6 a.m. on September 1, 1992. It terminates at 6 p.m. on September 22, 1992.

FOR FURTHER INFORMATION CONTACT: ENS Robert Coller, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office, P.O. Box 7509, Paducah, KY 42002–7509, (502) 442–1621.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to control the potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is ENS Robert Coller, project officer for the Captain of the Port, Paducah, KY.

Discussion of Regulation

The event requiring this regulation will begin on September 1, 1992. As a result of the closure of Kentucky Dam, an increase of traffic on the Cumberland River is expected. This increase of traffic, through narrow channels, necessitates the following restrictions. Vessels up to 40 feet in length will be permitted to transit the zones without restriction but must be prepared to give way to larger vessels. All vessels greater than 40 feet in length will be restricted to one way passage through the zones with no meeting, passing or overtaking permitted other than situations involving small vessels. Large vessels will be required to coordinate transits of the zones via marine radio or other electronic communications. Upbound large vessels preparing to enter either zone will be expected to give way to downbound large vessels preparing to enter the same zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165.T02045 is added to read as follows:

§ 165.T02045 Safety Zone: Cumberland River.

(a) *Location.* The following area is a safety zone: Cumberland River, Mile 0.0 to 10.0 and from mile 24.0 to 30.6.

(b) *Effective date.* This regulation becomes effective at 6 a.m. on September 1, 1992. It terminates at 6 p.m. on September 22, 1992.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 28, 1992.

Robert M. Segovis,

Commander, U.S. Coast Guard, Captain of the Port, Paducah, Ky.

[FR Doc. 92–22900 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 21 and 36

RIN 2900–AF95

Nomenclature Changes; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correction to technical amendments.

SUMMARY: This document contains additions to the Nomenclature Changes; Correction which was published Wednesday, August 26, 1992 (57 FR 38609–38611). The August 26, 1992, document made corrections to a nomenclature rule published Monday, July 13, 1992 (57 FR 31006–31033). The changes made were to conform the statutory citations found throughout title 38 of the Code of Federal Regulations to the redesignation of sections of title 38, United States Code effected by Public Law No. 102–40, the "Department of Veterans Affairs Health-Care Personnel Act of 1991," and Public Law No. 102–83, the "Department of Veterans Affairs Codification Act."

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Frederic Conway, Deputy Assistant General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 523–3911).

SUPPLEMENTARY INFORMATION: The additions in this document will complete the corrections to nomenclature changes throughout title 38 of the Code of Federal Regulations.

Approved: September 16, 1992.

B. Michael Berger,

Director Records Management Service.

Accordingly, the publication on August 26, 1992 (57 FR 38609–38611, is corrected as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart F—Education Loans

1. Page 31026, column 1, change number 5 is corrected by removing "38 U.S.C." and adding in its place "section".

Subpart G—Post-Vietnam ERA Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. Page 31027, column 1, change number 54 is corrected by removing all that appears and adding in its place "Remove the citation "38 U.S.C. 1780(d)(4)(B)" and add in its place "38 U.S.C. 3680(d)(4)(B)", wherever it appears.

2. Page 31027, column 2 is corrected by adding to the list of changes: "81. Remove the citation "38 U.S.C. 1641, 1676" and adding in its place "38 U.S.C. 3241, 3476", wherever it appears.

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. Page 31028, column 2, change number 17 is corrected by removing the citation "38 U.S.C. 1434, 1780(c)" and adding in its place "38 U.S.C. 1434, 1788(c)".

2. Page 31028, column 2, change number 17 is corrected by removing the citation "38 U.S.C. 3034, 3680(c)" and adding in its place "38 U.S.C. 3034, 3688(c)".

3. Page 31028, column 3, change number 40 is corrected by adding "(b)" after "38 U.S.C. 3012".

4. Page 31028, column 3, change number 44 is corrected by removing "3031(d)" the first time it appears and adding in its place "1431(d)".

5. Page 31029, column 2, change number 82 is corrected by adding ",

1790" after "1772(a)" and by adding ", 3690" after "3672(a)".

6. Page 31029, column 2, change number 83 is corrected by adding ", 1790" after "1772(a)" and by adding ", 3690" after "3672(a)".

7. Page 31030, column 1 is corrected by adding to the list of changes: "122. Remove the citation "38 U.S.C. 1434, 1652" and add in its place "38 U.S.C. 3034, 3452", wherever it appears."

"123. Remove the citation "38 U.S.C. 1402(2)" and add in its place "38 U.S.C. 3002(2)", wherever it appears."

"124. Remove the citation "38 U.S.C. 3001, 3013" and add in its place "38 U.S.C. 5101, 5113", wherever it appears."

"125. Remove the citation "38 U.S.C. 3003(a)" and add in its place "38 U.S.C. 5103(a)", wherever it appears."

"126. Remove the citation "38 U.S.C. 3504, 3505" and add in its place "38 U.S.C. 6104, 6105", wherever it appears."

"127. Remove the citation "38 U.S.C. 3012, 3013" and add in its place "38 U.S.C. 5112, 5113", wherever it appears."

"128. Remove the citation "38 U.S.C. 3012(a), 3013" and add in its place "38 U.S.C. 5112(a), 5113", wherever it appears."

"129. Remove the citation "38 U.S.C. 1434, 1784" and add in its place "38 U.S.C. 3034, 3684", wherever it appears."

"130. Remove the citation "38 U.S.C. 1417(a)" and add in its place "38 U.S.C. 3017(a)", wherever it appears."

"131. Remove the citation "38 U.S.C. 1434; 1788(c)" and add in its place "38 U.S.C. 3034, 3688(c)", wherever it appears."

Subpart L—Educational Assistance for Members of the Selected Reserve

1. Page 31030, column 2, change number 15 is corrected by removing "38 U.S.C. 3967(a)" and adding in its place "38 U.S.C. 3697(a)".

2. Page 31030, column 2, change number 16 is corrected by removing "38 U.S.C. 3467(a)" and adding in its place "38 U.S.C. 3697(a)".

3. Page 31030, column 2, change number 21 is corrected by removing all that appears and adding in its place "Remove the citation "38 U.S.C. 2131" and add in its place "10 U.S.C. 2131", wherever it appears."

4. Page 31031, column 1, change number 49 is corrected by removing all that appears and adding in its place "Remove the citation "10 U.S.C. 1788(b)" and add in its place "10 U.S.C. 2136(b), 38 U.S.C. 3688(b)", wherever it appears."

5. Page 31031, column 1, change number 54 is corrected by adding ", 1789, 1789(c), 4004(e)" after "1779" and by adding ", 3689, 3689(c), 7104(e)" after "3679".

6. Page 31031, column 1 is corrected by adding to the list of changes "58. "Remove the citation "38 U.S.C. 2131(b)" and add in its place "10 U.S.C. 2131(b)", wherever it appears."

"59. Remove the citation "38 U.S.C. 3012, 3013" and add in its place "38 U.S.C. 5112, 5113", wherever it appears."

"60. Remove the citation "38 U.S.C. 212(a); 1796" and add in its place "38 U.S.C. 512(a); 3696", wherever it appears."

PART 36—LOAN GUARANTY

1. Page 31031, column 2, change number 20 is corrected by removing the citation "38 U.S.C. 1812(9)(f)" and adding in its place "38 U.S.C. 18129(f)".

2. Page 31032, column 2, change number 84 is corrected by removing "(d)" wherever it appears.

3. Page 31032, column 3 is corrected by adding to the list of changes: "98. Remove the citation "38 U.S.C. 1812 (f) and (g)" and add in its place "38 U.S.C. 3712 (f) and (g)", wherever it appears."

"99. Remove the citation "section 1801(b)(2)" and add in its place "section 3701(b)(2)", wherever it appears."

"100. Remove the citation "38 U.S.C. Secs." and add in its place "38 U.S.C." wherever it appears."

"101. Remove the citation "38 U.S.C. 1803(d)" and add in its place "38 U.S.C. 3703(d)" wherever it appears."

"102. Remove the citation "38 U.S.C. 1803(c)(1) and 1810(c)" and add in its place "38 U.S.C. 3703(c)(1) and 3710(c)" wherever it appears."

"103. Remove the citation "38 U.S.C. 1810(a) (4) or (7)" and add in its place "38 U.S.C. 3710(a) (4) or (7)" wherever it appears."

"104. Remove the citation "38 U.S.C. 1814, 1829(d)" and add in its place "38 U.S.C. 3714, 3729(d)", wherever it appears."

"105. Remove the citation "section 1801(b)" and add in its place "section 3701(b)", wherever it appears."

"106. Remove the citation "38 U.S.C. 1820(a)(3)" and add in its place "38 U.S.C. 3720(a)(3)", wherever it appears."

"107. Remove the citation "38 U.S.C. 1812(g), 1820(a)(3)" and add in its place "38 U.S.C. 3712(g), 3720(a)(3)", wherever it appears."

"108. Remove the citation "38 U.S.C. 1813" and add in its place "38 U.S.C. 3713", wherever it appears."

"109. Remove the citation "38 U.S.C. 1803(d)(2)" and add in its place "38 U.S.C. 3703(d)(2)" wherever it appears."

"110. Remove the citation "38 U.S.C. 1804" and add in its place "38 U.S.C. 3704", wherever it appears."

"111. Remove the citation "38 U.S.C. 210(c) or 1803(a)(2)" and add in its place "38 U.S.C. 501 or 3703(a)(2)", wherever it appears."

"112. Remove the citation "38 U.S.C. 1831(d)" and add in its place "38 U.S.C. 3731(d)", wherever it appears."

"113. Remove the citation "38 U.S.C. 1804(a)" and add in its place "38 U.S.C. 3704(a)", wherever it appears."

"114. Remove the citation "38 U.S.C. 1831" and add in its place "38 U.S.C. 3731", wherever it appears."

"115. Remove the citation "38 U.S.C. 210(c), 1803(c), 1812(g)" and add in its place "38 U.S.C. 501, 3703(c), 3712(g)", wherever it appears."

"116. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6)" and add in its place "38 U.S.C. 501, 3703(c)(1), 3710(a)(6)", wherever it appears."

"117. Remove the citation "38 U.S.C. 210(c)(1), 1810(a)(6)" and add in its place "38 U.S.C. 501, 3710(a)(6)", wherever it appears."

"118. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1), (d)(3), 1810(a)(6)" and add in its place "38 U.S.C. 501, 3703(c)(1) and (d)(3), 3710(a)(6)", wherever it appears."

"119. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6), (b)(5)" and add in its place "38 U.S.C. 501, 3703(c)(1), 3710(a)(6) and (b)(5)", wherever it appears."

"120. Remove the citation "38 U.S.C. 210(c)(1), 1803(c)(1)" and add in its place "38 U.S.C. 501, 3703(c)(1)", wherever it appears."

"121. Remove the citation "38 U.S.C. 210, 801" and add in its place "38 U.S.C. 501, 2101", wherever it appears."

"122. Remove the citation "38 U.S.C. 801(b)" and add in its place "38 U.S.C. 2101(b)", wherever it appears."

"123. Remove the citation "section 612(a)" and add in its place "section 1712(a)", wherever it appears."

"124. Remove the citation "38 U.S.C. 801(b), 804" and add in its place "38 U.S.C. 2101(b), 2104", wherever it appears."

"125. Remove the citation "section 801(a)" and add in its place "section 2101(a)", wherever it appears."

"126. Remove the citation "section 801(b)" and add in its place "section 2101(b)", wherever it appears."

"127. Remove the citation "38 U.S.C. 802(b)" and add in its place "38 U.S.C. 2102(b)", wherever it appears."

"128. Remove the citation "38 U.S.C. 210(c), 801 (a) and (b)" and add in its place "38 U.S.C. 501, 2101 (a) and (b)", wherever it appears."

"129. Remove the citation "38 U.S.C. 1811" and add in its place "38 U.S.C. 3711", wherever it appears."

"130. Remove the citation "sections 1807 and 1818" and add in its place

"sections 3707 and 3718", wherever it appears."

"131. Remove the citation "38 U.S.C. 1811(d)(2)(A)" and add in its place "38 U.S.C. 3711(d)(2)(A)", wherever it appears."

"132. Remove the citation "38 U.S.C. 1810" and add in its place "38 U.S.C. 3710", wherever it appears."

"133. Remove the citation "38 U.S.C. 210(c), 1803(c)(1), 1811(d)(1), 1812 (f) and (g)" and add in its place "38 U.S.C. 501, 3703(c)(1), 3711(d)(1), 3712 (f) and (g)", wherever it appears."

"134. Remove the citation "section 1801(b)(2)" and add in its place "section 3701(b)(2)", wherever it appears."

"135. Remove the citation "38 U.S.C. 1829(d)" and add in its place "38 U.S.C. 3729(d)", wherever it appears."

"136. Remove the citation "38 U.S.C. 210(c), 1824 and 1829" and add in its place "38 U.S.C. 501, 3724 and 3729", wherever it appears."

"137. Remove the citation "38 U.S.C. 1803(c)(1), (d)(1)" and add in its place "38 U.S.C. 3703(c)(1) and (d)(1)", wherever it appears."

"138. Remove the citation "38 U.S.C. 1820(f)" and add in its place "38 U.S.C. 3720(f)", wherever it appears."

"139. Remove the citation "38 U.S.C. 1810(c)" and add in its place "38 U.S.C. 3710(c)", wherever it appears."

"140. Remove the citation "38 U.S.C. 1811(d)(1)" and add in its place "38 U.S.C. 3711(d)(1)", wherever it appears."

"141. Remove the citation 38 U.S.C. 1810(a)(8)" and add in its place "38 U.S.C. 3710(a)(8)", wherever it appears."

"142. Remove the citation "38 U.S.C. 1811(b)" and add in its place "38 U.S.C. 3711(b)", wherever it appears."

"143. Remove the citation "38 U.S.C. 210(c) or 1803(a)(2)" and add in its place "38 U.S.C. 501 or 3703(a)(2)", wherever it appears."

"144. Remove the citation "38 U.S.C. 210(c)(1), 1820(a)(5)" and add in its place "38 U.S.C. 501, 3720(a)(5)", wherever it appears."

"145. Remove the citation "38 U.S.C. 1811(g)" and add in its place "38 U.S.C. 3711(g)", wherever it appears."

"146. Remove the citation "38 U.S.C. 210(c), 1820" and add in its place "38 U.S.C. 501, 3720", wherever it appears."

"147. Remove the citation 38 U.S.C. 1820" and add in its place "38 U.S.C. 3720", wherever it appears."

"148. Remove the citation "38 U.S.C. 1803(c)(1) and 1820" and add in its place "38 U.S.C. 3703(c)(1) and 3720", wherever it appears."

"149. Remove the citation "38 U.S.C. 1814 and 1820" and add in its place "38 U.S.C. 3714 and 3720", wherever it appears."

"150. Remove the citation "38 U.S.C. 1810(a)" and add in its place "38 U.S.C. 3710(a)", wherever it appears."

"151. Remove the citation "38 U.S.C. 1810(b)(3)" and add in its place "38 U.S.C. 3710(b)(3)", wherever it appears."

[FR Doc. 92-22784 Filed 9-21-92; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6947

[OR-943-4214-10; GP2-231; OR-47267]

Withdrawal of National Forest System Land for Thunder Egg Lake Agate Beds; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 150.00 acres of National Forest System land in the Fremont National Forest from mining for a period of 20 years for protection of the Thunder Egg Lake Agate Beds. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect a Forest Service recreational rock hounding area:

Willamette Meridian

Fremont National Forest

T. 40 S., R. 21 E.,
Sec. 8, S½SE¼SW¼;
Sec. 17, W½NE¼, NE¼NW¼, and NE¼ SE¼NW¼.

The area described contains 150.00 acres in Lake County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 10, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-22843 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7550]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: if you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street SW., room 417, Washington DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management

aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having floodprone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

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

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regultory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Conversions				
Connecticut: Killingworth, Town of Middlesex County.	090174	July 15, 1975, Emergency; March 15, 1982, Regular; September 30, 1992, Suspension.	September 30, 1992	September 30, 1992.
Massachusetts: Grafton, Town of Worcester County.	250306	July 29, 1975, Emergency; May 2, 1983, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Vermont: Concord, Town of Essex County.	500207	October 28, 1975, Emergency; September 27, 1985, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region II				
New York:				
Greece, Town of Monroe County	360417	March 9, 1973, Emergency; March 18, 1980, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Mamakating, Town of Sullivan County.	360826	October 6, 1976, Emergency; September 24, 1984, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
West Seneca, Town of Erie County.	360282	March 31, 1972, Emergency; February 2, 1977, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.

State and location	Community No.	Effective date of authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III				
West Virginia: Charles Town, City of Jefferson County.	540066	April 24, 1975, Emergency; December 4, 1979, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Pennsylvania: Lower Chichester, Town of Delaware County.	421604	October 9, 1974, Emergency; September 22, 1978, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Pennsylvania: State College, Borough of Centre County.	420270	May 25, 1973, Emergency; June 30, 1976, Regular; September 30, 1992, Suspension.	September 30, 1992	September 30, 1992.
Region IV				
Tennessee: Jellico, City of Campbell County.	475431	November 27, 1970, Emergency; June 18, 1971, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region V				
Michigan: Kalamazoo, City of Kalamazoo County.	260315	December 26, 1974, Emergency; May 1, 1985, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Minnesota: Independence, City of Hennepin County.	270167	January 28, 1975, Emergency; January 6, 1983, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Illinois: Elwood, Village of Will County.	170849	December 23, 1982, Emergency; December 23, 1982, Regular; September 30, 1992, Suspension.	November 3, 1982	Do.
Region VI				
Texas: Pleak, Village of Fort Bend County.	481615	May 31, 1988, Emergency; May 31, 1988, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region VIII				
Colorado: Telluride, Town of San Miguel County.	080168	May 27, 1975, Emergency; September 15, 1978, Regular; September 30, 1992, Suspension.	September 30, 1992	Do.
Region VII				
Iowa:				
Clive, City of Polk and Dallas Counties.	190488	August 25, 1977, Emergency; November 1, 1979, Regular; October 16, 1992, Suspension.	October 16, 1992	October 16, 1992.
Windsor Heights, City of Polk County.	190687	October 7, 1977, Emergency; June 15, 1979, Regular; October 16, 1992, Suspension.	October 16, 1992	Do.
Nebraska: Fairbury, City of Jefferson County.	310120	August 28, 1974, Emergency; September 3, 1980, Regular; October 16, 1992, Suspension.	October 16, 1992	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

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

Issued: September 15, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administrtion.

[FR Doc. 92-22894 Filed 9-21-92; 8:45 am]

BILLING CODE 6718-21-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Recodification of Cost Accounting Standards Board Rules and Regulations

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Correction to final rule.

SUMMARY: On April 17, 1992, the Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, recodified at 48 CRF chapter 99 (57 FR 14148), the Cost Accounting Standards Rules and Regulations previously codified as both 48 CFR part 30, and 4 CFR parts 331 through 420. On August 3, 1992, the OFPP published corrections to the final rule (57 FR 34078). This document contains a correction to the August 3, 1992 notice .

EFFECTIVE DATE: April 17, 1992.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION:

Background

Section 5 of Public Law 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, established a Cost Accounting Standards Board (CASB) within the Office of Federal Procurement Policy. On April 17, 1992, the CASB recodified, into a single set of uniform regulations, those Cost Accounting Standards that are applicable to covered Government contracts and subcontracts. See 57 FR 14148 (4/17/92) and 57 FR 34078 (8/3/92).

Need for Correction

As published, the final regulation contains an error which may prove to be misleading.

Correction of Publication

Accordingly, the publication of corrections to the final rule on August 3, 1992 (57 FR 34078) is corrected as follows:

PART 9900—[AMENDED]

9903.202-9 [Corrected]

1. On page 34079, in the third column, in 9903.202–9, the entry should read as follows:

"6. On page 14159, in 9903.202–9, a new index page for CASB DS–1 is illustrated below:"

Dated: September 15, 1992.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 92–22673 Filed 9–21–92; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412–2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the recreational salmon fisheries in the exclusive economic zone from Cape Falcon to Humbug Mountain, Oregon, at midnight, September 10, 1992. The Director, Northwest Region, Northwest Region, NMFS (Regional Director), has determined that the overall recreational quota of 172,000 coho salmon south of Cape Falcon, Oregon, has been reached. This action is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, September 10, 1992. Comments will be accepted through October 1, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the overall recreational catch from Cape Falcon, Oregon, to the U.S.-Mexico border will be limited to a catch quota of 172,000 coho salmon. When this coho salmon quota is reached, all recreational fisheries between Cape Falcon and Humbug Mountain, Oregon, will close.

The recreational fisheries between Cape Falcon and Humbug Mountain opened on May 3 through June 11, then reopened on June 14 and were scheduled to continue through the earlier of September 20 or attainment of the overall coho salmon quota. The recreational fishery in the subarea from Florence South Jetty to Humbug Mountain was also subject to a subarea quota for chinook salmon; this quota was projected to be reached and the possession and landing of chinook salmon in the recreational fishery in the revised subarea from Heceta Head to Humbug Mountain was prohibited as of midnight, July 2, 1992 (57 FR 31666, July 17, 1992).

Based on the best available information on September 8, 1992, the recreational fishery catch south of Cape Falcon was projected to reach the overall recreational quota of 172,000 coho salmon and the recreational fishery for all salmon species between Cape Falcon and Humbug Mountain should be closed at midnight, September 10.

The Regional director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this closure. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Because of the need for immediate action, the Secretary of Commerce (Secretary) has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

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

Dated: September 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–22864 Filed 9–16–92; 5:01 pm]

BILLING CODE 3510–22–M

50 CFR Parts 672 and 675

[Docket No. 920939–2239]

Groundfish of the Gulf of Alaska, and Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interpretive rule; technical amendment.

SUMMARY: NMFS publishes this interpretive rule and technical amendment to clarify the definitions of vessel "length overall" that are published in regulations implementing the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA), and the FMP for the Goundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). This rule provides guidance for applying the definitions to determine the length overall (LOA) of vessels participating in the groundfish fisheries of the GOA and the BSAI, and amends 50 CFR parts 672 and 675 by adding illustrative figures to those regulations. This action is intended to clarify existing regulations to further the goals and objectives contained in the fishery management plans that govern these fisheries.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen Varosi, Fishery Biologist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic and foreign groundfish fisheries in the exclusive economic zone off Alaska are managed in accordance with the GOA and BSAI FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP is

implemented by regulations codified at 50 CFR part 672 for the U.S. fishery. The BSAI FMP is implemented by regulations codified at 50 CFR part 675 for the U.S. fishery. General regulations that also apply to domestic fisheries are codified at 50 CFR part 620.

On February 12, 1990, NMFS published regulations implementing the groundfish fisheries Observer Plan developed by the Secretary of Commerce pursuant to Amendment 13 to the BSAI FMP and Amendment 18 to the GOA FMP (55 FR 4839). The Observer Plan was implemented to collect fisheries data necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries of the GOA and BSAI.

Mandatory minimum observer coverage levels for catcher vessels and catcher/processor vessels vary with the LOA of the vessel. Regulated catcher vessels and catcher/processor vessels 125 feet (38.1 m) LOA or longer must carry a NMFS-certified observer at all times while fishing for groundfish. Operators of catcher vessels and catcher/processor vessels from 60 through 124 feet (18.3–37.8 m) LOA must carry a NMFS-certified observer during 30 percent of their days during fishing trips in each calendar quarter of the year in which the vessels fish more than 10 days in the groundfish fisheries.

The term "length overall" of a vessel is defined at §§ 672.2 and 675.2 as "the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments."

NMFS publishes this interpretive rule to clarify the usage of "stem" and "stern" in the definition of "length overall". "Stem" is the foremost position of the vessel, a section of timber or cast, forged, or rolled metal to which the sides of a vessel are united at the fore end, with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end. "Stern" is simply the aftermost part of the vessel. In order to provide additional guidance, NMFS amends the regulations at 50 CFR parts 672 and 675 by revising definitions in §§ 672.2 and 675.2 and by revising figures to the parts.

NMFS also has become aware that some owners and operators of catcher vessels and catcher/processor vessels may be using registered length rather than LOA to determine mandatory minimum observer coverage levels. When NMFS implemented the Observer Plan, NMFS expressly rejected the use of registered length for determining mandatory minimum observer coverage levels. LOA was considered a superior method of vessel measurement (55 FR 4345, February 12, 1990). Consequently, registered length is immaterial in determining LOA and required observer coverage levels.

NMFS advises owners and operators of catcher vessels and catcher/processor vessels to measure LOA consistent with the regulatory definition, without reference to registered length, for purposes of determining mandatory minimum observer coverage levels. NMFS also reminds vessel owners and operators that the same definition of LOA described above is used in the definition of "inshore component" implemented under Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP (57 FR 23344, June 3, 1992).

In 50 CFR part 672, Figure 1 is revised to illustrate LOA and Figures 2, 3, and 4 are redesignated for clarity. In § 672.2 and § 675.2, the definitions of "pelagic trawl" are revised to properly reference figures, and metric conversions are added to the definitions in accordance with Department of Commerce policy. Section 672.24(d)(1) and (2) are also revised to properly reference figures. No substantive changes are made to these sections.

Classification

This interpretive rule is consistent with the Magnuson Act and other applicable law.

This interpretive rule is exempt from the requirement to publish general notice of proposed rulemaking and to delay its effective date under section 553(b) and (d) of the Administrative Procedure Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

The Assistant Administrator for Fisheries, NOAA, determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Because the interpretive rule will have no direct regulatory effect upon the public, NMFS has determined that this rule does not affect the coastal zone of any state with an approved coastal management program.

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

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Recordkeeping and reporting requirements.

Dated: September 16, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.2, the definitions of "length overall" and "pelagic trawl" are revised to read as follows:

§ 672.2 Definitions.

* * * * *

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (Figure 1).

* * * * *

Pelagic trawl means a trawl that does not have discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, but that may have weights on the wing tips, and:

(1) That has stretched mesh sizes of at least 64 inches (1.6 m), as measured between knots, starting at all points on the fishing line, head rope, and breast lines and extending aft for a distance of at least ten meshes from the fishing line, head rope, and breast lines and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 20 inches (50.8 cm) between knots around the circumference of the net (Figure 2) and that contains no inserts or collars or other configurations intended to reduce the mesh size of the forward section; or

(2) That has parallel lines spaced no closer than 64 inches (1.6 m), or a combination of parallel lines and meshes with stretched mesh sizes of at least 64 inches (1.6 m), measured as described in paragraph (1) of this definition, for a distance of at least 33 feet (10.1 m), and starting at all points on the fishing line, head rope, and breast

lines and going around the entire circumference of the trawl (Figure 3).

* * * * *

3. In § 672.24, paragraph (d)(1) introductory text and paragraph (d)(2) introductory text are revised to read as follows:

§ 672.24 Gear limitations.

* * * * *

(d) * * *

(1) No person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 4, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

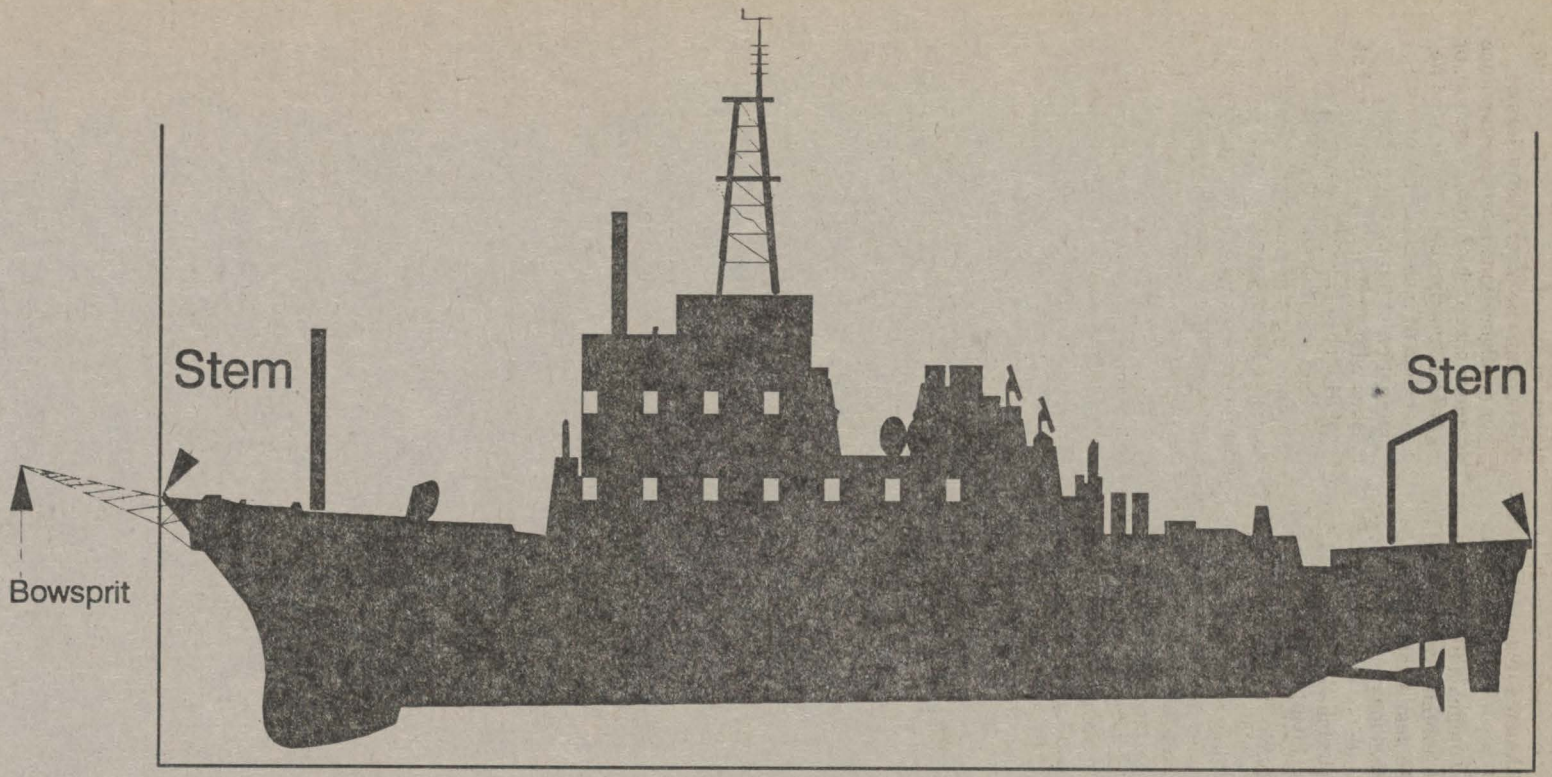
* * * * *

(2) From February 15 to June 15, no person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 4, Area Type II) from a vessel having any trawl other than a pelagic trawl either attached or on board:

* * * * *

4. Figure 1 to part 672 is revised and Figures 2, 3, and 4 to part 672 are redesignated as Figures 4, 2, and 3, respectively, to appear as follows:

BILLING CODE 3510-22-M



Length Overall - the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. Rounded to the nearest foot.

Stem - the foremost position of a vessel; a section of timber or cast, forged or rolled metal to which the sides of a vessel are united at the fore end with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end.

Stern - the aftermost part of the vessel.

Figure 1.

BILLING CODE 3510-22-C

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

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

6. In § 675.2, the definitions of "length overall" and "pelagic trawl" are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (Figure 1).

* * * * *

Pelagic trawl means a trawl that does not have discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, but that may have weights on the wing tips, and:

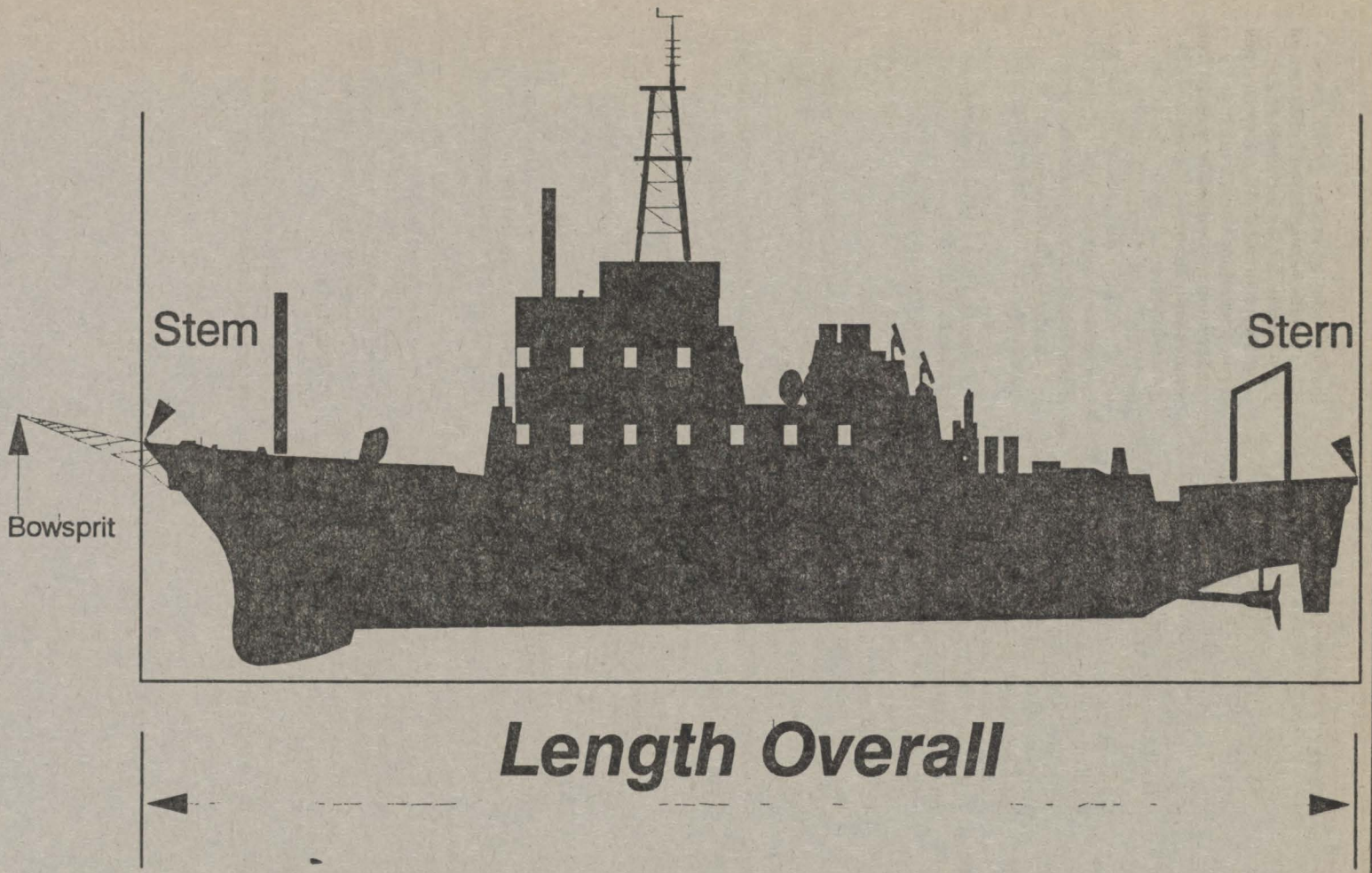
(1) that has stretched mesh sizes of at least 64 inches (1.6 m), as measured between knots, starting at all points on the fishing line, head rope, and breast lines and extending aft for a distance of at least ten meshes from the fishing line, head rope, and breast lines and going around the entire circumference of the trawl, and which webbing is tied to the fishing line with no less than 20 inches (50.8 cm) between knots around the circumference of the net (Figure 4) and that contains no inserts or collars or other configurations intended to reduce the mesh size of the forward section; or

(2) That has parallel lines spaced no closer than 64 inches (1.6 m), or a combination of parallel lines and meshes with stretched mesh sizes of at least 64 inches (1.6 m), measured as described in paragraph (1) of this definition, for a distance of at least 33 feet (10.1 m), and starting at all points on the fishing line, head rope, and breast lines and going around the entire circumference of the trawl (Figure 5).

* * * * *

7. Figure 3 to part 675 is revised to appear as follows:

BILLING CODE 3510-22-M



Length Overall - the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. Rounded to the nearest foot.

Stem - the foremost position of a vessel; a section of timber or cast, forged or rolled metal to which the sides of a vessel are united at the fore end with the lower end scarfed to the keel and the bowsprit, if one is present, resting on the upper end.

Stern - the aftermost part of the vessel.

Figure 3.

[FR Doc. 92-22973 Filed 9-21-92; 8:45 am]
BILLING CODE 3510-22-C

50 CFR Part 675

[Docket No. 920940-2240]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces a technical amendment to a final rule to clarify that nautical miles are used to measure nautical distances referred to in regulations implementing the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area. This technical amendment revises NMFS' definition of the term "mile" in the regulatory text relating to time and area closures by inserting the word "nautical" in front of the word "mile". The purpose of this revision is to clarify the meaning of this term. Clarification is consistent with the goals and objectives of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fisheries Management Division, Alaska Region, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone off Alaska are managed by the Secretary of Commerce in accordance with the BSAI FMP prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Act. The FMP is implemented by regulations governing the U.S. groundfish fishery at 50 CFR part 675. General regulations that also pertain to U.S. fisheries are implemented at 50 CFR part 620.

Because nautical distances are measured in nautical miles, the terms mile and nautical mile have been used interchangeably. Specifically, § 675.22(f) refers to NOAA Survey Chart 16315, which uses nautical miles and shows the 3 nautical mile boundary and the 12 nautical mile boundary of the territorial sea. Latitude and longitude, as they appear on NOAA survey Charts and that are measured in degrees and minutes, are used to measure navigational distances. A nautical mile is defined as the arc length intercepted on the surface angle of the earth by a central angle of measure 1 minute. The radius of the earth is 2.09×10^7 feet, thus yielding 6,076.1 feet (1,852 meters) in a nautical mile. To avoid potential confusion in interpreting the regulations, they are amended as indicated below where the term "mile" will be preceded by the word "nautical."

Classification

Because these technical amendments make only minor, non-substantive corrections to existing rules, notice and public procedure thereon and a delay in effective date would serve no purpose. Accordingly, under 5 U.S.C. 553(b)(B) and (d), notice and public procedure thereon and a delay in effective date are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under E.O. 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. No changes in the regulatory impacts previously reviewed and analyzed will result from implementation of the technical amendment.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

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

2. In § 675.22, paragraph (f) is revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(f) From April 1 through September 30 of any fishing year, vessels permitted under § 675.4 are prohibited in that part of the Bering Sea subarea between 3 and 12 nautical miles seaward of the baseline used to measure the territorial sea around islands named Round Island and The Twins, as shown on National Ocean Survey Chart 16315, and around Cape Peirce (58° 33' N. latitude, 161° 43' W. longitude).

* * * * *

[FR Doc. 92-22866 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

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

Office of the Secretary

7 CFR Part 13

RIN 0560-AC23

Excessive Manufacturing (Make) Allowance in State Marketing Orders for Milk

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document announces a 31-day extension of the time for submitting comments on the proposed rule, published in the **Federal Register** on June 19, 1992, (57 FR 27371), for implementing section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended. The proposed rule relates to excessive manufacturing allowances in state marketing orders for milk.

DATES: All comments on the proposed rule must be received on or before October 19, 1992, in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415.

FOR FURTHER INFORMATION CONTACT: Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013-2415, 202-720-7601.

SUPPLEMENTARY INFORMATION: Section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) provides that no State shall provide for (an no person shall collect, directly or indirectly) a greater allowance for the processing of milk ("make allowance") than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.

On June 19, 1992, a proposed rule was published to implement section 102, specifying that comments had to be received by July 20, 1992, in order to be assured of consideration. In response to requests from interested parties who indicated that they needed additional time to prepare an analysis of the proposed rule, the comment period was extended to September 18, 1992, by notice published in the **Federal Register** on July 17, 1992 (57 FR 31668).

The state of California, citing a potential significant impact that the proposed rule would have on the State, a need for additional analysis of recently gathered information and delays due to a recent budget crisis, has requested that additional time be granted to comment on the proposed regulation. Based upon our review of that request, the unusual nature of the issue involved, and the particular significance of that issue for the state of California, it has been determined that an additional 31 days will be allowed for comment. Accordingly, comments on the proposed rule must now be received by October 19, 1992, in order to be assured of consideration.

Notice

Notice is hereby given that the period of time for submitting comments on the proposed rule published on June 19, 1992 (57 FR 27371), is extended to October 19, 1992.

Signed this 16th day of September 1992 in Washington, DC.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92-22869 Filed 9-17-92; 2:39 pm]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-074-2]

Importation of Logs, Lumber, and Certain Other Wood Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are considering regulating the importation of certain types of unmanufactured wood, such as logs, lumber, wood chips, bark, and pulp wood. We believe it is necessary to regulate importation of these articles because there are a variety of exotic plant pests and diseases associated with them, and there has recently been increased interest in importing large quantities of these articles into the United States. This notice solicits public comment on this issue.

DATES: Consideration will be given only to comments received on or before November 23, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-074-2. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard L. Orr, Entomologist, Planning and Design, PPQ, APHIS, USDA, room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8939.

SUPPLEMENTARY INFORMATION:

Background

Trees produced in many foreign locations are attacked by a wide variety of exotic plant pests and diseases which do not occur in this country. Logs and other unmanufactured wood imported into the United States could pose a significant hazard of introducing pests and diseases detrimental to forest production, recreation and urban forest resources.

For the purpose of this document, "unmanufactured wood" means wood products that have not been manufactured in a manner that would remove or kill pests associated with the trees from which the wood was derived. One issue this document addresses is the need for precise standards for what types of manufacturing processes accomplish this. Logs, lumber, tree parts, bark, and wood chips are examples of unmanufactured wood, because no

process has been applied to them that would remove or kill pests associated with the trees from which the wood was derived. Plywood, particle-board, and wooden furniture are examples of articles that are not unmanufactured wood, because processes have been applied to them that would remove or kill the pests.

Unitl recently the quantity of unmanufactured wood imported into the United States was very small, and consequently no regulations were developed specifically to address such imports. The Animal and Plant Health Inspection Service (APHIS) has been dealing with such imports by detaining shipments at ports of entry for inspection and further action if warranted as an emergency measure. In addition, APHIS has prohibited logs from the Soviet Far East and Siberia, because we have found dangerous plant pests in such logs. Pest risk assessments performed to date on Siberian wood have not identified pest mitigation techniques that are both effective in controlling the pests and diseases and economically feasible for importers of Siberian wood. The prohibition of Siberian wood imports has been taken under the authority of sections 105 and 107 of the Federal Plant Pest Act, which state:

> * * * the Secretary may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States, or interstate, and which he has reason to believe is infested or infected by or contains any such plant pests * * *. (7 U.S.C. 150dd(a))
>
> Any properly identified employee of the Department of Agriculture shall have authority to stop and inspect, without a warrant, any persons or means of conveyance moving into the United States, and any plant pests and any products and articles of any character whatsoever carried thereby, to determine whether such persons or means of conveyance are carrying any plant pest contrary to this chapter * * *. (7 U.S.C. 150ff)

Inspection at the port of entry under this authority is not adequate to prevent introduction of plant pests through unmanufactured wood imports. Some pests such as nematodes are not readily detectable by visual inspection. Also, interest in importing logs and other unmanufactured wood from various countries is increasing rapidly toward a point where inspection and control activities solely at the port of entry will not be feasible. There is currently an intense commercial interest in developing a long-term industry in the Pacific Northwest for importing and processing logs from foreign countries. There is also potential for increased log and other unmanufactured wood imports into other areas of the United States.

Representatives of domestic timber industries, State governments, and environmental organizations have requested that we propose to add regulations to 7 CFR part 319 to establish an organized system for importing unmanufactured wood under conditions adequate to prevent the introduction of plant pests and diseases. These groups have suggested that the current practice of allowing unmanufactured wood to enter the United States based primarily on inspection at the port of entry (or prohibiting imports in the case of unmanufactured wood from the Soviet Far East and Siberia) is not sufficient for dealing with large-volume imports of unmanufactured wood from many sources. Importation of any of this wood may present a significant pest risk. Little is known about the pest risk levels presented by importation of wood from many areas.

We believe that developing more comprehensive procedures for importing logs and other unmanufactured wood would result in a greater level of pest protection, and would also allow importers to plan their transactions in an orderly way, to meet known regulatory requirements. Therefore, at this time we are soliciting comments on approaches, discussed below, for regulating the importation of logs and other unmanufactured wood.

To develop an approach to regulating unmanufactured wood imports, APHIS is working with Federal and State regulatory and forestry professionals from California, Oregon, and Washington, and representatives from Agriculture Canada, the Forest Service of the United States Department of Agriculture, and key industries with an immediate interest or involvement in potential importations. The objective of this effort is to define the conditions under which logs and other unmanufactured wood could be imported. This team effort has helped define the issues that must be addressed to develop the processes that will be required to safely import logs and other unmanufactured wood. Of key importance is defining the specific hazards involved with various classes of imports and the available means to manage each.

The Forest Service has completed a scientific assessment of pests and diseases of Soviet timber proposed for importation and their pest risk significance, and APHIS has prepared a summary of the Forest Service findings.[1] APHIS also is working with the Forest Service and other agencies to assess the pest risk associated with various other potential wood imports, identified through requests by potential importers. At the present time, we are trying to determine whether the following articles may be safely imported, and if so, under what conditions:

Dry bamboo canes from all sources
Pinus radiata from Chile and New Zealand
Douglas-fir from New Zealand
Tropical hardwoods

Based on the results of ongoing pest risk assessment and pest mitigation studies, we may propose to allow the importation of logs and other unmanufactured wood of some or all of the above types, only if they meet some combination of the following conditions:

Debarking
Heat treatment prior to export that brings the center of the logs to a temperature of 160° F for 75 minutes, documented by certification.
Fumigation under APHIS supervision at the port of export
Treatment with an APHIS-approved fungicide/insecticide prior to export, with retreatment every 30 days until exported, documented by certification.
Inspection upon arrival in the United States for compliance with the requirements of the regulation and freedom from apparent exotic pests and soil
Consignment in the U.S. only to sawmills or other users operating under compliance agreements detailing how the articles will be processed (e.g., kiln drying) and how waste will be disposed of

While we hope to develop a proposed rule containing specific import requirements for the articles listed above and possibly for other articles, the potential variety of logs and other unmanufactured wood that may be offered for import is of much greater scope. We want to establish regulations that deal with not only the wood which importers currently wish to import, but also the wide variety of articles that may be of commercial interest in the future. We hope to make the regulations inclusive and flexible enough to allow us to assign appropriate import conditions to wood articles importers

[1] "An Efficacy Review of Control Measures for Potential Pests of Imported Soviet Timber," United States Department of Agriculture Miscellaneous Publication No. 1496, September 1991. Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

may wish to import in the future, without requiring lengthy additional reulemaking to address the specific articles and conditions before their import can be allowed. One of the alternatives discussed below, Alternative B, specifically addresses this goal. Both of the alternatives discussed below would allow import of regulated logs, lumber, and other unmanufactured wood only in accordance with the regulations, and only after a permit is issued by APHIS.

Alternative A—Universal Entry Alternative, With Lesser Requirements for Specific Articles

Under this alternative, we would design entry requirements that include treatment or processing conditions that would destroy any pests and diseases associated with wood articles. Any article from any source could be imported after meeting this universal entry alternative. We could also establish entry requirements less restrictive than the universal entry alternative for certain specific articles that we determine may be safely imported under lesser restrictions. However, the number of articles the regulations list as allowed import under specified lesser restrictions would be small, due to the large amount of time and resources APHIS devotes to researching the pest risk associated with each article and designing effective restrictions to counteract that pest risk. It would not be possible to develop regulations that individually address a wide variety of wood articles in the near future.

As an example of application of the universal entry alternative, we could require that unless an alternative procedure is specified in the regulations for the particular type of log, any log to be imported must first be debarked, heat treated, fumigated, and sprayed or soaked with an approved fungicide/insecticide. For other wood, we could require kiln drying prior to import. These requirements would effectively address pest risk, but would not distinguish between high-risk and low-risk articles. While this approach might be established quickly, and would allow importers to commence operations, it would also require that most imports undergo costly processing and treatment that may not be necessary, in individual cases, to control pest risks.

Lesser restrictions could be included in the regulations for articles that pest risk assessments indicate can be safely imported without undergoing all the requirements of the universal entry alternative. For example, it is possible that some logs from some sources could be safely imported with only debarking and fumigation, if they are consigned to a sawmill in the United States for further processing under controlled conditions.

One problem with this approach is that articles with lesser import restrictions must be specified in the regulations. We cannot feasibly study and develop regulations for all the types of wood articles that could conceivably justify lesser restrictions, based on pest risk. Therefore, if at some time in the future an importer presents evidence that a particular article could be safely imported with lesser restrictions, under this alternative we could not allow its import until after we have determined that the lesser restrictions adequately address pest risk, and have used notice-and-comment rulemaking to add the article and its lesser conditions to the regulations.

Alternative B—Universal Entry Alternative, With Lesser Requirements Established Through Case-by-Case Risk Assessment

Under this approach, the universal entry alternative would still be available, and any article from any source could be imported after meeting it. With regard to establishing lesser requirements for articles that justify them, the regulations could list detailed requirements for the entry of some articles, but the regulations would not attempt to list all such articles and their entry conditions. Instead, the regulations would specify the type of information that would have to be submitted with each request to import wood under lesser requirements, and would describe how APHIS would evaluate each request, on a case-by-case basis, to determine whether lesser requirements are appropriate.

If this approach were adopted, persons wanting to import unlisted logs or wood under lesser requirements would have to apply to APHIS for a permit well before the expected time of importation. The permit application would have to include detailed information regarding the geographical source of the trees, identification of pests and diseases that might be present in those areas, and any efforts to mitigate the risks associated with these pests and diseases (including methods for harvesting, treatment, storage, and movement) that the applicant proposes to use before, during, or after their importation.

Under this alternative, the regulations would also specify the standards for a pest risk assessment APHIS would conduct on the requested importation, using information provided by the requestor and other data collected by APHIS. The pest risk assessment standards in the regulations could indicate:

—How significant pests and diseases associated with the host commodity would be identified by APHIS;
—How the entry potential for each pest and disease associated with the commodity would be evaluated;
—How the colonization potential and spread potential for each pest and disease would be evaluated;
—How the economic and non-economic damage potential of the pest's introduction would be evaluated, and
—How any opportunity to mitigate the entry, colonization, or spread potential of the pest or disease would be identified.

After conducting pest risk assessments for each new import request, APHIS would determine, based on the assessment results and decisionmaking criteria contained in the regulations, whether to allow the importation under lesser requirements than the universal entry alternative. If the answer is yes, APHIS would also determine, based on the assessment results, what specific pest mitigation, treatment, and other requirements are necessary for the requested importation. The specific requirements would become permit conditions for the requested importation.

A potential benefit of this approach is that it would decrease the time required to obtain a permit to import articles under lesser requirements than the universal entry alternative. Under Alternative A, even after APHIS determines through pest risk assessment that an article may be safely imported under lesser requirements, no permits to do so may be granted until after notice-and-comment rulemaking has added the article and its specific entry requirements to the regulations. Under Alternative B, permits may be issued soon after APHIS completes and evaluates the pest risk assessments.

Alternative A uses notice-and-comment rulemaking to give the public an opportunity to comment on the specific entry conditions for each article that APHIS proposes to admit under lesser requirements. Alternative B uses notice-and-comment rulemaking to allow the public to comment on the pest risk assessment standards and decisionmaking criteria that APHIS would use to develop the specific entry conditions for articles, but does not give the public an opportunity to comment on the specific entry conditions.

The lack of notice-and-comment rulemaking for specific entry conditions under Alternative B is a potential

drawback. The Alternative A approach of giving public notice of specific entry conditions is valuable for two reasons. First, public comment may raise valid challenges to the effectiveness of some of the entry conditions in preventing the entry of pests and diseases. Second, public notice of specific entry conditions is valuable for commercial interests who may be interested in importing the articles for which permits are issued, or similar articles.

This approach, with roles for both individual import permit decisions and general rulemaking, could both minimize rulemaking delays and ensure that notice-and-comment rulemaking is used appropriately.

Comments are invited on Alternatives A and B, and on the issue of regulating wood imports in general. In particular, we are soliciting comments addressing the following questions:

1. Should imports of logs and other unmanufactured wood be restricted from all source countries, or should exceptions exist (e.g., for Canada or Mexico)?

2. Apart from logs and lumber, what wood products should be subject to the regulations? Should there be exemptions, or specific lessor requirements, for any of the following: Cork bark, decorative or ornamental tree parts, sawdust, shingles, tree parts used for drug manufacturer or chemical extracts, wood chips? If so, why? What lesser requirements should apply to these articles?

3. Should any genera of trees be exempted from the requirements of the regulations? If so, why?

4. In addition to the pest risk assessment standards discussed above, what factors should be considered in determining whether to allow importation of logs or other unmanufactured wood under specific entry conditions?

5. We currently believe that heat treatment to an internal temperature of 160 °F, kiln drying, and fumigation with methyl bromide are effective treatments for a wide variety of pests in wood. Are they any problems with requiring these treatments, and are there any alternative treatments or processing methods that have similar effectiveness?

6. What volume and value of logs an other unmanufactured wood are currently being imported? What are the names of the source trees, countries of origin, frequency, port of entry, and point of final utilization for these shipments?

7. How important are imports of logs and other unmanufactured wood, in terms of their use in current or foreseeable United States production processes?

8. Should a person requesting an import permit be required to provide an inventory of plant pests and diseases associated with the permit articles in the country of origin, for evaluation by APHIS? Or, should APHIS develop a list of plant pests and diseases associated with the articles based solely on its own research and data collection?

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

Done in Washington, DC, this 16th day of September 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–22945 Filed 9–21–92; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–6957, 34–31183, 35–25631, 39–2292, IC–18953, IA–1336; File No. S7–31–92]

Periodic Review of Rules Under the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules scheduled for review pursuant to the Regulatory Flexibility Act. The schedule is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on individual rules listed in the schedule.

DATES: Public comments are due by December 31, 1992.

ADDRESSES: Persons wishing to submit written views should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., room 6184, Stop 6–9, Washington, DC 20549. All submissions should refer to File No. S7–31–92, and will be available for public inspection and copying at the Commission's Public Reference Room, room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: The name of the individual to contact concerning a particular rule is given at the end of each rule grouping.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (the "Act" or "RFA") (Pub. L. 96–354, 94 Stat. 1165 (September 19, 1980)), required each federal agency to review by 1991 all rules in effect at the time of the Act's passage which had "a significant economic impact upon a substantial number of small entities." [1] The Act further requires that rules adopted after September 19, 1980, should be reviewed within ten years of their publication as final rules. The Commission published a schedule designating which rules would be reviewed in each of the following ten years which expired in 1991.[2]

The Commission's schedule went beyond the requirements of the statute in that it included many rules that did not meet the RFA's significant impact criterion. Additional rules were included because the Commission had already determined to review many existing regulations and wished to "conduct a broader review, with a view to identifying those rules in need of modification or even rescission." [3]

Since the publication of the 1981 schedule, the Commission has reviewed each rule on that schedule in accordance with the purpose stated in the RFA: "to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of such small entities." [4] The Act requires that the following criteria be considered in the rule review;

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.[5]

The Act also requires that each agency publish annually in the **Federal Register** a list of the rules which the agency will review during the following twelve months. The Commission's 1981 master schedule has not been amended to include new rules adopted since its publication. Instead, the Commission

[1] 5 U.S.C. 610(a).

[2] Securities Act Release No. 6323, 22 SEC Docket 1319 (July 8, 1981).

[3] Securities Act Release No. 6323, 22 SEC Docket 1319 (June 24, 1981).

[4] 5 U.S.C. 610(a).

[5] 5 U.S.C. 610(c).

has given the public notice of rules which are scheduled for review in the semiannual regulatory agenda, published every year in April and October. This year, the Commission is for the first time publishing its schedule of rules for review separately from the semiannual regulatory agenda. The Commission is, however, continuing its tradition of reviewing a much broader class of its rules than those which meet the significant impact criterion of the Act.

The Commission's plan for the review of its rules in 1992 is as follows:

Rules Administered by the Division of Corporation Finance

Title: Regulation A and Related Forms (general exemption from registration)
Citation: 17 CFR 230.251 to 230.263; 17 CFR 239.90 to 239.96
Authority: 15 U.S.C. 77c; 15 U.S.C. 77s

Title: Rule 15d–2 (special financial report)
Citation: 17 CFR 240.15d–2
Authority: 15 U.S.C. 78*l*; 15 U.S.C. 78m; 15 U.S.C. 78o

Title: Rule 3a12–3 (exemption from Exchange Act subsections 14(a), (b), (c), and (f) and section 16)
Citation: 17 CFR 240.3a12–3
Authority: 15 U.S.C. 78c; 78*l*; 78m; 78o; 78w

Title: Rule 3b–4 (definitions for foreign issues)
Citation: 17 CFR 240.3b–4
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w

Title: Rule 12h–3 (suspension of duty of file reports)
Citation: 17 CFR 240.12h–3
Authority: 15 U.S.C. 78*l*; 78m; 78o; 78w

Title: Rules 13a–16 and 15d–16 (reports of foreign private issuers on Form 6–K)
Citation: 17 CFR 240.13a–16 and 240.15d–16
Authority: 15 U.S.C. 78c; 78*l*; 78m; 78o; 78w

Title: 16e–1 (arbitrage transactions under section 16)
Citation: 17 CFR 240.16e–1
Authority: 15 U.S.C. 77d; 77s; 78*l*; 78m; 78o; 78p; 78x

Title: Form 20F (registration of securities of foreign private issuers and annual and transition reports)
Citation: 17 CFR 249.220f
Authority: 15 U.S.C. 78a *et seq.*

Title: Rule 24 of the Commission's Rules of Practice (incorporation by reference)
Citation: 17 CFR 201.24
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Rule 25 of the Commission's Rules of Practice (confidential treatment of certain matters)
Citation: 17 CFR 201.25
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Securities Act Industry Guide 2 and Exchange Act Industry Guide 2 (disclosure of oil and gas operations)
Citation: 17 CFR 229.801(b) and .802(b)
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 77aa (25) and (26); 78*l*; 78m; 78n; 78o; 78w

Title: Rule 134 (communications not deemed a prospectus)
Citation: 17 CFR 230.134
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78n; 78o; 78w

Title: Rule 134a (options materials not deemed a prospectus)
Citation: 17 CFR 230.134a
Authority: 15 U.S.C. 77a. *et seq.*

Title: Rule 1353 (notice of certain offerings)
Citation: 17 CFR 230.135
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Rule 135b (materials not deemed an offer to sell or offer to buy)
Citation: 17 CFR 230.135b
Authority: 15 U.S.C. 77a *et seq.*

Title: Rule 138 (definition of "offer for sale" and "offer to sell")
Citation: 17 CFR 230.138
Authority: 15 U.S.C. 77f; 77g; 77j; 77s

Title: Rule 144 (persons deemed not to be engaged in a distribution and therefore not underwriters)
Citation: 17 CFR 230.144
Authority: 15 U.S.C. 77b; 77c; 77d; 77s

Title: Rule 145 (reclassification of securities, mergers, consolidations and acquisitions)
Citation: 17 CFR 230.145
Authority: 15 U.S.C. 77b; 77d; 77s

Title: Rule 147 ("part of an issue," "person resident," and "doing business within")
Citation: 17 CFR 230.147
Authority: 15 U.S.C. 77b; 77f; 77g; 77h; 77j; 77s; 77sss; 78c; 78*l*; 78m; 78n; 78o; 78w

Title: Rule 148 (persons deemed not to be underwriters of securities issued or sold in connection with bankruptcy proceedings)
Citation: 17 CFR 230.148
Authority: 15 U.S.C. 77b; 77d; 77s

Title: Rule 153b (definition of "preceded by a prospectus")
Citation: 17 CFR 230.153b
Authority: 15 U.S.C. 77a *et seq.*

Title: Rule 175 (liability for certain statements by issuers)
Citation: 17 CFR 230.175
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78n; 78o; 78w

Title: Rule 176 (circumstances affecting the determination of what constitutes reasonable investigation and reasonable grounds for belief under Section 11 of the Securities Act)
Citation: 17 CFR 230.176
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 77sss; 79t; 80a–37

Title: Rule 236 (exemption of shares offered in connection with certain transactions)
Citation: 17 CFR 230.236
Authority: 15 U.S.C. 77c; 77d; 77s; 78*l*; 78p; 78w

Title: Regulation B (exemption relating to fractional undivided interests in oil and gas rights) and related forms and schedules
Citation: 17 CFR 230.300 to 230.346 and 239.101
Authority: 15 U.S.C. 77a *et seq.*; 78c; 78*l*; 78m; 78n; 78o; 78w

Title: Regulation D (rules governing the limited offer and sale of securities without registration) and Form D
Citation: 17 CFR 230.501 to 230.508 and 239.500
Authority: 15 U.S.C. 77b; 77c; 77d; 77s

Title: Form S–1 (registration statement)
Citation: 27 CFR 239.11
Authority: 15 U.S.C. 77g; 77j; 77s; 78*l*; 78m; 78o

Title: Form S–2 (registration of securities of certain issuers)
Citation: 17 CFR 239.12
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Form S–3 (registration of securities of certain issuers offered pursuant to certain types of transactions)
Citation: 17 CFR 239.13
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78c; 78*l*; 78m; 78n; 78o; 78w; 79t; 77sss; 80a–37

Title: Form S–11 (registration of securities of certain real estate companies)
Citation: 17 CFR 239.18
Authority: 15 U.S.C. 77g; 77j; 77s; 78*l*; 78m; 78n; 78o; 78w

Title: Form F–1 (registration statement for securities of certain foreign private issuers)
Citation: 17 CFR 239.31
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 80a–8; 80a–29; 80a–30; 80a–37

Title: Form F-2 (registration of certain foreign private issuers)
Citation: 17 CFR 239.32

Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 80a–8; 80a–29; 80a–30; 80a–37

Title: Form F–3 (registration for securities of certain foreign private issuers offered pursuant to certain types of transactions)
Citation: 17 CFR 239.32
Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 80a–8; 80a–29; 80a–30; 80a–37

Title: Form SR (report of sales of securities and use of proceeds therefrom)
Citation: 17 CFR 239.61
Authority: 15 U.S.C. 77f; 77g; 77h; 77i; 77s; 78*l*; 78m; 78o; 78w

Contact person: James R. Budge, Attorney, Office of Disclosure Policy, Securities and Exchange Commission, Division of Corporation Finance, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2589.

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Rules Administered by the Division of Investment Management

Title: Title of securities (Regulation C)
Citation: 17 CFR 230.480
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Information required in prospectus (Regulation C)
Citation: 17 CFR 230.481
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Advertising by an investment company as satisfying requirements of section 10 (Regulation C)
Citation: 17 CFR 230.482
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Exhibits for certain registration statements (Regulation C)
Citation: 17 CFR 230.483
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Undertaking required in certain registration statements (Regulation C)
Citation: 17 CFR 230.484
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Effective date of post-effective amendments filed by certain registered investment companies (Regulation C)
Citation: 17 CFR 230.485
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Effective date of post-effective amendments filed by registered separate accounts of insurance companies (Regulation C)
Citation: 17 CFR 230.486
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Registration statements filed by certain unit investment trusts (Regulation C)
Citation: 17 CFR 230.487
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Registration statements relating to securities to be issued in certain business combination transactions (Regulation C)
Citation: 17 CFR 230.488
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78c; 78d–1 and d–2; 78*l*; 78o; 78w; 79t; 77sss; 80a–8; 80a(37)

Title: Liability for certain statements by issuers 17 CFR 270.0–9
Citation: 17 CFR 270.0–9
Authority: 15 U.S.C. 77f to 77h; 77j; 77s; 78*l*; 78m; 78o; 78w; 79t; 77sss; 80a–8; 80a–(37)(a)

Title: Rule 0–10 (small entities for purposes of the Regulatory Flexibility Act)
Citation: 17 CFR 270.0–10
Authority: 5 U.S.C. 601 *et seq.*

Title: Rule 5b–1 (definition of "total assets")
Citation: 17 CFR 270.5b–1
Authority: 15 U.S.C. 80a–5; 80a–12

Title: Rule 5b–2 (exclusion of certain guarantees as securities of the guarantor)
Citation: 17 CFR 270.5b–2
Authority: 15 U.S.C. 80a–5

Title: Rule 6b–1 (exemption of employees' securities company pending determination of application)
Citation: 17 CFR 270.6b–1
Authority: 15 U.S.C. 80a–6

Title: Exemption from stockholders' approval of certain small investment advisory contracts
Citation: 17 CFR 270.15a–1
Authority: 15 U.S.C. 80a–6; 15 U.S.C. 80a–37

Title: Rule 15a–2 (annual continuance of contracts)
Citation: 17 CFR 270.15a–2
Authority: 15 U.S.C. 80a–37

Title: Rule 15a–4 (temporary exemption for certain investment advisers)
Citation: 17 CFR 270.15a–4
Authority: 15 U.S.C. 80a–6;(c) 80a–(a)

Title: Rule 17g–1 (bonding of officers and employees of registered management investment companies)
Citation: 17 CFR 270.17g–1
Authority: 15 U.S.C. 80a–6(c); 80a–17(d); 80a17(g); 80a–37(a)

Title: Exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule.
Citation: 17 CFR 270.22d–1
Authority: 15 U.S.C. 80a–6(c); 80a–37(a)

Title: Consent to service or process to be furnished by non-resident investment advisers and by non-resident investment general partners or managing agents of investment advisers
Citation: 17 CFR 275.0–2
Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: References to rules and regulations
Citation: 17 CFR 275.0–3
Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: General requirements of paper and applications
Citation: 17 CFR 275.0–4
Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Procedures with respect to applications and other matters
Citation: 17 CFR 275.0–5
Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Incorporation by reference in applications
Citation: 17 CFR 275.0–6
Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Small entities for purposes of the Regulatory Flexibility Act
Citation: 17 CFR 275.0–7
Authority: 15 U.S.C. 77s; 78w; 77ss; 80a–37; 79c; 79t; 77eee; 77ggg; 77nnn; 77sss; 80b–3; 80b–4; 80b–11

Title: Withdrawal from registration
Citation: 17 CFR 275.203–2
Authority: 15 U.S.C. 80b–11

Title: Fees for registrants and applicants
Citation: 17 CFR 275.203–3
Authority: 15 U.S.C. 77f(b); 77f(c); 78ee

Title: Books and records to be maintained by investment advisers
Citation: 17 CFR 275.204–2
Authority: 15 U.S.C. 80b–6; 80b–4; 80b–11(a)

Title: Written disclosure statements
Citation: 17 CFR 275.204–3
Authority: 15 U.S.C. 80b–4; 80b–11(a)

Title: Definition of "investment performance" of an investment company and "investment record" of an appropriate index of securities prices
Citation: 17 CFR 275.205–1

Authority: 15 U.S.C. 80b–5; 80b–6a; 80b–11

Title: Definition of "specified period" over which the asset value of the company or fund under management is averaged

Citation: 17 CFR 275.205–2

Authority: 15 U.S.C. 80b–5; 80b–6a; 80b–11

Title: Exemption of investment advisers registered as broker-dealer in connection with the provision of certain investment advisory services

Citation: 17 CFR 275.206(3)–1

Authority: 15 U.S.C. 80b–6a; 80b–11(a)

Title: Agency cross transactions for advisory clients

Citation: 17 CFR 275.206(3)–2

Authority: 15 U.S.C. 80b–11(a)

Title: Advertisements by investment advisers

Citation: 17 CFR 275.206(4)–1

Authority: 15 U.S.C. 80b–6

Title: Custody or possession of funds or securities of clients

Citation: 17 CFR 275.206(4)–2

Authority: 15 U.S.C. 80b–6

Title: Cash payments for client solicitations

Citation: 17 CFR 275.206(4)–3

Authority: 15 U.S.C. 80b–4; 80b–6; 80b–11(a)

Title: Form N–8A (notification of registration)

Citation: 17 CFR 274.10

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–2 (registration statement of closed end management investment companies)

Citation: 17 CFR 274.11a–1; 17 CFR 239.14

Authority: 15 U.S.C. 80a–1 *et seq.*; 77a *et seq.*

Title: Form N–8B–2 (registration statement of unit investment trusts which are currently issuing securities)

Citation: 17 CFR 274.12

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–8B–3 (registration statement of unincorporated management investment companies currently issuing periodic payment plan certificates)

Citation: 17 CFR 274.13

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–8B–4 (registration statements of face-amount certificate companies)

Citation: 17 CFR 274.14

Authority: 15 U.S.C. 80a–1 *et seq.*

Title: Form N–5 (registration statement of small business investment company under the Securities Act of 1933 and the Investment Company Act of 1940)

Citation: 17 CFR 274.5; 17 CFR 239.24

Authority: 15 U.S.C. 77a *et seq.*; 15 U.S.C. 80a–1 *et seq.*

Contact person: Carolyn A. Miller, Senior Financial Analyst, Securities and Exchange Commission, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2762.

Rules Administered by the Division of Market Regulation

Title: Recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board

Citation: 17 CFR 240.17a–1

Authority: 15 U.S.C. 78q(a)(1)

Title: Records to be made by certain exchange members, brokers, and dealers

Citation: 17 CFR 240.17a–3; .17a–4

Authority: 15 U.S.C. 78q(a)(1)

Title: Right of national securities exchange, national securities association, registered clearing agency or the Municipal Securities Rulemaking Board to destroy or dispose of documents

Citation: 17 CFR 240.17a–6

Authority: 15 U.S.C. 78q(a)(1)

Title: Reports of Municipal Securities Rulemaking Board

Citation: 17 CFR 240.17a–21

Authority: 15 U.S.C. 78q(a)(1)

Title: Form MSD (application for registration as a municipal securities dealer pursuant to Rule 15Ba2–1)

Citation: 17 CFR 249.1100

Authority: 15 U.S.C. 78o–4(a)(2)

Title: Form MSDW (notice of withdrawal from registration as a municipal securities dealer)

Citation: 17 CFR 249.1110

Authority: 15 U.S.C. 78o–4(a)(2)

Title: Forms X–15Aa–1, X–15Aj–1, and X–15Aj–2

Citation: 17 CFR 240.15A1–1; .15Aj–1

Authority: 15 U.S.C. 78o–3(a)

Contact person: Dirk Peterson, Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 504–2418.

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Rules Administered by the Office of the Chief Accountant

Title: Article 3A of Regulation S–X (presentation of consolidated and combined financial statements in filings with the Commission)

Citation: 17 CFR 210.3A

Authority: 15 U.S.C. 77f; 77g; 77s(a); 77aa(25) to (26); 78l; 78m; 78o(d); 78w(a); 79e(b); 79n; 79t(a); 80a–8; 80a–29

Title: Article 7 of Regulation S–X (form and content of financial statements filed with the Commission by insurance companies)

Citation: 17 CFR 210.7

Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s(a); 77aa(25) to (26); 78l; 78m; 78o(d); 78w(a); 79e(b); 79n; 79t(a); 80a–8; 80a–29

Title: Article 9 of Regulation S–X (concerning the form and content of financial statements filed by banks and consolidated financial statements filed by bank holding companies with the Commission)

Citation: 17 CFR 210.9

Authority: 15 U.S.C. 77f; 77g; 77h; 77j; 77s(a); 77aa(25) to (26); 78l; 78m; 78o(d); 78w(a); 79e(b); 79n; 79t(a); 80a–8; 80a–29

Contact person: Robert Burns, Chief Counsel, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2130.

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The Commission invites public comment regarding the regulatory flexibility analysis of the rules scheduled for review.

By the Commission.

Dated: September 16, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22929 Filed 9–21–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 166

[Docket No. 82P–0186]

Margarine; Amendment of the Standard of Identity; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a tentative final rule to amend the standard of identity for margarine that appeared in the Federal Register of July 31, 1992 (57 FR 33916). The document was published with an inadvertent typographical error. Also, the telephone number of the contact person has been changed since the publication of the tentative final rule. This document corrects the typographical error and updates the telephone number.

DATES: Written comments by August 31, 1992. The agency proposes that any final rule that may be issued based upon this tentative final rule shall become

effective 60 days after date of publication in the **Federal Register.**

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF–414), 200 C St. SW., Washington, DC 20204, 202–205–5112.

In FR Doc. 92–18109, appearing on page 33916, in the **Federal Register** of Friday, July 31, 1992, the following corrections are made:

1. On page 33916, in the 3d column, under the heading **"FOR FURTHER INFORMATION CONTACT:"**, in the 4th line, the telephone number "202–485–0112" is corrected to read "202–205–5112".

2. On page 33917, in the 3d column, in the 5th full paragraph, in the 4th line, the word "now" is corrected to read "no".

Dated: September 11, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–22951 Filed 9–21–92; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Union Dues Regulations

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking and notice of oral argument.

SUMMARY: this first Notice of Proposed Rulemaking provides rules and procedures for the implementation of the United States Supreme Court decision in *Communications Workers* v. *Beck*, 487 U.S. 735 (1988). The supreme Court there held that Section 8(a)(3), like its statutory equivalent, Section 2, Eleventh of the Railway Labor Act (45 U.S.C. 152, Eleventh), does not authorize a union, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment. The Board has determined that the articulation of certain of labor organizations' statutory duties under the *Beck* decision may best be achieved through the use of Section 553 ("informal") rulemaking under the Administrative Procedure Act (APA).

We emphasize, however, that in our effort to address by rule what is legally required of a union to fulfill its duty of fair representation, the rules proposed are offered to invite debate and generate discussion of the practical impact of the rules on the workplace. indeed, we are not ourselves unanimous on several issues. The Board hopes to have a full range of opinion on all aspects of the proposed rules before we make a determination on what provisions to include in the final rules.

DATES: Comments must be received on or before [October 22, 1992.] The Board plans to hold oral argument on November 5, 1992, to consider certain legal issues that are likely to be addressed in the public comments. Further details will be announced at a later date.

ADDRESSES: Comments should be submitted in eight copies to: Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., room 701, Washington, DC 20570, Telephone: (202) 254–9430.

Persons wishing to be heard at the oral argument should notify the Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, DC 20570, Telephone: (202) 254–9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: The following is an outline of the contents of this Notice:

I. Background
II. Validity and Desirability of Rulemaking; Impact Upon Pending Cases
III. Purpose
IV. Definitions
V. Coverage
VI. Notice, Information, and Challenge Requirements
VII. Challenge Procedures, including Board and Arbitral Procedures
VIII. Chargeable and Nonchargeable Expenses
IX. Union-Security Clauses and *Beck*
X. Effective Date
XI. Docket
XII. Regulatory Flexibility Act
XIII. Regulatory Text
XIV. Appendix to § 103.42

I. Background

In its Advance Notice of Proposed Rulemaking at 57 FR 7897 dated February 27, 1992, the Board announced a desire to receive public comment on questions involving rulemaking to articulate certain of labor organizations' duties under the Beck decision. The comment period ended on April 30, 1992, and the Board received twelve comments representing a diversity of viewpoints.

On May 4, 1992, the Board held a public meeting at which it was briefed on and considered these comments. Following the briefing, the Board elected to pursue the rulemaking initiative and directed its staff to produce a preliminary draft of a set of rules and associated comment. The Board decided that during the rulemaking process the Agency should continue adjudicating *Beck*-related cases. The Board additionally determined that it would, at a future time, hold oral argument on the proposed rules.

In crafting the proposed rule, the Board took note of the recommendations in several of the comments. Comment No. 3 (Management Association of Illinois), Comment No. 9 (Citizens for a Sound Economy Foundation) and Comment No. 10 (National Right to Work Foundation) suggested that a good beginning point would be the General Counsel's Guideline Memorandum 88–14, which was issued approximately five months after the Supreme Court's decision in Beck. That Memorandum was designed as a guide for the NLRB's Regional, sub-Regional and Resident Offices in the handling of Beck-related issues. Since its issuance, many cases have been investigated and complaints issued in some cases pursuant to its directives.

The Board recognizes that this Memorandum has, over the last three and one-half years, been an important element in this Agency's handling of Beck-type cases. Accordingly, while the proposed rules are not to be understood as adopting the provisions of the Memorandum in any legal sense, it has provided an initial frame of reference for identifying the relevant issues and the pertinent legal interests.

II. Validity and Desirability of Rulemaking; Impact upon Pending Cases

Section 6 of the National Labor Relations Act expressly grants the Board authority to engage in rulemaking:

> The Board shall have authority from time to time, to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

In *American Hospital Association* v. *NLRB*, _____, U.S. _____ 111 S. Ct. 1239 (1991), the Supreme Court upheld the Board's authority to make and promulgate substantive rules. Further, in its comments approving the Board's first use of substantive rulemaking in the area of health care bargaining units and

encouraging the Board to remain open to rulemaking in other appropriate areas, the Administrative Conference of the United States (ACUS) stated that rulemaking offers "broader opportunity for public participation and more meaningful notice to affected parties of potential changes in regulatory standards." The Board finds that ACUS's characterization of the advantages of rulemaking is especially apt in the circumstances here. The Supreme Court's decision in Beck affects thousands of bargaining units and collective-bargaining agreements, and labor organizations already have begun to set up procedures to deal with the Court's new interpretation of the duty of fair representation articulated in Beck. Because of the variety of issues and questions that arise under the application of Beck, the Board finds that engaging in rulemaking and continuing to decide the cases coming before it at the same time serves the dual purposes of increasing access to the process of changing regulatory standards while preventing unnecessary delay in processing cases.

Further, the Board has examined the changes in the law brought about by the Beck decision in light of ACUS's suggested factors for identifying appropriate areas for future rulemaking and finds that each of those factors is present here. Thus, the Board finds that its efforts to arrive at rules of law that best embody Congressional intent in section 8(a)(3) and 8(b)(1)(A), as interpreted by the Supreme Court in Beck, would be aided by: (i) submissions and information, including empirical data, beyond that normally available through adjudication; (ii) participation by affected persons beyond the parties; (iii) the desirability of establishing new policies promptly in this area; (iv) the desirability of stabilizing the law quickly; (v) the possibility of lessening the cost in all future litigation and enforcement actions through readily applicable rules; and (v) the achievement of control over policy review and development. See ACUS, 305.91-5, "Facilitating the Use of Rulemaking by the National Labor Relations Board" (Recommendation No. 91-5), I CFR Ch. 3 (1/1/92 edition).

Comments received by the Board in answer to its February 27, 1992, Advance Notice of Proposed Rulemaking was generally favorable to the rulemaking concept with certain exceptions and caveats. Ken Harrison and Peter C. McConarty, Sr., writing as individuals, (Comments 1 and 2) pronounced themselves pleased at the prospect of rulemaking. Mr. Harrison (Comment 1) recommended that the procedure be kept "simple." The Management Association of Illinois (Comment 3) and Associated General Contractors of America (Comment 5) favored rulemaking and presented numerous suggestions for the specific content of the rules. The ranking minority members of the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor—Senator Orrin G. Hatch (R-Utah) and Congressman William F. Goodling (R-Pennsylvania)—both favored rulemaking (Comment 6) as did the Labor Policy Association (Comment 7). The AFL-CIO, through its counsel Lawrence Gold (Comment 8), stated that "there is no clearly right choice between proceeding through rulemaking or proceeding through litigation." The National Right to Work Foundation (Comment 10) and Associated Builders and Contractors, Inc. (Comment 12) opposed rulemaking. Nothing that several Beck cases were pending before the Board, the Right to Work Foundation concluded that "[I]t seems to us that employees' Beck rights can be more promptly and completely protected through the Board's expeditious decisions in these cases, and that rulemaking is, at best, unnecessary." The Right to Work Foundation also noted that cases soon to come before the Board would "present the full range of Beck issues." Associated Builders and Contractors, Inc. stated that it was "most concerned that the present rulemaking proposal not delay resolution of numerous Beck-related issues which are already in the process of adjudication. If not abandoned altogether, this rulemaking proceeding must be expedited so as to avoid the appearance of unwarranted delay."

At the May 4 public meeting, the Board took note of the concern expressed by the foregoing public comments that a rulemaking proceeding would unduly delay the disposition of the cases proceeding through the adjudicatory pipeline. The Board thus concluded that, to the extent feasible, case processing should continue despite the pendency of rulemaking. Ten cases now have been brought before the Board on exceptions from decisions of the Agency's administrative law judges, and deliberations on those cases are presently underway. In the event that the Board does promulgate final administrative rules and applies them to pending cases (an issue on which the Board has proposed alternatives), it is obvious that the administrative rules will probably have a bearing on the outcome of some of those cases. Accordingly, the Board is weighing whether to give notice to the parties in those cases pending before the Board, suggesting that they consider submitting comments for the rulemaking record.

III. Purpose

Section 103.40(a) sets forth statements of purpose and intent, in order to provide, first, an explanation of the legal foundation of the proposed rules and, secondly, a guideline for interpreting the proposed rules in the broader context of the Board's jurisprudence.

The statutory predicate giving rise to the Beck decision is section 8(a)(3), which authorizes an employer and a labor organization to enter into a union-security agreement, thus imposing the legal duty upon a unit employee to provide a degree of financial support for the union's activities. However, the statute does not by its express terms either define such significant terms as "membership" or lay out in detail the limitations that Congress intended to be imposed on a labor organization's right to exact monetary support from unit employees. The Court in Beck construed the statute as providing that employees enjoying the benefits of union representation should contribute a fair financial share to the cost of the services provided by the bargaining agent, but that the statute authorized collection of only those fees and dues necessary to support collective-bargaining activities. The expenditure of dues and fees on activities outside the union's role as a collective-bargaining representative, the Court held, violated the union's duty of fair representation to employees who objected to such expenditures.

The Supreme Court has defined the component parts of the duty of fair representation to include (1) serving the interests of all members without hostility or discrimination toward any, (2) exercising its discretion with complete good faith and honesty, and (3) avoiding arbitrary conduct. *Vaca* v. *Sipes*, 386 U.S. 171, 177 (1967). It is a doctrine which originated not as a Board rule but as a judicially-fashioned one of specific focus—to combat racial discrimination by unions against African-American workers. *Steele* v. *Louisville & N.R.R.*, 323 U.S. 1192 (1942). However, the duty of fair representation has not been static. Over the last half-century, the doctrine has exhibited an evolving character, the principles of which have been applied in ever-widening contexts, including contract negotiations (*Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953)), the

grievance/arbitration process (*Vaca* v. *Sipes, supra*), and the administration of the hiring halls (*Breininger* v. *Sheet Metal Workers*, 493 U.S. 67 (1989)). Significantly, the duty of fair representation found new application in the Beck decision, which focused on the responsibilities which a union owes to its employees on the matter of compulsory union dues and fees.

Just as the doctrine has been applied to various aspects of the relationship between unions and the bargaining unit employees, it also has undergone refinement as a legal concept. For purposes of supporting the proposed rule, it is especially noteworthy that the Supreme Court has recently described the duty as "akin to the duty owed by other fiduciaries to their beneficiaries * * * [such as] the duty a trustee owes to trust beneficiaries." *Air Line Pilots Association* v. *O'Neill*, 113 L.Ed.2d 51, 62 (1991), citing *Teamsters* v. *Terry*, 108 L.Ed.2d 519 (1990). In relying upon the trustee analogy, the Court has equated a union's duty to act in good faith with a trustee's duty to act in the best interests of the beneficiaries. *Teamsters* v. *Terry, supra*. With respect to the handling of grievances, the Court in Terry noted the similarities between the authority of a union as exclusive representative and the authority of a trustee, citing various sections of the Restatement (Second) of Trusts.

The fiduciary analogy in the judicial doctrine of fair representation is not a surprising or aberrant development, but in a sense was foreshadowed in Board law. Although the Board did not recognize the duty of fair representation as an enforceable obligation under the Act until 1962 in Miranda Fuel Co., 140 NLRB 181, enforcement denied, 326 F.2d 172 (2d Cir. 1963), several circuits have described the duty in fiduciary terms. *NLRB* v. *Teamsters Local 282*, 740 F.2d 141 (2d Cir. 1984); *NLRB* v. *Teamsters Local 182*, 401 F.2d 509 (2d Cir. 1968; *NLRB* v. *Hotel, Motel & Club Employees' Union, Local 586*, 320 F.2d 254 (3d Cir. 1963).

Applying the "trustee" analogy found useful by the courts in defining the judicial doctrine of the duty of fair representation to financial obligations under union-security agreements,[1] the Board believes that it is appropriate to define the duty of fair representation under section 8(b)(1)(A) as entailing an obligation to provide unit employees with pertinent information regarding their relationship with the union under such agreements, including the right of employees to decline to become full union members, the right to object to the use of dues for nonrepresentational purposes, and the right, once an appropriate objection has been made, to be charged only for activities germane to the labor organization's function as a bargaining representative. The Board finds that such a duty is appropriate on a practical level, so that employees covered by such agreements will possess the information necessary to exercise their rights, and that such a duty also properly flows from a union's status as the exclusive bargaining representative and the concomitant obligation to accord fair representation to all unit employees. Moreover, the Board's imposition of a duty to inform employees of their rights in this area is not incompatible with the Supreme Court's observation in *Machinists* v. *Street*, 367 U.S. 740, 774 (1960), that dissent is not presumed. Under the rules proposed here employees will retain the burden of making their objections known to the bargaining representative; however, employees will now generally be provided with the knowledge necessary to choose whether to object or not.

In addition, a duty to disclose is directly linked to the protection of the section 7 rights of employees to refrain from concerted activities. The failure to inform employees of their rights under *NLRB* v. *General Motors Corp.* 373 U.S. 734 (1963) and Beck, and, where warranted, of certain financial information regarding a labor organization's expenditure of fees and dues can result in employees' unwitting financial support of activities from which they have a statutory right to refrain. Thus, under the prescriptions of Section 8(b)(1)(A), a breach of this duty of disclosure constitutes a restraint on the employees' section 7 rights. See *NLRB* v. *Teamsters Local 282, supra*, 740 F.2d at 145–46.

In addition, the Board has held that a union violates its duty of fair representation if it seeks to enforce a union-security clause without giving the affected employee full information as to the amount owed and a reasonable opportunity to pay it. See *CWA Local 11509 (Pacific Bell)*, 283 NLRB 1143 (1987); *Teamsters Local 291 (Kaiser Industries)*, 263 NLRB 1100 (1978).

The requirements associated with explicit, open notice are also consistent with the position which the Board recently took in favor of candid language in *IBEW Local No. 2088, AFL–CIO (Lockhead Space Operations Co.)*, 302 NLRB No. 49 (May 29, 1991) (In dues checkoff situation explicit language within checkoff authorization clearly setting forth an obligation to pay dues even in absence of union membership will be required to establish that the employee bound himself or herself to pay the dues even after resignation of membership.) In another context—the exclusive hiring hall—the Board has stated that unions are obligated to inform employees and applicants who use a hiring hall of procedures and changes in procedures used in the operation of the hiring hall. This obligation has been described as "statutory." Electrical Workers IBEW Local 11 (Los Angeles NECA), 270 NLRB 424, 426 (1984), enfd. 772 F.2d 571 (9th Cir. 1985).

Finally, a requirement to notify employees of *Beck* rights is consistent with decisions of the United States Supreme Court in the public sector and the Railway Labor Act (RLA). Thus, in *Chicago Teachers Union Local 1* v. *Hudson*, 475 U.S. 292, 306 (1986), the Court stated:

> Basic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the Union's fee. Leaving the nonunion employee in the dark about the source of the figure for the agency fee—and requiring [him] to object in order to receive information—does not adequately protect the careful distinctions drawn in Abood.

In addition to providing doctrinal support for the proposed rules, these decisions are relevant from a practical standpoint. A number of unions must operate not only under the National Labor Relations Act but also under one or the order statutory/constitutional framework. It is appropriate as a matter of administrative efficiency that the Board tailor the requirements under the Act so as to lessen the burdens and expenses which a union might incur by virtue of inconsistencies in the overlapping regulatory schemes.

It is true that the Board over three decades ago attempted to exercise its Section 10(c) remedial powers to require certain prophylactic safeguards in hiring hall agreements to protect against discrimination. These included the posting of notices to employees and job applicants of all the provisions relating to the functioning of the hiring hall arrangement. The Supreme Court

[1] Cf. *Restatement(Second) of Trusts* section 173, Duty to Furnish Information, & Comment C ("* * * the beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust.")

Our discussion here is not intended to announce any change in the Board's analysis of a labor organization's duty of fair representation under section 8(b)(1)(A) with respect to allegations of unfair labor practices unrelated to the arbitrary union conduct discussed in Beck.

refused enforcement of the Board's order in *Local 357, Teamsters* v. *NLRB*, 365 U.S. 667 (1961). Noting that Congress had not outlawed the hiring hall, the Court determined that there was no warrant for inferring as a general manner that unions would operate hiring halls in an unlawfully discriminatory manner. "Where * * * Congress has aimed its sanctions only at specific discriminatory practices, the Board cannot go farther and establish a broader, more pervasive regulatory scheme." Local 357, Teamsters, supra at p. 676. *Breininger* v. *Sheet Metal Workers Local 6*, 493 U.S. 67, 89 n.12 (1989) affirmed that reading of Local 357, Teamsters, stating "that the Board's approach * * * exceeded the mandate of the NLRA."

The Board's rulemaking with respect to the Supreme Court's interpretation of a union's duty of fair representation in Beck, however, stands on a fundamentally different footing than its judicial prescriptions in Local 357, Teamsters. In the first place, Local 357 was not a duty of fair representation case. Indeed, the Board rule under review in that case had its origins in the 1958 opinion in Mountain Pacific Chapter, 119 NLRB 883, 893, which antedated the incorporation of the fair representation duty into the Board's unfair labor practice jurisprudence in Miranda Fuel by four years. Given the evolutionary nature in the courts of the duty of fair representation, whose hallmark features are "flexibility and adaptability," Breininger, *supra*, 493 U.S. at 86, the Board is not prepared to say that Local 357 forecloses adoption of the rules proposed in this Notice. Since, after Beck, a union violates section 8(b)(1)(A) and its duty of fair representation by expending dues collected from objectors for nonrepresentational purposes, a consideration of what other obligations are essential to a union's fulfillment of that duty is appropriate. Secondly, in the hiring hall context such as that in Local 357, employees were not required to initiate any communication with the union to perfect their statutory rights to be free from unlawfully discriminatory treatment by the union. In contrast, employees who desire to opt for "proportionate share payer" status are required to affirmatively communicate their objections to the union, as well as any challenges which they wish to make as to the expense allocations. Likewise, as a matter of practical experience employees who wish to hold only "financial core" status in the union, as opposed to full membership, must so inform the union. In either case, employees will have to be knowledgeable enough as to their rights in order to make an informed decision over the extent to which they wish to engage in, or refrain from, concerted activity.

IV. Definitions

A definitional section is included in the proposed rules. The purpose of this section is to make clear distinctions among employees who have variously opted for different forms of relationship with a union that is party to a contract containing a traditional union-security clause. Three such relationships are identified: (1) Full members of the union; (2) "financial core employees" who are not full members but pay the equivalent of initiation fees and uniform periodic dues within the meaning of General Motors Corporation, 373 U.S. 734 (1963); and (3) the Beck category of employee who is designated as a "proportionate share payer." This latter employee is neither a full member of the union nor a General Motors-type "financial core employee" in that such an employee has elected to pay only that part of union periodic dues and fees which pay for those union activities germane to the performance of the duties of an exclusive bargaining representative. The definition of "labor organization" draws on section 2(5) of the National Labor Relations Act and that of "full member" of such an organization from section 3(o) of the Labor-Management Reporting & Disclosure Act. 29 U.S.C. 402(o).

While we have included in the definitional section the terms "representational activities" and "nonrepresentational activities," the actual definitions are, for purposes of convenience, set forth in §§ 103.41(a) and 103.41(b) of the rules. These latter deal with the question of which expenditures a union may or may not charge to "financial core employees" who have made an appropriate objection to them under § 103.40(d)(2).

V. Coverage; Obligations of a Labor Organization Regarding Membership, and Dues and Initiation Fees

Section 103.40 (c) and (d) simply track the established legal requirements of the Supreme Court's decisions in Beck and General Motors with respect to a labor organization's statutory obligations under a union-security agreement entered into pursuant to the proviso to section 8(a)(3) and section 8(f). The rule prohibits a labor organization from requiring any employee to become a full member of the union as a condition of employment. However, consistent with the Supreme Court's recognition in Beck of the union's status as exclusive representative of all bargaining unit employees regardless of membership, and the union's duty of fair representation to all bargaining unit employees, the rule permits a labor organization to require financial core employees to pay the equivalent of initiation fees and uniform periodic dues charged to members, unless the financial core employee objects to the use of his dues for nonrepresentational purposes. In the event a financial core employee lodges an appropriate objection, the rule permits a labor organization to charge the objecting employee only the percentage of fees and dues which reflects the percentage spent for appropriate representational activities.

VI. Notice Requirements

Sections 103.40 (e) and (f) of the proposed rule impose notice and disclosure obligations upon labor organizations.

The purpose of these notice and disclosure requirements is to ensure that all unit employees are advised of their options with respect to the financial obligations arising out of applicable union-security agreements. The legal justification for these requirements is spelled out in part III, *supra*. In addition, it is noted that some comments received following publication of the Advance Notice of Proposed Rulemaking favored notice requirements of the type set forth in our proposed rule. Comment No. 9, filed by Citizens for a Sound Economy Foundation, at p. 3, followed General Counsel Memorandum 88–14 in calling for a notice requirement. Comment No. 10 from the National Right to Work Foundation also called for a notice requirement.

In particular, the rule requires that the labor organization inform all employees of their Beck rights, the right to join or refrain from joining a union, and the financial obligations incident to each status. In addition, consistent with the guidelines set forth in GC Memorandum 88–14, the rule requires that a labor organization notify all financial core employees of their right to object to expenditures for activities unrelated to representational activities, and the procedure to register such objections.

As provided under subsection (e), the notice of legal rights must be given annually to all employees. New employees, however, must be provided the notice within 30 days of notice to the labor organization of hire or transfer into the unit.

The proposed rule provides alternatives with respect to the method of providing the required notice to employees. Alternative A of

§ 103.40(e)(2) and Alternative A of § 103.40(f)(2) provide that notice to all unit employees and to financial core employees shall be given by mail. Alternative B of § 103.40(e)(2) and Alternative B of § 103.40(f)(2) provide for posting of the requisite notices to all unit members and to all financial core employees in an accessible place customarily used for such purposes or for publication in a union publication received by all bargaining unit employees. With respect to the information that labor organizations are required to provide only to objecting financial core employees, the Rules require that notice shall be by mail to the last known address.

As provided in subsection (f), notices of a more detailed nature, including both information of a legal nature and financial information, must be given to "financial core employees" and to "proportionate share payers." The subsection also provides that once an employee lodges an objection and becomes a proportionate share payer, a labor organization must begin charging the proportionate share payer only the percentage of dues and fees corresponding to the percentage of monies expended for representational activities.

The time periods prescribed in the Notice, Objection and Challenge provisions of § 103.40 (e) and (f) were chosen for apparent reasonableness and a perceived need for expedition in handling Beck-type disputes. The 90-day period following the end of the labor organization's fiscal year, prescribed in § 103.40(f)(4), was selected to match the similar 90-day period for the filing of LM–2 and LM–3 forms with the Department of Labor.

The proposed rule sets forth alternative rules under § 103.40(f)(4). Alternative A calls for an independent audit of the financial information a labor organization is required to supply to objecting financial core employees. See § 103.40(f)(4)(ii). The reported cases indicate that the issue of an independent audit usually entails two questions: (1) Should an auditor, if employed, verify the nature of a particular expenditure as being representational or nonrepresentational? and (2) should the auditor, if employed, verify only that a particular expenditure was made? The proposed rule at § 103.40(f)(4)(ii) provides that the accountant will not verify the representational or nonrepresentational nature of expenditures. The Board is not persuaded that it is proper for an accountant to be called upon to deliver what is, in essence, a legal opinion. Courts of appeal which have considered the issue appear to agree. See, e.g., *Andrews* v. *Education Association of Cheshire*, 829 F.2d 335, 340 (2d Cir. 1987) and *Dashiell* v. *Montgomery County*, 925 F.2d 750, 754–57 (4th Cir. 1991). Under the proposed rule, then, a union will be required to show only that the auditor has verified the actual financial information.

There is, of course, the underlying question of whether any type of independent audit should be required. The Supreme Court's comment in *Chicago Teachers Union Local 1* v. *Hudson*, 575 U.S. 292, 306 n.18 (1986), is persuasive authority that such a requirement should be included in the proposed rule:

> The Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, *as well as verification by an independent auditor* (emphasis supplied).

Yet, the AFL–CIO in Comment No. 8 suggests that there are limits beyond which cases such as Hudson, arising in the public sector and relying upon constitutional considerations, should not apply to the Act. It is with this uncertainty in mind, and the Board's concern over the pragmatic consequences, in terms of expense and time, of imposing a requirement for an independent audit of unions' financial statements, that the Board proposes Alternative B. Under this alternative, the Department of Labor forms LM–2 and LM–3, which do not require independent audit, may be submitted to objecting financial care employees in satisfaction of notice required in § 103.40(f)(4).

VII. Challenge Procedures, Including Board and Arbitral Procedures

Subsection (g) addresses what is to occur in the event a proportionate share payer decides to challenge the allocation which the labor organization has made between representational and nonrepresentational activities. A step-by-step procedure is prescribed, with time limits included.

Section 103.40(g)(4) of the proposed rules permit a union to institute arbitral procedures to handle disputes arising out of Beck questions. Section 103.40(g)(3) permits an employee who disagrees with a union's reply to a challenge regarding expenditures to file a charge with the National Labor Relations Board. An employee may pursue both these courses of action. The arbitral procedures under these proposed rules accord with the Supreme Court's holding in *Chicago Teachers Union Local 1* v. *Hudson*, supra, that a union has the responsibility, in the public employment sector, to provide procedures that enable employees to exercise statutory (and First Amendment) rights.

To obviate the possibility that a person challenging the allocation may be forced to make what is tantamount to an involuntary loan during the pendency of the challenge, Section 103.40(g)(6) provides that amounts in dispute be placed in an escrow account and paid, with interest, should the employee prevail in the dispute. A similar procedure was approved in *Price* v. *Automobile Workers*, 927 F.2d 88 (2d Cir. 1991).

Section 103.40(g)(5) provides that where an employee's Board charge concerns only the accuracy of supplied financial data, the Board's General Counsel may defer processing of such charge pending the outcome of an arbitral procedure. Following the decision in the arbitral process, the decision will be reviewed under the standards set forth in Olin Corp., 268 NLRB 573 (1984). No deferral is permitted if the employee's charge concerns matters other than the accuracy of financial data, e.g. whether a given expenditure is representational or nonrepresentational.

Consideration was given to the possibility of a broader form of deferral to arbitration, i.e., one which might have deferred to arbitral awards involving the nature of particular expenditures. We have decided, in these proposed rules, not to propose this broader deferral policy. Such questions, in the current state of Beck litigation, are better left to this Board in its capacity as maker of national labor policy. There are currently no extant Board decisions on the whole range of Beck issues. While deferral to arbitration has played an important role in board law at least since the decision in Spielberg Manufacturing Company, 112 NLRB 1080 (1955), some 37 years ago, we would not feel it prudent to provide for deferral on a whole range of issues which the Board itself has not as yet considered. Such deferral would leave both the labor-management community and arbitrators without guidance in a situation in which the Board is designed to give such guidance.

VIII. Chargeable and Nonchargeable Expenditures

Section 103.41 of the proposed rules lists certain types of union activities and classifies them as either representational or nonrepresentational. The types of activities listed in the proposed rule substantially track those

listed in General Counsel's Memorandum 88–14. The Board has not attempted to set forth an exhaustive list of such activities. There are three reasons for its reluctance to do so. First, it would seem almost impossible to conjure up every activity, representational and nonrepresentational, that a labor organization might conceivably undertake. Second, even if the Board could compile an exhaustive list of activities, the law has not developed to the point where we could authoritatively categorize all, or even most, of the activities on such a list. Third, most of the law that does exist at this juncture pertains to the public sector and the railway labor sector. In the Board's view, it remains an open question whether a classification of activities in either the public or the railway labor areas necessarily applies to activities by labor organizations under the NLRA.

The Board anticipates that categorization of other labor organization activities as "representational" or "nonrepresentational" will be accomplished through adjudication, further rulemaking, or both.

The Board recognizes that certain categorizations of chargeable and nonchargeable expenses are controversial and unsettled by case law. In the interest of speedy promulgation of the rule, therefore, the Board has offered three alternatives to § 103.41.

The Board notes that while it has presented, *infra*, three Alternative Rules outlining the chargeability or nonchargeability of a limited number of expense categories, there exists case law which impacts on this issue. The Board notes initially that the Supreme Court in *Ellis* v. *Railway Clerks*, 466 U.S. 435 (1984) decided that, under an analogous provision in the Railway Labor Act, [2] "organizing expenses [spent] on employees outside the collective bargaining unit already represented" afford only the most attenuated benefits to collective bargaining on behalf of the dues payers, and thus, such expenses are not chargeable to objecting employees. The Board has also taken note, however, of the Supreme Court's recent statement in *Lehnert* v. *Ferris Faculty Association*, 111 S. Ct. 1950 (1991). Lehnert is silent with respect to the chargeability of organizing expenses to objecting employees in the public sector. The Court nevertheless prescribed a case-by-case analysis following guidelines set forth in *Machinists* v. *Street*, 367 U.S. 740 (1961) and *Chicago Teachers Union Local No. 1* v. *Hudson*, 475 U.S. 292 (1986). Alternative Rule B provides for organizing expenses in the same industry to be chargeable.

We have provided an Alternative Rule relating to whether a labor organization may charge objecting employees for activities, viz. litigation, not undertaken directly on behalf of an objecting employee's bargaining unit. In doing so, the Board is mindful of Supreme Court's decision in Lehnert, supra, declining to require such a direct relationship. In that case the Court stated:

> "[w]hile we consistently have looked to whether non-ideological expenses are germane to collective bargaining . . . we have never interpreted that test to require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit.
>
> * * * * *
>
> We therefore conclude that a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employee's bargaining unit. (emphasis supplied)

Lehnert, 137 LRRM at 2327. See *Crawford* v. *Air Line Pilots Ass'n Intern.*, 870 F.2d 155 (4th Cir. 1989), rehg. en banc granted; *Cumero* v. *Public Employment Relations Board*, 49 Cal. 3d 575, 778 P.2d 174 (1989).

Similarly, we have provided Alternative Rules categorizing activities undertaken on behalf of employees in units other than the one in which union security payments are being exacted. Again, there is Supreme Court precedent impacting on this question. See *Lehnert* v. *Ferris Faculty Association*, supra.

The Board invites comment on all three of the Alternative Rules and on whether these enumerated activities should be treated as representational or nonrepresentational.

IX. Union-Security Clauses and Beck

Several comments received by us in answer to the Advance Notice of Proposed Rulemaking proposed that the Board modify the model union-security clause set forth in *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880 (1958). Comment No. 3 (Management Association of Illinois) and Comment No. 10 (National Right to Work Foundation) both proposed that Keystone be modified to explicate the differences between (1) employees who choose full membership in a labor organization, (2) those who choose financial core status under *NLRB* v. *General Motors Corp.*, 373 U.S. 734 (1963) and (3) those who elect to pay only that portion of dues and fees used to pay expenses germane to collective bargaining.

The model clause in Keystone, adopted before either General Motors or Beck, spoke only in terms of "membership in good standing." It did not define the phrase and it did not describe the various ways in which employees can satisfy their obligations under the clause.

Consistent with the comments that we have received, and in harmony with the other provisions of these rules, we have proposed a model union-security clause which sets forth the obligations of each of the three groups named above. Since the union-security clause is the source of employee obligations, it would seem appropriate that the clause clearly state the obligations of each of the three groups. In addition, such a clause, together with the notices proposed in these rules, will clearly apprise employees of the choices available to them and the obligations attendant to each choice.

However, we have not overruled *Paragon Products Corp.*, 134 NLRB 662 (1961). Thus, the mere fact that a union-security clause does not conform to the model clause would not remove the contract as a bar to a representation petition. Rather, we shall continue to apply the following holding of Paragon:

> [W]e now hold that only those contracts containing a union-security provision which is clearly unlawful on its face, or which has been found to be unlawful in an unfair labor practice proceeding, may not bar a representation petition. A clearly unlawful union-security provision for this purpose is one which by its express terms clearly and unequivocally goes beyond the limited form of union-security permitted by section 8(a)(3) of the Act, and is therefore incapable of a lawful interpretation.

The model clause will function as a "safe harbor" for negotiators but other, differently-worded clauses would not be found illegal unless they violate the Paragon standard.

Finally, Comment No. 3 (Management Association of Illinois) suggests combining checkoff provisions with the model clause. We have not done so in our proposed rule. Checkoff is a method for employees to make their payments under a union-security clause. Thus, the principles concerning checkoff do not deal with the extent of the obligation; they deal only with the payment mechanism for satisfying the obligation. See generally IBEW Local 2088 (Lockheed Space Operations Co.), 302 NLRB No. 49 (March 29, 1991). In short, the subject of checkoff is beyond the

[2] Section 2, Eleventh.

purview of these rules. In addition, any effort to handle the innumerable combination of pay intervals, timing of payroll deductions and provisions for forwarding deductions to the union could easily lead to confusion and attendant litigation. Accordingly, the Board declines to be drawn into this unrelated subject.

X. Effective Date

Generally, rules promulgated pursuant to Section 553 ("informal") rulemaking under the Administrative Procedure Act (APA) are applied prospectively. 5 U.S.C. 551 (4). However, the Board may not be foreclosed from applying proposed rules retroactively to pending cases. Compare *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947); *Laidlaw Corp.* v. *NLRB*, 414 F. 2d 99 (7th Cir. 1969), with *Retail, Wholesale & Dept. Store Union* v. *NLRB*, 466 F.2d 380 (D.C. Cir 1972). As a general matter, in other contexts, where retroactive effect would not be "manifestly unjust" (see e.g., *Greene* v. *U.S.*, 376 U.S. 149, 160 (1964); *Coe* v. *Secretary of HEW*, 502 F.2d 1337, 1339 (4th Cir. 1974)) or where a balance of factors favors it (see e.g., *Maxcell Telecom Plus, Inc.* v. *FCC*, 815 F.2d 1551, 1554–55 (D.C. Cir. 1987), retroactive application has been approved. Recent cases also suggest that a retroactive effective date of a rule may be invalid if precluded by statue (*Bowen* v. *Georgetown University Hospital*, 448 U.S. 204 (1988)) or if it "unreasonably impacts" on past activities (*Chemical Waste Management, Inc.* v. *EPA*, 869 F. 2d 1526, 1535–37 (D.C. Cir. 1989).

The fact that cases are beginning to come before the Board for review which present many of the issues being addressed in the proposed rules suggests the appropriateness of applying the administrative rules to the pending cases. However, the Board desires to develop an administrative record on which to make a final determination, and thus, the Board seeks comment on whether to give retroactive effect to the proposed rule. Section 103.43, therefore, is presented as an alternative form. Alternative A provides for retroactive application of the rule to pending cases; Alternative B provides that the rule shall apply prospectively.

XI. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the NLRB in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so they can participate effectively in the rulemaking process; and (2) to serve as the record in case of judicial review. The docket, including a verbatim transcript of any hearings, the exhibits, the written statements, and all comments submitted to the Board, is available for public inspection during normal working hours at the Office of the Executive Secretary in Washington, DC.

XII. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Board certifies that the proposed rule will not have significant economic impact on small entities. Prior to this rule, parties were compelled to litigate before the Board questions of fair representation and a union's fiduciary responsibilities in the collection of initiation fees and dues under union-security contract clauses. The proposed rule resolves many of these questions and thus the necessity for litigation will be correspondingly reduced. Although the rule requires labor organizations to send notices to employees concerning their rights under *General Motors* and *Beck*, this requirement is consistent with the fundamental Congressional aim of insuring employees a free and informed choice in the exercise of their statutory rights.

XIII. Regulatory Text

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor-management relations.

For the reasons set forth in the prior pages, it is proposed to amend 29 CFR part 103 as follows:

PART 103—OTHER RULES

Subpart D, consisting of §§ 103.40, 103.41, 103.42, and 103.43 is added to read as follows:

Subpart D—Union Dues Regulations

Sec.

103.40 Labor organization dues and fees regulations
103.41 Categorization of representational and nonrepresentational activities
103.42 Model union security clause
103.43 Effective Date

Subpart D—Union Dues Regulations

§ 103.40 Labor organization dues and fees regulations.

(a) *Purpose.* (1) The purpose of this regulation is to articulate certain obligations that a labor organization must fulfill in connection with the negotiation and administration of union-security agreements authorized under section 8(a)(3) and 8(f) of the National Labor Relations Act (the Act). Those obligations are grounded in the duty of fair representation, which a labor organization owes to employees as their exclusive bargaining representative. The duty of fair representation imposes an obligation on a labor organization to represent each employee fairly and in good faith, without arbitrary or discriminatory treatment. *Vaca* v. *Sipes*, 375 U.S. 335 (1964); Miranda Fuels, 140 NLRB 181 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963). Further, the Supreme Court, in *Chicago Teachers Union Local No. 1* v. *Hudson*, 475 U.S. 292 (1986), found that *"[b]asic considerations of fairness* * * * dictate that the potential objectors be given sufficient information to gauge the propriety of the Union's fee." 475 U.S. 292, 306 (emphasis added). The Board finds that the "basic considerations of fairness" the Court found operative in the context of public sector employment also underlie a union's duty of fair representation. Further, it believes that it best effectuates the policies of the National Labor Relations Act if all employees covered by contractual union-security clauses, whether union members or nonmembers, are informed of their rights under *NLRB* v. *General Motors Corp.*, 373 U.S. 734 (1963), *CWA* v. *Beck*, 487 U.S. 735 (1988), and related cases. Thus, the Board will find that a labor organization seeking the discharge of an employee for failure to tender dues and fees has violated section 8(b)(1)(A) and 8(b)(2) if the labor organization has failed to notify employees of their rights, as described herein, or to reduce the dues and fees charged if such is warranted under these rules. The Board also will find that a labor organization has failed to notify employees of their rights, as described herein, or to reduce the dues and fees charged if such is warranted under these rules. The Board also will find that a labor organization has violated section 8(b)(1)(A) of the Act if it fails to abide by any of the provisions of these rules.

(2) It is not intended that this regulation be a comprehensive or exclusive statement of the obligations on this subject. Rather, the intention is to state requirements that have not been announced previously by the Board and to address other requirements which have been announced previously through adjudication. The Board contemplates that it may in the future refine the details of the obligations set out here and define additional obligations either through case-by-case adjudication on complaints issued by the General Counsel or through further administrative rulemaking, or both.

(b) *Definitions.* For purposes of this section, § 103.41, and § 103.42—

(1) The term *employee* means an employee as defined in section 2(3) of the Act who is included in a bargaining unit for which a labor organization is the exclusive bargaining representative.

(2) The term *full member* means an employee who has fulfilled the requirements for membership in a labor organization has voluntarily joined the labor organization, and who neither has voluntarily resigned from membership nor has been expelled or suspended from membership.

(3) The term *fees and dues* means the periodic dues and initiation fees uniformly required by a labor organization as a condition of acquiring or retaining membership.

(4) The term *financial core employee* means an employee who is not a full member of the Union, but who is required to pay the equivalent of fees and dues to retain his employment under a contractual union security provision.

(5) The term *proportionate share payer* means a financial core employee who has elected to pay only that part of the union fees and dues charged for activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues.

(6) The term *proportionate share payment* means that percentage of fees and dues which reflects the percentage spent by the labor organization for representational activities.

(7) The term *labor organization* means a labor organization as defined in section 2(5) of the Act which acts as the exclusive bargaining representative of employees covered under the Act.

(8) The term *representational activities* means the activities of an exclusive bargaining representative as set forth in § 103.41(a).

(9) The term *nonrepresentational activities* means the activities of an exclusive bargaining representative as set forth in § 103.41(b).

(c) *Coverage.* The rules set forth in this Section and §§ 103.41 and 103.42 apply in circumstances where a labor organization is party to a union-security agreement entered into pursuant to the proviso of section 8(a)(3) of the National Labor Relations Act (the Act) or section 8(f) of the Act.

(d) *Obligations of a labor organization regarding membership and dues and initiation fees.* (1) A labor organization may not require, as a condition of employment, that an employee become or remain a full member. A labor organization may require, as a condition of employment, that an employee become a financial core employee or, upon appropriate employee objection, a proportionate share payment.

(e) *Obligations of a labor organization to provide certain information to all employees.* (1) Each year, a labor organization must inform all bargaining unit employees, both members and nonmembers, of the following rights:

(i) All employees have a right to become or remain full members of the Union;

(ii) All employees have a right to refuse to become or remain full members of the union. All employees have a right to become or remain financial core employees (thereby obligated to pay the equivalent of fees and dues to retain their employment under a contractual union security provision);

(iii) All financial core employees, upon appropriate objection, have a right to become or remain proportionate share payers (thereby obligated to pay only that part of the union fees and dues charged for activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues).

[Alternative A

(2) A labor organization shall give the employee the notification specified above by mailing it to each employee at his/her last known address.]

[Alternative B

(2) A labor organization will be deemed to have fulfilled its obligation to notify employees who are full members of these rights by posting a notice containing the above information in an accessible place where such notices are customarily posted or by publishing it in a union publication received by all members. A labor organization will be deemed to have fulfilled its obligation to notify employees who are financial core employees and proportionate share payers if it posts a notice on a bulletin board or other agreed-upon place in the workplace where such notices are customarily posted or if it publishes the information in a newsletter or other publication that it mailed to all unit employees, full members, financial core employees, and proportionate share payers alike.]

(3) A labor organization shall provide the notice specified in paragraph (e)(1) of this section, within 30 days after notice of their entry into the unit, to all employees hired or transferred into the unit.

(f) *Obligations of a labor organization to provide certain information to financial core employees and proportionate share payers.* (1) Each year, a labor organization must provide a notice to all financial core employees giving them the following information:

(i) They have a right to object to labor organization expenditures for activities unrelated to representational activities.

(ii) If they exercise their right to object, they will be charged only that percentage of dues and fees which reflects the percentage spent by the labor organization for representational activities. The notice shall set forth the percentages spent for representational and nonrepresentational activities during the most recent fiscal year.

(iii) A financial core employee who has filed an objection shall be deemed to remain a proportionate share payer until the employee informs the labor organization that the employee wishes to change status.

[Alternative A

(2) The notice set forth in paragraph (f)(1) of this section shall be mailed to each financial core employee at his/her last known address and must be sent no later than 60 calendar days after the end of the labor organization's fiscal year. A labor organization may require that an objection be filed within a specified period after receipt of the notice described in paragraph (f)(1) and (2) of this section but in no event shall that period be less than 15 days from receipt of the notice.]

[Alternative B

(2) The notice set forth in paragraph (f)(1) of this section shall be provided no later than 90 calendar days after the end of the labor organization's fiscal year. A labor organization will be deemed to have fulfilled this requirement by posting or publication as set forth in paragraph (e)(2) of this section. A labor organization may require than an objection be filed within a specified period after receipt of the notice described in paragraph f(1) and (2) of this section but in no event shall that period be less than 15 calendar days from receipt of notice.]

(3) After receiving an objection, the labor organization will immediately begin to charge only the percentage amount set forth in paragraph (f)(1)(ii) of this section.

(4) As soon as practicable after the end of the labor organization's fiscal year, but in no event more than 90 days after the end of such year, the labor organization must supply certain financial information to those financial core employees who have filed appropriate objections as referred to in paragraph (f)(1) of this section. Notice of

such information shall be mailed to each financial core employee at his/her last known address. The information shall be provided as follows.

(i) It will include:

(A) The percentage figure set forth in paragraph (f)(1)(ii) of this section;

(B) A description of the activities deemed representational and those deemed nonrepresentational, and the amount of money spent on each;

[Alternative A

Provided: If the labor organization is the local of a national or international labor organization and the national or international labor organization receives a portion of the amounts derived from dues and fees under the union-security agreement, the financial report must include relevant information regarding both the local and the national or international organizations.]

[Alternative B

Provided: If the labor organization is the local of a national or international labor organization and the national or international labor organization receives a portion of the amounts derived from dues and fees under the union-security agreement, the financial report must include relevant information regarding both the local and the national or international organizations.

Provided further that, if part of the dues collected under union-security agreements by a local labor organization is forwarded to a national or international labor organization with which the local is affiliated, the allocation between chargeable and nonchargeable expenses for the national or international labor organization may be considered equivalent to the allocation for the local union.]

[Alternative A

(ii) This information must be audited and verified by an independent accountant. The accountant need not verify the representational or nonrepresentational nature of a given expenditure but only that the particular expenditure was made.]

[Alternative B

(ii) The labor organization may satisfy the obligations specified above by mailing Department of Labor forms LM–2 and LM–3, as revised, to those financial core employees who have filed appropriate objections, provided that those forms contain the information required in this paragraph (f) of this section.]

(5) With respect to the computation and exaction of proportionate share payments, a labor organization may deem the "dues year" to commence when notice of the amount to be charged is sent to employees, provided that date is no more than 90 days after the close of the labor organization's fiscal year and the labor organization charges that amount for the following twelve months.

(6) The information described in paragraph (f)(4) of this section may be sent together with the notice described in paragraph (f)(1) of this section.

(g) *Obligations of a labor organization to proportionate share payers who challenge the calculation of the proportionate share payment; right to resort to remedies of the Act.* (1) The labor organization shall permit employees who are proportionate share payers to challenge the data supplied by it. The labor organization may require that the challenge be made in writing within a specified period but in no event shall that period be less than 15 calendar days after receipt of the information set forth in paragraph (f)(3) of this section. The labor organization also may require that the challenge specifically set forth the disagreement with the labor organization's data. If the last day of any prescribed period falls on Sunday or legal holiday, the deadline shall be the next business day. Deposit in the United States mail shall suffice to meet this deadline.

(2) If the labor organization disagrees with the employee's challenge, it shall notify the employee in writing. If the labor organization does not respond within 30 days (deposit in the mails to suffice to meet this deadline), it shall be deemed to have agreed to the employee's challenge.

(3) An employee aggrieved by a labor organization's disagreement with his challenge may file a charge with the General Counsel of the National Labor Relations Board at any Regional, sub-Regional or Resident Office or at the Board's office in Washington, DC.

(4) A labor organization may establish arbitral procedures for the handling of disputes arising from the employee challenge. Such an arbitral procedure shall not grant sole discretion to the labor organization in the selection of an arbitrator. In any given case, arbitration may be invoked only upon agreement of both the labor organization and the challenging employee. The arbitrator shall be paid by the labor organization: Provided, that the labor organization may require that each party bear its own costs of arbitration, including travel costs and attorney fees.

(5) If the employee's charge before the Board concerns only the accuracy of the financial data, and if the employee has resorted to an appropriate arbitral mechanism established under paragraph (g)(4) of this section, the General Counsel of the NLRB may defer processing of the charge, pending the outcome of that procedure. After the rendering of an arbitral award, such award shall be reviewed under the standards of *Olin Corp.*, 268 NLRB 573 (1984). If the employee's charge concerns other matters (e.g., the classification of an expenditure as representational), the charge shall not be deferrable.

(6) Pending resolution of the employee's challenge, the labor organization may charge the employee the percentage amount reflected by the labor organization's data. However, the difference between this amount and the amount asserted by the employee shall be placed into an escrow account and paid, with interest, to the employee if he or she prevails. Such interest shall be computed at the rate and in the manner provided for in unfair labor practice cases before the Board.

[Alternative A

§ 103.41 Categorization of representational and nonrepresentational activities.

(a) The term *representational activities* means those activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues. Examples of such activities include:

(1) Collective bargaining, contract administration, and grievance-arbitration

(2) National conventions

(3) Social events open to full members, financial core members, and proportionate share payers and business meetings.

(4) Labor organization publications to the extent that they report on the representational activities of the labor organization

(5) Benefit programs that are available on an equal basis to full members, financial core employees, and proportionate share payers

(6) Litigation activities incident to negotiating a collective bargaining agreement, settling grievances and disputes, fulfilling the duty of fair representation, handling jurisdictional disputes with other labor organizations, and conducting other litigation before administrative agencies or courts.

(7) Organizing activities.

(b) The term *nonrepresentational activities* means those activities not germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues.

Examples of such nonrepresentational activities include:

(1) Labor organization publications to the extent that they report on activities other than representational activities.

(2) Benefit programs that are not available on an equal basis to full members, financial core employees, and proportionate share payers

(3) A labor organization building fund

(4) Lobbying activities

(5) Activities to promote or defeat legislation

(6) Political campaign activities

(7) Advertising unrelated to representational activities.

(c) The examples enumerated in paragraphs (a) and (b) of this section are not intended to be exhaustive. It is intended that activities not falling within specified examples shall be evaluated in accordance with the standards stated in such paragraphs and shall be subject to further articulation or clarification in accordance with paragraph (a) of § 103.40.]

[Alternative B

§ 103.41 Categorization of representational and nonrepresentational activities.

(a) *Representational activities* means those activities germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues. Examples of such activities include:

(1) Collective bargaining, contract administration, and grievance-arbitration concerning employees in the bargaining unit

(2) National conventions

(3) Social events open to full members, financial core members, and proportionate share payers and business meetings related to the bargaining unit

(4) Labor organization publications to the extent that they report on the representational activities or organizing activities in the same industry of the labor organization

(5) Benefit programs that are available on an equal basis to full members, financial core employees, and proportionate share payers in the bargaining unit

(6) Litigation activities incident to negotiating a collective bargaining agreement or settling grievances and disputes concerning employees in the bargaining unit, fulfilling the duty of fair representation to the unit, handling jurisdictional disputes with other labor organizations concerning bargaining unit work, and conducting litigation before administrative agencies or courts concerning bargaining unit employees

(7) Union organizing activity confined to the industry of the bargaining unit.

(b) *Nonrepresentational activities* means those activities not germane to the Union's performance of the duties of an exclusive bargaining representative of employees in dealing with labor-management issues. Examples of such nonrepresentational activities include:

(1) Labor organization publications to the extent that they report on activities other than representational activities or organizing activities outside the same industry

(2) Benefit programs that are not available on an equal basis to all bargaining unit employees

(3) A labor organization building fund

(4) Lobbying activities

(5) Activities to promote or defeat legislation

(6) Political campaign activities

(7) Advertising unrelated to representational activities

(8) Union organizing activities beyond the industry of the bargaining unit

(c) The examples enumerated in paragraphs (a) and (b) of this section are not intended to be exhaustive lists. It is intended that activities not falling within specified examples shall be evaluated in accordance with the standards stated in such subsection and shall be subject to further articulation or clarification in accordance with paragraph (a) of § 103.40.]

[Alternative C

§ 103.41 Categorization of representational and nonrepresentational activities.

(a) The term *representational activities* means those activities, within the particular bargaining unit, which relate to the union's performance of its duties as the exclusive bargaining representative of that unit. Examples of such activities include:

(1) Collective bargaining, contract administration and grievance-arbitration

(2) National conventions

(3) Union business meetings and social activities open to member and nonmember unit employees

(4) Labor organization publications to the extent they report on the labor organization's representational activities

(5) Costs of benefits available to all bargaining unit employees alike

(6) Litigation expenses incident to negotiating and administering the contract, settling grievances and disputes, fulfilling the duty of fair representation, handling jurisdictional disputes with other labor organizations and conducting other litigation before administrative agencies or courts.

(b) The term *nonrepresentational activities* means those activities which do not relate to the union's performance of its duties as the exclusive bargaining representative of the particular bargaining unit. Examples of such activities include:

(1) Labor organization publications to the extent they report on nonrepresentational activities

(2) Costs of benefits not available to all bargaining unit employees

(3) Costs of labor organization building fund

(4) Lobbying activities

(5) Promotion or defeat of legislation

(6) Political campaigns

(7) Advertising related to nonchargeable matters

(8) Organizing activities]

§ 103.42 Model union security clause.

Purpose. The Board determines, in accordance with § 103.40(a), that the promulgation of a model union security clause would facilitate the ability of a labor organization to fulfill its duty of fair representation to employees by clarifying for such employees the requirements of the Act as interpreted by the Supreme Court in *NLRB* v. *General Motors Corp.*, 373 U.S. 734 (1963), *CWA* v. *Beck*, 487 U.S. 735 (1988), and related cases. The model union security clause set forth in the Appendix to this section supersedes all previous such model clauses announced by the Board, including that promulgated in Keystone Coat, Apron, and Towel Supply Co., 121 NLRB 880 (1958). This announcement does not affect Paragon Products Corp., 134 NLRB 662 (1961).

Appendix to § 103.42

Model Union Security Clause

Union security and financial obligations of employees to the bargaining representative.

[EMPLOYER] and [UNION] herein exercise their right, under Section 8(a)(3) [or 8(f)] of the National Labor Relations Act and the laws of [STATE], to agree to the following union security provision:

(1) Every employee covered by this Agreement must, for the life of this Agreement after the grace period described in Section 2 below, satisfy an obligation to the Union as the unit's exclusive bargaining representative. Under this Agreement, employees must choose one of the three ways of satisfying this obligation, as described below. Every employee has the right to make this choice free of interference, restraint or coercion:

(a) Full union membership: The employee chooses to join the Union as a full member, is subject to all rights and duties accorded members, and, as a condition of employment, must pay the full initiation fee (if applicable) and uniform periodic dues charged by the Union;

(b) Financial core employee: The employee does not become a member of the Union; thus, he/she is not entitled to the full range of rights and duties of membership. This employee does not object to the Union's spending part of the dues and fees collected under this Agreement for activities not germane to its role as the unit's exclusive bargaining representative. This employee must pay, as a condition of employment, the full initiation fee (if applicable) and the uniform periodic dues charged by the Union. The Union must provide this employee with information to enable him/her to decide whether to object to the use of his/her dues for nonrepresentation expenditures.

(c) Proportionate share payer: The employee does not become a full member of the Union, and thus is not entitled to the full range of rights and duties of union membership; further, the employee informs the Union that he/she objects to the Union's spending part of the dues and fees collected under this Agreement for activities not germane to its role as the exclusive bargaining representative; this employee must, as a condition of continued employment, pay the percentage of fees and uniform, periodic dues used for activities germane to the Union's status as the unit's exclusive bargaining representative. The Union must provide this employee with information about its expenditures and this employee may challenge the Union's information.

(2) Each employee covered by this Agreement who is not a full member of the Union on the effective date of this Agreement (or hire date, if applicable), has the right to a "grace period" of twenty-nine [or seven, if 8(f)] days in which to choose his/her status. Thus:

(a) For all employees who are in the unit and are not full Union members on the effective date of this Agreement [or the Agreement's date of execution, whichever is later], their chosen status, and their obligation to pay dues and fees, shall begin on the thirtieth [eighth, if 8(f)] day after the effective date of this Agreement [or the Agreement's date of execution, whichever is later].

(b) For all new employees who are hired into the unit during this Agreement's life and are not full Union members on the date of hire, their chosen status, and their obligation to pay dues and fees, shall also begin on the thirtieth day [eighth, if 8(f)] after their date of hire [or the Agreement's date of execution, whichever is later].

(3) Employees in the unit who are full Union members on this Agreement's effective date or, if hired during this agreement's life, on their date of hire, do not receive the grace period. For these full Union members, their obligation to the Union is continuous and is not affected by this Agreement, although they are free to change their status.

(4) Employees may elect to change their chosen status upon appropriate written notice to the Union.

[Alternative A

§ 103.43 Effective Date.

Sections 103.40, 103.41, and 103.42 shall apply to all pending cases in whatever stage.]

[Alternative B

§ 103.43 Effective Date.

Sections 103.40, 103.41, and 103.42 shall have prospective effect only.]

Dated, Washington, DC, September 17, 1992.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 92-22919 Filed 9-21-92; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 202

Eligibility Criteria for News Media Membership in the DoD National Media Pool

AGENCY: Department of Defense.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice is issued to inform the news media and the public of a contemplated Department of Defense (DoD) rule to cover National Media Pool operations. While the Department of Defense is not of the view that this possible rule must be published, the Department believes that this advance notice should be useful in obtaining public comments, which will enhance the deliberative process.

The rule would establish uniform criteria by which to determine media organizations' eligibility for membership in the DoD National Media Pool.

In situations where pool coverage provides the only feasible means of media access to United States military operations, DoD will activate the National Media Pool to deploy a representative group of journalists to cover the operation, unless national security considerations require otherwise. By participating in the pool, each media organization must agree to observe basic ground rules designed to allow pool representatives the greatest permissible freedom and access in battlefield coverage while protecting operational security. However, because the operational requirements of any particular mission are difficult to predict, the ground rules are subject to change based on situational factors such as space limitations, remote locations, or the need to maintain operational security and to protect the safety of U.S. troops during the nearly phases of an operation.

By participating in the pool, member organizations also agree to provide personnel and equipment on standby to be deployed anywhere in the world on four hours notice to cover a particular operation. The pool members rotate this obligation every three months among themselves. The composition of any pool to be deployed will be tailored to meet the operational requirements and limitations of the DoD activity to be covered.

DATES: Written comments must be received by November 12, 1992.

ADDRESSES: Comments should be addressed to Pete Williams, Assistant Secretary of Defense (Public Affairs), The Pentagon, room 2E800, Washington, DC 20301-1400.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Principal Deputy Assistant Secretary of Defense (Public Affairs), telephone (703) 697-0713.

SUPPLEMENTARY INFORMATION: The DoD National Media Pool was established in 1985 to provide a means to allow journalists to accompany U.S. forces and report on military operations while still maintaining operational security and troop safety. There have been twelve media pool deployments since the pool was created, including the earliest stages of Operation Desert Shield in August, 1990. Currently, more than forty Washington-based media organizations are members of the DoD National Media Pool.

The Assistant Secretary of Defense for Public Affairs held discussions with a representative group of news media organizations on ways to improve combat coverage. On May 21, 1992, the Department of Defense officially adopted and incorporated the principles for news media coverage of DoD operations into DoD Directive 5122.5, Assistant Secretary of Defense (Public Affairs), on May 21, 1992.

Administrative Notices

A. Executive Order 12291

This rule, as proposed, does not meet the criteria for a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions or (3) a significant adverse effect

on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Paperwork Reduction Act

The requirements for information collection contained in this advance notice of proposed rulemaking, as it is currently drafted, would be covered by the Paperwork Reduction Act of 1980. In accordance with 44 U.S.C. 3504(h), the information collection requirement will be submitted to the Office of Management and Budget (OMB) for review if and when this advance notice of proposed rulemaking becomes a proposed rule.

C. Regulatory Flexibility Act

This advance notice of proposed rulemaking has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and, as it is currently drafted, it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities as defined by that act.

List of Subjects in 32 CFR Part 202

Administrative practice and procedures, Federal buildings and facilities, News media.

Accordingly, 32 CFR, chapter I, subchapter M, is proposed to be amended to add part 202 to read as follows:

PART 202—ELIGIBILITY CRITERIA FOR NEWS MEDIA MEMBERSHIP IN THE NATIONAL MEDIA POOL

Sec.

202.1 Purpose.
202.2 Applicability.
202.3 Definitions.
202.4 Policy.
202.5 Membership criteria.
202.6 Ground rules.
202.7 Procedures.

Authority: 10 U.S.C. 113; 10 U.S.C. 133, 10 U.S.C. 136.

§ 202.1 Purpose.

This part establishes DoD policy and procedures for membership in the DoD National Media Pool for news media coverage of U.S. military operations.

§ 202.2 Applicability.

This part applies to the Office of the Assistant Secretary of Defense (Public Affairs), and to the extent directed by the Office of the Assistant Secretary of Defense (Public Affairs), to the Office of the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred collectively as "DoD Components").

§ 202.3 Definitions.

(a) Contingency. An emergency involving military forces caused by natural disasters, terrorists, subversives, or by required military operations. Due to the uncertainty of the situation, contingencies require plans, rapid response, and special procedures to ensure the safety and readiness of personnel, installations and equipment.

(b) Operational security. A process of analyzing friendly actions attendant to military operations and other activities to:

(1) Identify those actions that can be observed by adversary intelligence systems.

(2) Determine indicators hostile intelligence systems might obtain that could be interpreted or pieced together to derive critical information in time to be useful to adversaries.

(3) Select and execute measures that eliminate or reduce to an acceptable level the vulnerabilities of friendly actions to adversary exploitation.

(c) Pool. A representative or representatives of the news media selected to accompany U.S. forces on an operation or mission and report to the American public when open, independent coverage is not possible.

§ 202.4 Policy.

It is DoD policy that while open and independent reporting shall be the principal means of coverage of U.S. military operations, under some conditions and with due regard for mission requirements, pools may provide the only feasible means of early access to a military operation. In such situations, unless national security considerations require otherwise, the DoD will activate the National Media Pool to allow a representative group of journalists access to DoD activities.

§ 202.5 Membership criteria.

(a) Eligibility for membership in the National Media Pool shall be limited to those news media organizations which satisfy the following general membership criteria:

(1) All news organizations in the pool must demonstrate a familiarity with the U.S. military and military operations by maintaining a correspondent who regularly covers military affairs, visits military operational units, attends Pentagon press conferences, and interviews senior military and civilian DoD officials.

(2) The news media organization is required to maintain a Washington, DC staff of sufficient size to preclude compromising operational security when the pool is activated.

(3) The representatives designated by the organization to participate in the National Media Pool on standby must be able to deploy with all requisite equipment in a minimum of four hours.

(4) By participating in the National Media Pool, media organizations and their representatives agree to adhere to the ground rules as listed in § 202.6, and any additional ground rules or procedures established by the Assistant Secretary of Defense (Public Affairs) or the appropriate military commander to meet the operational security requirements of a given mission.

(5) All media organizations represented in the National Media Pool must be U.S. owned and operated.

(b) In addition to meeting the general membership criteria, pool members must also meet the following criteria established for each media category:

(1) Television networks: Must produce and transmit finished daily, general news broadcasts under national editorial direction to a nationwide audience and have the capability to deploy a satellite earth station with the pool.

(2) Newspapers: Must be general coverage newspaper, published at least five times a week.

(3) Newsmagazine: Must be general circulation, general coverage, news weeklies with national distribution and a photographic capability.

(4) Wire Services: Must have both a news and a photo capability, providing breaking news and photos on an immediate basis to a large multi-media, nationwide audience, as well as the capability to deploy portable developing and photo transmitting equipment with the pool.

(5) Radio participants must represent a network which provides breaking news on an immediate basis to a large, nationwide audience.

§ 202.6 Ground rules.

(a) News organizations participating in the National Media Pool agree to the following ground rules.

(1) Activating the DoD National Media Pool should protect the security of the operation and the safety of the troops involved, while allowing pool members the greatest permissible freedom and access in covering the story as representatives of all U.S. media. Accordingly, all members agree to maintain operational security when the pool is deployed by not disclosing that it

has been activated or revealing any information about its deployment.

(2) Once activated, representatives of member organizations must remain with the media escort officers at all times, until formally released, and follow their instructions regarding pool activities. These instructions are not intended to hinder reporting and are given only to facilitate movement of the pool and ensure troop safety.

(3) Members further agree to provide fully equipped personnel to serve on standby for the pool, ready to be deployed world-wide on four hours notice.

(4) Members will reimburse the U.S. government, as required, for travel, food, lodging, medical expenses, equipment and other support.

(b) When activated:

(1) It is DoD policy that media pools are to be non-competitive. Pool members should seek the widest possible coverage of the military operation, allocating assignments appropriately among themselves, if needed.

(2) Participants in the National Media Pool will share fully all media products with other pool members within their respective medium, on a timely basis, at pool member meetings during or immediately following the operation. Correspondents will share their pooled information at the scene of the operation, and photographers will make their film available by turning it over to wire service participants. The wire services should undertake to transmit the newspaper pool's news report.

(3) Pool members will be expected to brief each other concerning their experiences. All information, from videotape, sound bites, photo cutlines, etc., will be pooled with other National Media Pool members before journalists file stories or otherwise attempt to communicate with any individual about the operation.

(4) Detailed instructions on filing will be provided by the military escorts at an appropriate time.

(c) Participation in the National Media Pool indicates an understanding of these guidelines, of the need to maintain operational security, and all National Media Pool members' willingness to adhere to the requirements of this rule. Failure to follow the ground rules may result in the expulsion of a pool member.

§ 202.7 Procedures.

(a) General news organizations wishing to join the DoD National Media Pool should submit written requests to the Office of the Assistant Secretary of Defense (Public Affairs), Attention: Directorate for Plans, room 2D757, The Pentagon, Washington, DC 20301. Requests must indicate a description of the organization's news gathering and dissemination operations, the number of its outlets or subscribers, its general circulation or viewing audience, and include other information identified in § 202.5 of this Part, setting forth membership criteria. Applications for membership will be evaluated against the pool membership criteria, and the final decision on granting pool membership will be made by the Assistant Secretary of Defense (Public Affairs.)

(b) When activated, individual media pools will be formed by contacting those representatives of the media designated as being "on standby," in accordance with the media's own rotation system.

(c) In the event that operational restrictions limit the size of the media pool to be activated, the spaces available normally will be allocated in the following order. When space constraints permit one pool representative, that space will normally be filled by an Associated Press reporter, in recognition of its unique role in the U.S. news industry. The remaining pool positions will normally be filled, in turn, by a still photographer, a TV camera person, a TV reporter, a newspaper reporter, a radio reporter, a TV crew member, a news magazine reporter, a news magazine photographer, a wire reporter, two newspaper reporters, and a still photographer.

Dated: September 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23087 Filed 9-18-92; 2:15 pm]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-92-89]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, From St. Marys River to Key Largo

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Mayor of Sea Ranch Lakes, the Coast Guard proposes to modify the regulations governing the operation of the Commercial Boulevard Drawbridge (Northeast 50th Street/State Road 870), mile 1059.0, at Lauderdale-by-the-Sea, Broward County, Florida. This proposal is being made as a result of complaints about the highway traffic delays. This action should accommodate current needs of highway traffic while still meeting the reasonable needs of navigation. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

DATES: Comments must be received on or before November 6, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami Florida 33131-3050, or may be delivered to Room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. For information concerning comments the telephone number is (305) 536-4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie E. Rich, Project Manager, Bridge Section, (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7-92-89] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Brodie Rich at the address under "**ADDRESSES**". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Brodie E. Rich, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

The draw presently opens on signal except that, from November 1 through May 15 from 8 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. The Mayor of Sea Ranch Lakes has requested the bridge be opened only on the hour and half-hour to reduce highway traffic congestion.

The Coast Guard analysis of bridge openings, highway traffic levels of service, and waterway holding conditions has determined this bridge averages only 2 openings per hour on weekdays with no apparent increases in commuter traffic levels during morning and afternoon rush hours. On weekends, there is a reduction in highway traffic levels, however, during the winter season the number of drawbridge openings increases due to heavy boating activities on the Intracoastal Waterway. In order to reduce highway traffic delays, the Coast Guard is proposing to implement a 20-minute opening schedule on weekends during the seasonal period.

Discussion of Proposed Amendments

The Coast Guard's analysis determined that the change to a 20-minute opening schedule on weekends from November 1 through May 15th, would improve the highway traffic flow by allowing an approximate 16-minute uninterrupted period for vehicular transit after each opening without causing a significant impact on navigation. This rule changes only the regulated period on weekends and only applies to nonexempt vessels. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would be passed through the draw at any time.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities.

"Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this proposal, the economic impact is expected to be minimal on all entities. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway, from St. Marys River to Key Largo.

* * * * *

(ee) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea.* The draws shall open on signal; except that, from 8 a.m. to 6 p.m., Monday through Friday from November 1 through May 15, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour, and on Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: September 8, 1992.

William P. Leahy,

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

[FR Doc. 92–22899 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[CA15–2–5433; FRL–4509–1]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Bay Area Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD) on November 23, 1988 and the South Coast Air Quality Management District (SCAQMD) on December 7, 1990. the California Air Resources Board (ARB) submitted the BAAQMD and SCAQMD rule revisions to EPA on March 26, 1990 and May 13, 1991, respectively. These revisions concern the following: BAAQMD Regulation 8, Rule 30 and SCAQMD Rule 1164, Semiconductor Manufacturing Operations, both of which control volatile organic compound (VOC) emissions from the semiconductor manufacturing industry. EPA has evaluated the revisions to BAAQMD Regulation 8, Rule 30 and new SCAQMD Rule 1164 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of the CAA because the rules do not meet the part D, section 182(a)(A) requirement of the CAA.

DATES: Comments must be received on or before October 22, 1992.

ADDRESSES: Comments may be mailed to: Dan Meer, Southern CA and AZ Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following appropriate locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

South Coast Air Quality Management District, Planning & Rules Division, P.O. Box 4939, Diamond Bar, CA 91765–0939.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Northern CA, NV, and HI Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Bay Area and the South Coast Air Basin. 43 FR 8964; 40 CFR 81.305. Because the Bay Area and the South Coast Air Basin were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the BAAQMD and SCAQMD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for VOCs and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. VOCs contribute to the production of ground level ozone and smog.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amended guidance.[1] EPA's SIP-CALL used that guidance to indicate the necessary corrections for specific nonattainment areas. Since the Bay Area and the South Coast Air Basin are classified as moderate and extreme ozone nonattainment areas [2], respectively, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP. The two rules being acted on in this notice were submitted on March 26, 1990 for the BAAQMD Regulation 8, Rule 30 and May 13, 1991 for SCAQMD Rule 1164. This notice addresses EPA's proposed action for BAAQMD Regulation 8, Rule 30 and SCAQMD Rule 1164. These submitted rules were found to be complete on June 20, 1990 and July 10, 1991, respectively, pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, Appendix V [3] and are being proposed for limited approval and limited disapproval.

BAAQMD Regulation 8, Rule 30 and SCAQMD Rule 1164 control the emissions of VOCs from semiconductor manufacturing operations. The Bay Area's Regulation 8, Rule 30 and the South Coast's Rule 1164 were originally adopted as part of the effort of these Districts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. Bay Area's Regulation 8, Rule 30 has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. South Coast's Rule 1164 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD's Regulation 8, Rule 30 and SCAQMD's Rule 1164.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidance (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For some emission categories, such as semiconductor manufacturing, EPA did not publish a CTG. In such cases, the District will make a determination of what controls are required to satisfy the RACT requirement by reviewing the operations of facilities within the affected source category. Additionally, for both CTG and non-CTG rules, the District may rely on EPA policy documents, such as the Blue Book, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD Regulation 8, Rule 30, Semiconductor Manufacturing Operations

The following are revisions from the current SIP approved rule:

- changes the small semiconductor exemption definition;
- adds an exemption for vapor degreasers and/or cold cleaners;
- adds an exemption for compounds with low volatility;

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Bay Area Air Quality Management District and South Coast Air Quality Management District retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

- adds to the specificity of the semiconductor manufacturer; and the solvent cleaning station definitions;
- adds the definition of a liquid solvent leak;
- distinguishes between a container and a reservoir;
- adds an interim solvent cleaning station provision;
- adds an entire section of provisions for final solvent; cleaning stations to include requirements for covers, freeboard ratios, markings, storage and disposal, and repairs;
- adds recordkeeping requirements for the small semiconductor exemption;
- adds a source test requirement for negative photoresist operations; and
- adds a reference to a test method for determining abatement efficiency.

SCAQMD Rule 1164, Semiconductor Manufacturing Operations

This is a new rule which was adopted to control VOC emissions from semiconductor manufacturing operations and, as such, it strengthens the SIP. The rule accomplishes this by specifying equipment requirements for solvent cleaning stations, by requiring the use of low-vapor-pressure or low-VOC solvents, by requiring add-on controls for positive and negative photoresist operations, and by requiring improved equipment cleanup procedures for handling solvents.

EPA has evaluated BAAQMD's submitted Regulation 8, Rule 30 and SCAQMD's submitted Rule 1164 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of BAAQMD's Regulation 8, Rule 30 and SCAQMD's Rule 1164 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. BAAQMD's rule is still deficient because of the following:

- director's discretion for the approval and implementation of alternative emission control plans without EPA approval; director's discretion to allow equivalent emission control devices without applicable test methods and EPA approval; and
- reference to a test method that has been found unacceptable by EPA for measuring VOC emissions controlled by an incinerator or other combustion devices.

SCAQMD's rule is deficient because of the following:

- lack of reference to specific test methods for determining the VOC concentration of materials, the emission concentrations of the VOC-containing vapors, and vapor pressure of the solvent; and
- lack of methodology for determining equivalent and approvable alternative emission control devices.

A detailed discussion of rule deficiencies can be found in the appropriate technical support documents for Regulation 8, Rule 30 (2/92) and Rule 1164 (2/92) which are available from the EPA, Region 9 office.

Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and other pre-amendment guidance and may lead to rule enforceability problems.

Also because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Regulation 8, Rule 30 and SCAQMD's submitted Rule 1164 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA,and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding restrictions and revised offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, final disapproval will trigger the federal implementation plan (FIP) requirement under section 110(c)..

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

Regulatory Process

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

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base 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. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements

This action has been classified as a Table 2 action by the Regional

Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 1992.

John Wise,

Regional Administrator.

[FR Doc. 92–22939 Filed 9–21–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[MA–9–3–5385; A–1–FRL–4509–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revised Regulations Controlling Volatile Organic Compound Emissions for the Solvent Metal Degreasing, Surface Coating of Miscellaneous Metal Parts and Products, and Organic Material Storage and Distribution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts which amend the Massachusetts solvent metal degreasing, surface coating of miscellaneous metal parts and products, and organic material storage and distribution regulations. These revisions consist of revised volatile organic compound (VOC) emission regulations applicable in the entire Commonwealth of Massachusetts. The intended effect of this action is to propose approval of corrections for several deficiencies in Massachusetts' Ozone Attainment Plan.

DATES: Comments must be received on or before October 22, 1992. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On June 7, 1991, Massachusetts' DEP submitted revisions to its SIP for its Ozone Attainment Plan in response to EPA's notices of proposed rulemakings (NPRs) published in the **Federal Register** on May 29, 1990 (55 FR 21755) and October 12, 1990 (55 FR 41553). These revisions consist of revised VOC emissions regulations.

Background

On May 25, 1988, EPA sent a letter to Michael Dukakis, then Governor of Massachusetts, indicating that the Massachusetts SIP was substantially inadequate to attain the ozone standard. EPA requested that the state respond in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the states should correct their SIPs. The first phase included (1) correcting deficiencies and inconsistencies in existing regulations, (2) adopting regulations previously required or committed to but never adopted and (3) updating the base emission inventory for those areas identified as nonattainment.

On June 16, 1988, EPA sent a letter to the acting director of the Massachusetts Department of the Environmental Quality Engineering's (now Massachusetts Department of Environmental Protection (DEP)) Division of Air Quality Control and identified the corrections that needed to be made in the existing regulations for the control of VOC emissions. These corrections were necessary to make Massachusetts' SIP consistent with the CAA as interpreted in EPA's guidance.

The Commonwealth of Massachusetts made changes to its VOC regulations as required by EPA's May 25 and June 16, 1988 letters, and submitted revised adopted VOC regulations as a formal SIP revision on August 17, 1989.

EPA proposed approval of the August 17, 1989 submittal in two notices. A notice proposing partial approval and partial disapproval of the automobile surface coating regulation was published in the **Federal Register** on October 12, 1990 (55 FR 41553). EPA proposed approval of the remaining VOC regulations submitted on August 17, 1989 in the May 29, 1990 NPR.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. In section 182(a)(2)(A) of the amended Act, Congress codified the requirement that states revise their SIPs for ozone nonattainment areas so that they conform with section 172 of the pre-amended Act as interpreted in EPA's pre-amendment guidance. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Commonwealth of Massachusetts is designated as a nonattainment area and all areas within the state are classified are serious.[2] Therefore, the entire state was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On June 7, 1991, Massachusetts submitted revisions to its VOC regulations pursuant to the changes requested in the NPRs published in the **Federal Register** on May 29, 1990 and October 12, 1990. Today's action proposes approval of those revisions made by Massachusetts and submitted on June 7, 1991 which were never before

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[1] Among other things, the pre-amendment guidance consists of the Post–87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulations Cutpoints, Deficiencies and Deviations, Clarification to appendix D of the November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines.

[2] All nonattainment areas in Massachusetts retained their designation of nonattainment and were classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

proposed by EPA in the **Federal Register**.

The May 29, 1990 NPR listed several corrections Massachusetts needed to make to 310 CMR 7.24, "Organic Material Storage and Distribution," 310 CMR 7.18(8), "Solvent Metal Degreasing" and 310 CMR 7.18(11), "Miscellaneous Metal Parts and Products" regulations. Massachusetts made changes to these regulations and submitted them on June 7, 1991. Because the changes to regulations 310 CMR 7.24, portions of 310 CMR 7.18(8) and portions of 310 CMR 7.18(11) were more extensive than EPA requested in the **Federal Register** on May 29, 1990, EPA is proposing approval of these revisions today.

Content of Revised Regulations

The Massachusetts DEP made the following changes to the VOC regulations:

1. Changes were made to the definitions of "bulk plant" and "vapor balance system" in 310 CMR 7.00 to improve the clarity of the definitions.

2. Massachusetts made changes to three rules: (1) 310 CMR 7.18(8)(a), "Cold Cleaning Degreasing"; (2) 310 CMR 7.18(8)(b), "Vapor Degreasing" and (3) 310 CMR 7.18(8)(c), "Conveyorized Degreasing" consistent with EPA's guidance document: *Regulatory Guidance and Control of Volatile Organic Compound Emissions from 15 Categories of Stationary Sources* (EPA–905/2–78–001). The applicability of 310 CMR 7.18(8)(b) was changed so that any vapor degreaser is subject to the requirements of 310 CMR 7.18(9)(b). Although Massachusetts subsequently has stated that they intend to change this applicability to exempt open top vapor degreasers with an open area smaller than 1 square meter (10.8 square feet) from having to be equipped with a refrigerated chiller as listed in 310 CMR 7.18(9)(b)4.b. or from installing a carbon adsorption system as listed in 310 CMR 7.18(8)(b)4.d., EPA proposes to approve the existing provisions of 310 CMR 7.18(8)(b).

3. A typographical change to 310 CMR 7.20(10)(c)2.

4. 310 CMR 7.18(11), "Miscellaneous Metal Parts and Products," was amended to lower the applicability level. The following changes were made in the regulation:

a. The applicability cutoff was lowered to include sources which have the potential to emit equal to or greater than 10 tons per year of VOCs.

b. Massachusetts added a section exempting coatings used in small amounts. A facility may use up to 55 gallons of exempt coatings per year.

c. Massachusetts has also exempted from the emission limitations of 310 CMR 7.18(11)(b), sources which actually emit less than one ton of VOC per month and less than 10 tons of VOCs per year prior to the application of air pollution control equipment.

d. Section 310 CMR 7.18(11)(a)3. requires sources subject to the regulation to come into compliance by July 1, 1992.

5. Massachusetts amended 310 CMR 7.24(1), "Organic Material Storage Tanks," to include specific inspection requirements for seals in organic material storage tanks. Massachusetts also defined a 95% control efficiency for vapor recovery systems and required that records be kept. This regulation also lists miscellaneous requirements that are consistent with EPA guidance.

6. 310 CMR 7.24(2), "Bulk Terminals and Bulk Plants," details the specific requirements for bulk plants and bulk terminals. The most substantive change is the provision requiring facilities in Berkshire, Dukes and Nantucket counties to install vapor balance systems by April 1, 1993.

Other changes include specifying that bulk terminals may emit no more than 80 milligrams per liter of liquid loaded or unloaded over a six hour period and specifying that the organic material may only be transferred into leak tight tank trucks.

7. 310 CMR 7.24(3), "Distribution of Motor Vehicle Fuel," consolidates all the requirements for Stage I controls at motor vehicle fuel dispensing facilities into one section. The applicability of Stage I is also lowered to 250 gallons for storage tanks constructed after July 1, 1991. Additionally, Stage I controls are not required in Berkshire county. Changes in the Stage I vapor recovery regulations include: requiring that transfers take place through submerged filling; requiring tanks with a capacity of 250 gallons or more and installed after July 1, 1991 to have a vapor balance system; specifying that the vapor-laden delivery vessels can only refill at bulk gasoline terminals and plants which are in compliance with 310 CMR 7.24(2); and recordkeeping requirements.

8. Changes to 310 CMR 7.24(4), "Motor Vehicle Fuel Tank Trucks," consist of deleting the existing section and renumbering 310 CMR 7.24(3) to 7.24(4), correcting internal references, and clarifying some language in this regulation.

Aor additional details on the approvability of each portion of Massachusetts' regulations, see the Technical Support Document prepared on the revision available at the locations listed in the **ADDRESSES** section of this notice. EPA soliciting public comments on the issues discussed in this notice or on other relevant matters.

These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

PROPOSED ACTION: The additions made to the Massachusetts VOC regulations which were submitted on June 7, 1991 and proposed in this notice meet the RACT requirement of section 182(a)(2)(A) of the CAA and are consistent with EPA's guidance. For the reasons described here and in the Technical Support Document, EPA is proposing to approve the additions made to the Massachusetts VOC regulations on June 7, 1991. These revisions amend Massachusetts' VOC regulations which are part of Massachusetts' Ozone Attainment Plan.

Although EPA is proposing to approve the Massachusetts submittal, EPA would like to note the following issues. (1) 310 CMR 7.18(8), "solvent metal degreasing," does not exempt small open top vapor degreasers as provided by EPA guidance. Massachusetts has stated that it is going to revise 310 CMR 7.18(8)(b) of this regulation to exempt those sources from having to be equipped with a refrigerated chiller or from installing a carbon adsorption system. However, the provision proposed for incorporation in the SIP does not exempt small open top vapor degreasers. EPA believes such an amendment would be approvable. (2) EPA is suggesting that the state amend regulation 310 CMR 7.24(1)(d) to require seals applicable to 310 CMR 7.24(1)(b)(3 or 310 CMR 7.24(1)(c) to meet the requirements listed in 310 CMR 7.24(1)(d). Also, the typographical errors in 310 CMR 7.24(1)(d)3. should be corrected to "21.2 cm^2" and 1.0 in^2". (3) 310 CMR 7.24(4) does not include any reference to the EPA test method pertinent to the annual testing of tank trucks. However, Massachusetts has stated that they would include and submit to EPA, a reference to the test method before EPA takes final approval of these revisions. These changes should be submitted to EPA for approval when Massachusetts makes the corrections outlined above. EPA's final approval of the revisions proposed in this notice, however, will only be contingent upon Massachusetts addressing the third issue outlined above.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a

substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 14, 1992.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 92–22940 Filed 9–21–92; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–1–1–5112; FRL–4509–2]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Regulation 32 for Nonattainment Area Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of a revision to the Bernalillo County, State of New Mexico Implementation Plan (SIP) which includes: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 32, Construction Permits for Nonattainment Areas, as filed with the State Records & Archives Center on March 16, 1989; the July 12, 1989, Supplement for Albuquerque/Bernalillo County Areas Designated Nonattainment, and a July 18, 1989, letter regarding a stack height commitment and a New Source Performance Standard (NSPS)/National Emission Standard for Hazardous Air Pollutants (NESHAPS) performance testing commitment. This proposed SIP revision was submitted by the Governor to EPA on April 14, 1989, and on August 7, 1989, and is intended to establish a program under which new and modified sources may be constructed in areas of Bernalillo County where a National Ambient Air Quality Standard (NAAQS) is being exceeded, without interfering with the continuing progress toward attainment of that standard. AQCR 32 is comparable to the New Mexico Environmental Improvement Board's Air Quality Control Regulation 709, Permits for Nonattainment Areas, as adopted by the State on July 26,1985, and with four revisions as adopted on July 8, 1988. EPA approved this Regulation 709 version on June 4, 1990 (55 FR 22784).

DATES: Comments must be received on or before October 22, 1992.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, at the EPA Region 6 Air Programs Branch (Address below). Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather or Dr. John Crocker, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION:

1. New Source Review Nonattainment Program

The Clean Air Act requires States to implement a preconstruction permit program for new or modified stationary sources that wish to locate in a nonattainment area. See sections 172(c)(5) and 173. In accordance with section 74–2–4 of the State of New Mexico Air Quality Control Act, Bernalillo County is authorized to provide for the local administration and enforcement of the preconstruction permitting requirements of the Clean Air Act as well as the State Act. Bernalillo County and the City of Albuquerque, through a joint Air Quality Control Board (Board), have the sole authority to issue new and modified source permits within the geographical limits of Bernalillo County. The Albuquerque Environmental Health Department (AEHD) implements the Board's requirements. The submitted new source review (NSR) regulation, AQCR 32, would allow the EHD to issue permits to sources in Bernalillo County to construct or modify processes in areas where a NAAQS is being exceeded, without interfering with the continuing progress toward attaining the standard. The EPA first approved the New Mexico Nonattainment Area (part D) SIP, pertaining to review of new sources and modifications, on April 10, 1980 (45 FR 24460), with a condition that revisions to permit regulations be submitted to EPA. The Governor of New Mexico (The Governor), in a May 20, 1980, letter to EPA, committed to continue (in the meantime) the policy of not issuing permits to new or modified stationary sources in New Mexico, including Bernalillo County, nonattainment areas.

EPA has adopted regulations specifying the State new source review provisions that must be adopted by a State to satisfy the requirements of sections 172 and 173. These regulations are found in 40 CFR part 51, subpart I, Review of New Sources and Modifications. A SIP satisfying sections 172(b)(6) and 173 of the Act is required to meet the conditions as set forth in 40 CFR 51.165.

At this time, § 51.165 does not reflect the new major source size, offset ratios, and other nonattainment NSR provisions added by the Clean Air Act Amendments (CAAA) of 1990. Nonetheless, these new provisions add additional requirements for State NSR programs which must be reflected in the applicable SIPs. State SIP revisions incorporating the changes mandated by the CAAA of 1990 are subject to specific pollutant by pollutant deadlines. For

instances, SIP revisions incorporating the changes mandated for carbon monoxide (CO) and ozone nonattainment areas are due by November 15, 1992. EPA is currently in the process of revising its regulations in accordance with the CAAA of 1990 and expects to propose an amended § 51.165 within the near future. Since the SIP revisions proposed for Bernalillo County were submitted prior to passage of the CAAA of 1990 and represent a substantial strengthening of the County's nonattainment preconstruction permitting program, EPA is proposing that the revisions be approved. However, this proposed action does not excuse the County from making the additional changes required by the CAAA of 1990. Indeed, even with the promulgation of the County rules under review in this proceeding, EPA may use its powers under section 113(a)(5) of the Act to challenge any permits issued by the County which are not in substantial compliance with the additional permitting requirements imposed by the CAAA of 1990. See 57 FR 13498, 13555 (April 16, 1992).

The sources to which AQCR 32 apply are new and modified sources that: (1) Are in a nonattainment area and would emit the nonattainment pollutant in a specific amount (100 tons per year), or (2) Are located within an attainment area, but their emissions would have a significant impact on a neighboring nonattainment area. By operation of the law under the CAAA of 1990, Bernalillo County has been designated nonattainment for CO. The nonattainment CO boundaries for Bernalillo County are the Albuquerque Metropolitan Statistical Area (MSA). EPA has also initiated a process to designate the County nonattainment for PM-10. See 56 FR 16274 (April 22, 1991).

EPA reviewed AQCR 32 for compliance with the requirements of title 40 of the Code of Federal Regulations (40 CFR), part 51, and for compliance with part D of title I of the Clean Air Act. Pertinent details of EPA's review are found in the "Evaluation Report for Albuquerque/Bernalillo County Regulation 32—Construction Permits in Nonattainment Areas," January 1991. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. The highlights of the report are given below.

The baseline in AQCR 32 for calculating emission reduction credit for offsets is the most stringent emission limitation applicable to the source, whether Federal or State, including a Federally enforceable permit which is applicable and in effect at the time the application to construct is filed. Where there is no emission limitation for the particular source of offsets in either a City/County AQCR or Federally enforceable permit, actual emissions from which offset credit is obtained will form the baseline. Where the allowable emissions from the offsetting source are greater than its potential to emit, the potential to emit forms the baseline. Shutdown credits for offsetting are also allowed by AQCR 32 with the same restrictions currently found at 40 CFR 51.165(a)(3)(ii)(C). The regulation requires, as a general rule, an emission reduction (offset) that is at least 20 percent greater than the proposed new allowable emissions, allowing the requirement of EPA regulations for a net air quality benefit to be achieved. Provision is made for the excess to be either greater or less than 20 percent, but greater than one-for-one, if in certain limited circumstances another amount is more appropriate. Also, once a source becomes subject to AQCR 32, the source must meet all applicable requirements; i.e. a source could not use required emissions reductions in order to "net out" from further requirements.

It is important to note that the CAAA of 1990, in section 173(c), now require all offset emission reductions to be in actual emissions. Specifically, it must be assured that the total tonnage of increased emissions of an air pollutant from a new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. Albuquerque/Bernalillo County will be required to revise Regulation 32 to address this new requirement. Unlike the pollutant-specific NSR changes (such as the drop in source size in ozone nonattainment areas), the changes Congress made to the general nonattainment permitting provisions in section 173 by the CAAA of 1990 were not tied to any specific SIP-submission deadlines. For this reason, EPA views the changes to section 173 as being immediately applicable to this and all SIP amendments EPA reviews.

Major new sources and major modifications are required by AQCR 32 to meet and maintain the Lowest Achievable Emission Rate (LAER). Additionally, all major stationary sources owned or operated in the State must be in compliance with, or on a compliance schedule for, all applicable emission limitations.

Section L of AQCR 32 contains a provision for banking of emission reductions that will be used as offset credits. The regulation contains requirements to ensure the reductions are surplus, permanent, enforceable, and quantifiable.

The State of New Mexico contains only one area, Bernalillo County, which was granted an extension until December 31, 1987, for attainment of the NAAQS for CO. Former section 172(b)(11)(A) of the Clean Air Act required preconstruction permitting regulations for extension areas to contain a provision requiring proposed new major sources or major modifications to perform alternate siting analysis. Section 173(a)(5) of the CAAA of 1990 provides that as a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, "an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification." Alternate siting requirements for CO are found in section E.2 of AQCR 32. Albuquerque/Bernalillo County will now be required to revise Regulation 32 to address alternate siting requirements for all regulated pollutants in accordance with the new requirements of the CAAA of 1990.

The definitions in AQCR 32 all either exactly or substantially correlate with the Federal definitions found in the CFR and the Clean Air Act. The Evaluation Report reviews all definitions in AQCR 32.

2. Visibility New Source Review

AQCR 32 requires the County to ensure that proposed new major stationary sources or major modifications which would locate in a nonattainment area and which could potentially degrade visibility in Mandatory Class I Federal areas demonstrate that the sources' emissions will be consistent with making reasonable progress toward the national visibility goal. The national visibility goal is the prevention of any future, and the remedying of any existing, manmade impairment of visibility in certain national wilderness areas, and national and international parks. See section 169A(a)(1) and 40 CFR 51.300(a). Mandatory Class I Federal areas are any areas identified in 40 CFR part 81, subpart D. There are nine Mandatory Class I Federal areas in New Mexico. See 40 CFR 81.421. Two examples of Mandatory Class I Federal areas near Bernalillo County include Bandelier

Wilderness Area (40 kilometers), and Bosque del Apache Wilderness Area (80 kilometers). For the purpose of determining the affected sources' consistency with reasonable progress toward the national visibility goal, AQCR 32 provides that the County may take into account costs and time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source. See 40 CFR 51.307(c).

On October 23, 1984 (49 FR 42670), EPA proposed Federal regulations for visibility NSR and monitoring and proposed to disapprove the SIPs for 34 States, including New Mexico, and to incorporate the new Federal regulations into those SIPs. To avoid Federal promulgation of these rules, EPA required those States that had not yet done so (including New Mexico) to submit SIP revisions by May 6, 1985, containing a visibility monitoring strategy and visibility NSR regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and § 51.307 (visibility NSR). EPA promulgated Federal regulations for visibility NSR and visibility monitoring for those States (including New Mexico) which did not adopt necessary SIP revisions by the deadline. See 50 FR 28544, 51 FR 5504 and 51 FR 22937.

The Governor of New Mexico subsequently submitted the Albuquerque/Bernalillo County visibility NSR plan to EPA on April 14, 1989, and August 7, 1989. The NSR plan includes Albuquerque/Bernalillo County Regulation 29—"Prevention of Significant Deterioration," applicable to attainment and unclassified areas, and Regulation 32—"Albuquerque/Bernalillo County Areas Designated Non-Attainment," applicable to non-attainment areas. EPA has reviewed the County's submittal and developed a report entitled "Evaluation Report for the Albuquerque/Bernalillo County Visibility Protection Plan," November 1990. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. As indicated in the evaluation report, Regulation 32 contains all of the visibility NSR requirements specified in 40 CFR 51.307 for nonattainment areas. Since there are no Mandatory Class I Federal areas in Bernalillo County, the County plan was only required to contain visibility NSR regulations. Regulation 29, concerning attainment and unclassified areas, will be addressed in a separate Federal Register notice.

In addition to the provisions described previously, AQCR 32 contains provisions requiring written notification of the affected Federal Land Managers of any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area, and provisions for modeling of the environmental effects of the source or modification and associated growth. The evaluation report referenced above contains a more detailed analysis of AQCR 32's compliance with the requirements set out in 40 CFR 51.307. The visibility protection regulations contained in AQCR 32 pertain to nonattainment area sources and are one element of a comprehensive visibility protection plan. Therefore, the EPA is proposing to approve the Albuquerque/Bernalillo County Regulation 32 as meeting the "nonattainment area" portion for protection of visibility in Mandatory Class I Federal areas under the NSR program, and to revoke the Federal visibility NSR regulations for nonattainment areas promulgated by EPA for Albuquerque/Bernalillo County on February 13, 1986. Thus, if today's proposed action is approved in final form, then it would supplant or displace the Federal visibility rules issued for the State of New Mexico, but only to the extent that those rules implement visibility NSR requirements applicable to nonattainment areas in Bernalillo County.

3. Stack Height Regulations

It is necessary that Regulation 32 be in compliance with the Federal Stack Height and Dispersion Technique Regulations. The Governor of New Mexico submitted to EPA, concurrent with Regulation 32, a SIP revision for Stack Height and Dispersion Technique Regulations (Regulation 33). Regulation 33 was approved by EPA on March 5, 1991. See 56 FR 9173.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Under this program, AEHD will be issuing permits and establishing emission limitations that may be affected by the court ordered reconsideration of the stack height regulations promulgated on July 8, 1985 (50 FR 27892). For this reason, the EPA requires that the AEHD include the following caveat in all potentially affected permit approvals until the EPA completes its reconsideration of remanded portions of the regulations and promulgates any necessary revisions:

> In approving this permit, the Albuquerque Environmental Health Department has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in *NRDC* v. *Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

The AEHD made an enforceable commitment to include this caveat in all affected permits in a letter from the Director, Environmental Health Department, to the EPA Region 6 Regional Administrator dated July 18, 1989. This letter will be approved as part of the SIP if final approval action is taken on the SIP revision.

4. Required Amendments to AQCR 32

Before EPA can finally approve the NSR regulation, AQCR 32 must be amended to address four issues:

(A) AQCR 32 has provisions for offset exemptions in section I (Exemptions to D.4. and D.5). The exemption for resource recovery facilities, for temporary emission sources, and for sources which must switch fuels, must be deleted from the regulation. Neither 40 CFR 51.165 nor the CAAA of 1990 allow offset exemptions for these or any other types of sources.

(B) AQCR 32 must also have Section A (Applicability) revised. Specifically, section A.3 should be deleted, and sections A.1 and A.5(a) must be revised to read as follows:

> A. Applicability
>
> 1. Any person constructing any new major stationary source or major modification, shall obtain a permit from the department in accordance with the requirements of this regulation prior to the start of construction or modification if either of the following conditions apply:
>
> a. The major stationary source or major modification will be located within a

nonattainment area so designated pursuant to section 107 of the Clean Air Act and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment; or

b. The major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to section 107 of the Clean Air Act and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Table 1 at any location that does not meet any national ambient air quality standard for the same pollutant (See section A.5).

5. A new major stationary source or major modification which meets the criteria of section A.1.(b) shall demonstrate that the source or modification will not cause or contribute to a violation of any National Ambient Air Quality Standard by meeting the following requirements and no others of this regulation:

(i) Section D.4(b) regarding emission offsets;

(ii) Section D.5 regarding a net air quality benefit;

(iii) Section F—Emission Offset Baseline;

(iv) Section G—Emission Offset; and

(v) Section H—Air Quality Benefit.

(C) Albuquerque/Bernalillo County will now be required to revise Regulation 32 to address alternate siting requirements for all regulated pollutants in accordance with section 173(a)(5) of the CAAA of 1990. Specifically, section E.2 must be revised to require the owner or operator of proposed major stationary sources or major modifications to conduct an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed sources which demonstrate that benefits of the proposed sources significantly outweigh the environmental and social costs imposed as a result of their location, construction, or modification.

(D) As noted earlier, the CAAA of 1990, in section 173(c), now require all offset emission reductions to be in actual emissions. Specifically, it must be assured that the total tonnage of increased emissions of an air pollutant from a new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. Albuquerque/Bernalillio County will be required to revised Regulation 32 to adequately address this new requirement by revising section D.4.a.

5. Discussion on "Plantwide Definition" of Stationary Source

With regard to Section K, Definition number 17, "Major Stationary Source," The Albuquerque/Bernalillo County Air Quality Control Board (Board) has selected the "plantwide definition." On October 14, 1981, the EPA revised the NSR regulations in 40 CFR part 51 to give States the option of adopting the "plantwide" definition of stationary source in nonattainment areas (see 46 FR 50766). This definition provides that only physical or operational changes that result in a net increase in emissions at the entire plant require an NSR permit. In 1984, in *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 104 S. Ct. 2778, the Supreme Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well (see 104 S. Ct. at 2792).

On April 14, 1989, and August 7, 1989, the Governor of New Mexico submitted a SIP revision for Albuquerque/Bernalillo County that would add an NSR program for nonattainment areas to the SIP. This program uses a plantwide definition of source and requires an additional 20% emissions offset when sources are subject to major NSR requirements. Therefore, EPA here proposes to approve the adoption of a plantwide definition in accordance with its 1981 action.

Proposed Action: EPA is proposing to approve the Albuquerque/Bernalillo County Nonattainment Area permit SIP revision. Specifically, EPA is proposing to approve (1) AQCR 32, as filed with the State Records and Archives Center on March 16, 1989; (2) the Supplement to AQCR 32 as adopted by the Board on July 12, 1989, and (3) the July 18, 1989, committal letter agreeing not to waive or amend NSPS or NESHAPS mandated performance testing, and agreeing to comply with the terms of the Stack Height Regulation (Regulation 33) prior to the issuance of any permit. Final approval action on this pending SIP revision submittal is contingent upon incorporation of the previously discussed amendments into AQCR 32. The AEHD has agreed to incorporate these amendments into AQCR 32. EPA is also proposing to approve the SIP revision submittal as meeting the "nonattainment area" portion of the NSR requirements (40 CFR 51.307) for protection of visibility in Mandatory Class I Federal areas.

Finally, EPA is also proposing to revise the condition found at 40 CFR 52.1628(b), which prohibits the issuance of permits to new or modified stationary sources, as specified in the Governor's letter of May 20, 1980. A construction ban will still be in effect for all major stationary sources or major modifications in Bernalillo County, if the emissions from such facilities will cause or contribute to concentrations of CO in Bernalillo County (40 CFR 52.1627(a)(1)). This construction ban will remain in effect until a complete CO SIP revision for Bernalillo County is submitted by the State of New Mexico and approved by EPA. This complete SIP revision must include a commitment to correcting deficiencies in the vehicle inspection/maintenance (I/M) program, a comprehensive CO emission inventory, and incorporation of an oxygenated fuels program in order to assure attainment and maintenance of the NAAQS for CO by December 31, 1995.

Based on the above evaluation, EPA is proposing approval of this SIP revision which will result in a strengthening of the Albuquerque/Bernalillo County SIP. As discussed, future revisions to this plan regarding Nonattainment Area Permitting must be made in accordance with the requirements of the CAAA of 1990.

Regulatory Flexibility

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify 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 Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. § 7410(a)(2).

Executive Order 12291

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 8, 1992.

Joe D. Winkle,

Acting Regional Administrator (6A).

[FR Doc. 92–22938 Filed 9–21–92; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–3–1–5119 FRL–4509–3]

Approval and Promulgation of Air Quality Plans; New Mexico; Albuquerque/Bernalillo County Prevention of Significant Deterioration Program, Including Nitrogen Dioxide Increment Provisions and a Continuous Emission Monitoring Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of a revision to the State of New Mexico Implementation Plan (SIP) which includes: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 29, Prevention of Significant Deterioration (PSD), as filed with the State Records and Archives Center on March 16, 1989, and all of the revisions to AQCR 29 filed on April 24, 1990; and the July 12, 1989, PSD Supplement and the April 11, 1990, revisions to the PSD Supplement and § § 2.31, 2.32, 2.33, 2.34 and 2.51 of AQCR 2, Definitions, as filed with the State Records and Archives Center on March 16, 1989. This proposed SIP revision was first submitted by the Governor to EPA on April 14, 1989, and on August 7, 1989, and is intended to establish a program under which major stationary sources or major modifications can be constructed in attainment areas and unclassified areas without causing significant deterioration of the air quality in those areas. In addition, this action also proposes approval of revisions to AQCR 29 to include nitrogen dioxide (NO_2) increment provisions, and a continuous emission monitoring (CEM) negative declaration (in the Supplement). These additional revisions were submitted by the Governor to EPA by letter dated May 1, 1990.

DATES: Comments must be received on or before October 22, 1992.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, at the EPA Region 6 Air Programs Branch (address below). Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP) 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather of Dr. John Crocker, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION:

1. Prevention of Significant Deterioration (PSD) Program

The Clean Air Act (CAA) (as amended) sets forth requirements for plans for attainment and unclassified areas in part C. EPA is required to develop regulations to fulfill the requirements of the CAA. The regulations that fulfill this requirement regarding PSD are found in 40 CFR 51.166. The Albuquerque/Bernalillo County PSD program has been reviewed against the requirements found in 40 CFR 51.166 and in the Clean Air Act Amendments (CAAA) of 1990. When the PSD program for Albuquerque/Bernalillo County is approved in the SIP, the City/County will be authorized to issue permits to allow major sources to construct or modify processes in attainment or unclassified areas in Bernalillo County. The Governor of New Mexico submitted the proposed PSD SIP revision for Albuquerque/Bernalillo County to EPA on April 14, 1989, and August 7, 1989, and on May 1, 1990. The SIP revision contained AQCR 29 and the supplement to AQCR 29. AQCR 29 and the Supplement apply to all of Bernalillo County, which, in accordance with section 74–2–4 of the State of New Mexico Air Quality Control Act, is authorized to provide for the local administration and enforcement of the Act. This PSD SIP revision meets the Federal requirements including those for best available control technology (BACT) and modeling. The details of EPA's evaluation and our determination that the PSD program in Albuquerque/Bernalillo County meets the Federal requirements are addressed in EPA's Technical Support Document dated January 1991.

The Federal regulations in 40 CFR 51.166(j) require applicants for PSD permits to consider and install the BACT in construction of new major sources or modification of existing major stationary sources. AQCR 29 and the Supplement meet the Federal requirements concerning BACT in sections E and P.10 of AQCR 29 ("Control Technology Requirements"), and in section 8.b of the Supplement.

Section 40 CFR 51.166(l) of the Federal PSD regulations requires the applicants to use the EPA approved models for all PSD permitting purposes. AQCR 29 and the Supplement meet the Federal requirements concerning ambient air quality modeling in section H of AQCR 29 and in section 5 of the Supplement by requiring the use of EPA approved models.

2. Nitrogen Dioxide Increment Provisions

To prevent significant deterioration of air quality due to emissions of nitrogen oxides, NO_2 increment provisions have been incorporated into AQCR 29. The provisions follow the requirements set forth in 40 CFR 51.166 and the final rule pertaining to the Prevention of Significant Deterioration for Nitrogen Oxides (53 FR 40656). The NO_2 increment provisions establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration as defined in section P.8. of AQCR 29.

3. Continuous Emission Monitoring Negative Declaration

The April 11, 1990, revisions to the Supplement added a negative declaration regarding continuous emissions monitoring (CEM). This revision specifically addresses 40 CFR part 51, appendix P, § 1.1 (Minimum Emission Monitoring Requirements—Applicability). There is an allowance recognized by the Environmental Protection Agency (EPA) for negative declarations regarding Federal CEM requirements if there are no existing sources such as would be required by 40 CFR 51.214 and 40 CFR part 51, appendix P, to have continuous emission monitoring. The narrative explains that as of April 11, 1990, there were no

existing sources in Bernalillo County such as would be required by 40 CFR 51, Appendix P, to have continuous emissions monitoring.

4. Visibility New Source Review

AQCR 29 requires the County to ensure that proposed new major stationary sources or major modifications which would locate in an attainment or unclassified area and which could potentially degrade visibility in Mandatory Class I Federal areas demonstrate that the sources' emissions will be consistent with making reasonable progress toward the national visibility goal. The National visibility goal is the prevention of any future, and the remedying of any existing, manmade impairment of visibility in certain national wilderness areas, and national and international parks. See section 169A(a)(1) and 40 CFR 51.300(a). Mandatory Class I Federal areas are any areas identified in 40 CFR part 81, subpart D. There are nine Mandatory Class I Federal areas in New Mexico. See 40 CFR 81.421. Two examples of Mandatory Class I Federal areas near Bernalillo County include Bandelier Wilderness Area (40 kilometers) and Bosque del Apache Wilderness Area (80 kilometers). For the purpose of determining the affected sources' consistency with reasonable progress toward the national visibility goal, AQCR 29 provides that the County may take into account costs and time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source. See section 169A(g)(1) of the Clean Air Act (CAA).

The CAAA of 1990 revised sections 162(a) and 164(a) of the CAA to specify that the boundaries of areas designated as Class I must conform to all boundary changes at such parks and wilderness areas made since August 7, 1977, and any changes that may occur in the future. EPA interprets the current regulations at 40 CFR 52.21 as being able to accommodate these statutory changes, and no regulatory revisions are necessary at this time in order to implement these changes. For a discussion of EPA's policy regarding the implementation of the boundary change, please consult the memorandum entitled "New Source Review Program Transitional Guidance," from John S. Seitz, Director, Office of Air Quality Planning and Standards, March 11, 1991. See 57 FR at 18075 (April 28, 1992). In addition, by letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the PSD regulations in a manner consistent with the changes in sections 162(a) and 164(a) of the Act as interpreted by EPA.

On October 23, 1984 (49 FR 42670), EPA proposed Federal regulations for visibility new source review and monitoring and proposed to disapprove the State Implementation Plans (SIPs) for 34 States, including New Mexico, and to incorporate the new Federal regulations into those SIPs. To avoid Federal promulgation of these rules, EPA required those States that had not yet done so (including New Mexico) to submit SIP revisions by May 6, 1985, containing a visibility monitoring strategy and visibility new source review (NSR) regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). EPA promulgated Federal regulations for visibility NSR and visibility monitoring for those States (including New Mexico) which did not timely adopt necessary SIP revisions. See 50 FR 28544, 51 FR 5504 and 51 FR 22937.

The Governor of New Mexico subsequently submitted the Albuquerque/Bernalillo County visibility NSR plan to EPA on April 14, 1989, and August 7, 1989. The NSR plan includes Albuquerque/Bernalillo County Regulation 29—"Prevention of Significant Deterioration," applicable to attainment and unclassified areas, and Regulation 32—"Albuquerque/Bernalillo County Areas Designated Nonattainment," applicable to nonattainment areas. EPA has reviewed the County's submittal and developed a report entitled "Evaluation Report for the Albuquerque/Bernalillo County Visibility Protection Plan," November, 1990. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 address listed above. As indicated in the evaluation report, Regulation 29 contains all of the visibility NSR requirements specified in 40 CFR 51.307 for attainment or unclassified areas. Since there are no Mandatory Class I Federal areas in Bernalillo County, the County plan was only required to contain visibility NSR regulations. Regulation 32, concerning nonattainment areas, will be addressed in a separate FR notice.

In addition to the provisions described previously, AQCR 29 contains provisions requiring written notification of the affected Federal Land Managers of any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area, and provisions for modeling of the environmental effects of the source or modification and associated growth. The evaluation report referenced above contains a more detailed analysis of AQCR 29's compliance with the requirements set out in 40 CFR 51.307. The visibility protection regulations contained in AQCR 29 pertain to attainment and unclassified area sources and are one element of a comprehensive visibility protection plan. Therefore, the EPA is also proposing to approve the Albuquerque/Bernalillo County Regulation 29 as meeting the "attainment area" portion for protection of visibility in Mandatory Class I Federal areas under the NSR program. Thus, if today' proposed action is approved in final form, then it would supplant or displace the Federal visibility rules issued for the State of New Mexico, but only to the extent that those rules implement visibility new source review requirements applicable to attainment and unclassifiable areas in Bernalillo County.

5. Concluding Remarks and Administrative Details

EPA reviewed AQCR 29 and the Supplement for compliance with the requirements of title 40 of the Code of Federal Regulations (40 CFR), part 51.166 pertaining to PSD requirements including NO_2 increment provisions, 40 CFR part 51, appendix P, pertaining to CEM requirements, and part C of Title I of the CAA, as amended. This review is available at the EPA Region 6 address listed above in the technical support document.

There are four administrative corrections that need to be made in subsequent adoptions of this regulation. They do not prevent the approval of this regulation at this time.

A. In section P. 7, Table 2, Table 4, and Table 6, "mgm/m^3" needs to be changed to "μgm/m^3."

B. In the Regulation Section E.3., the phrase, "* * * appropriate at the *latest* reasonable time * * *" should read, "appropriate at the *least* reasonable time* * *", in accordance with 51.166(j)(4).

C. Under definitions, section P. 11, "Building, structure, facility, or installation," the U.S. Government stock number is incorrectly listed as 041–001–00066–6. It should read 4101–0066 in accordance with 40 CFR 51.166(b)(6).

D. The Clean Air Act Amendments of 1990 amended section 169(1) to expand the list of major emitting facilities subject to PSD requirements to include municipal incinerators (municipal waste combustors) capable of charging more than 50 tons of refuse per day with a potential to emit more than 100 tons per year of any regulated pollutant. Under

prior law, only municipal incinerators capable of charging more than 250 tons of refuse per day were subject to the 100 tons per year major source threshold for PSD applicability. EPA interprets this statutory change as being immediately effective. The City of Albuquerque, by their updated NSPS/NESHAP delegation agreement, has the authority to issue PSD permits to this new class of PSD major sources. In addition, the City will formally add this new class of PSD major sources to AQCR 29 at the next adoption of the regulation.

Proposed Action

EPA is proposing to approve (1) Albuquerque Environmental Health Department (AEHD) Air Quality Control Regulation 29 as filed with the State Records and Archives Center on March 16, 1989, and revisions to AQCR 29 as filed on April 24, 1990; (2) The July 12, 1989, Supplement for AQCR 29, and as amended on April 11, 1990, and (3) Sections 2.31, 2.32, 2.33, 2.34, and 2.51 of AQCR 2, Definitions, as filed with the State Records and Archives Center on March 16, 1989. The administrative corrections referenced above will need to be made during the next adoption of revisions to Regulation 29 and the Supplement, but the need for these corrections will not prevent the approval of the PSD SIP at this time. EPA is also proposing to approve the SIP revision submittal as meeting the "attainment area" portion of the NSR requirements (40 CFR 51.307) for protection of visibility in Mandatory Class I Federal areas.

The 1990 Amendments added a new section 302(z) of the Act defining the term "stationary source" as generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216. EPA's initial view is that the definition of stationary source in the PSD regulations is flexible enough to accommodate new section 302(z) without requiring regulatory revisions. By letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the regulations in a manner consistent with this statutory addition.

The 1990 Amendments also revised section 169(3) of the Act to specify that "clean fuels" should be considered in a BACT analysis, and to provide that a source utilizing clean fuels, or any other means, to comply with the BACT requirement shall not be allowed to increase above levels that would have been required under section 169(3) prior to the 1990 CAAA. EPA has interpreted the new statutory language regarding clean fuels as merely codifying present practice under this Act, under which clean fuels are an available means of reducing emissions to be considered along with other approaches in identifying BACT-level controls. Please reference the letter from Will G. Rosenberg, Assistant Administrator, to Henry Waxman, Chairman, Subcommittee on Health and the Environment, U.S. House of Representatives, October 17, 1990. Accordingly, EPA believes that no regulatory revisions are necessary in order to implement these statutory changes. By letter dated April 20, 1992, the City of Albuquerque has committed to interpreting the revised language in section 169(3) in a manner consistent with EPA's interpretation.

The EPA has reviewed and evaluated the Albuquerque/Bernalillo County PSD program, including nitrogen dioxide increment provisions and a continuous emission monitoring negative declaration. The EPA's preliminary determination is that the Albuquerque/Bernalillo County PSD program is adequate for authorizing the AEHD to issue and enforce the PSD permits in most areas of Bernalillo County. The EPA will retain authority for reviewing, issuing, and enforcing the PSD permits on Indian lands in Bernalillo County, in accordance with 40 CFR 52.21 and other applicable regulatory provisions. The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. With respect to all of the statutory changes discussed in today's notice, EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its regulations. Upon final adoption of those regulations, EPA will call upon States with approved PSD programs, including Albuquerque, to make corresponding changes in their SIPs. Based on the above evaluation, the EPA proposes to approve the Albuquerque/Bernalillo County PSD program.

The Albuquerque/Bernalillo County PSD SIP revision does not apply to sources located or wanting to locate on Indian lands. This PSD SIP revision is proposed to be approved under the statutory requirements of sections 110 and 160–169A of the Clean Air Act (the Act), 42 U.S.C. 7410 and 7470–7491.

Regulatory Flexibility

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify 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 Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671Q

Dated: September 8, 1992.

Joe D. Winkle,

Acting Regional Administrator (6A).

[FR Doc. 92–22944 Filed 9–21–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–685–P]

RIN 0938–AE79

Medicare Program; Payment for Nursing and Allied Health Education

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth in regulations our policy on Medicare payment for the costs of approved nursing and allied health education programs, an action directed by section 6205(b)(2) of the Omnibus Budget Reconciliation Act of 1989. In addition, it would implement the provisions of sections 4004(b) (1) and (2) and 4159(b) (1) and (2) of the Omnibus Budget Reconciliation Act of 1990. In general, except for the changes required by the latter statute, the provisions set forth in this proposed rule restate or clarify our current policies governing these costs, which have been previously set forth in the Provider Reimbursement Manual and other documents but have not been included in the regulations. We also are proposing to amend the list of approved nursing and allied health education programs and to clarify the payment methodology for certified registered nurse anesthetist education programs.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 23, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–685–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, room 3001, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

In commenting, please refer to file code BPD–685–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966–4529.

SUPPLEMENTARY INFORMATION:

I. Background

Medicare has historically paid providers for its share of the costs they incur in connection with approved educational activities. The activities may be broken down into the following three general categories to which different payment policies apply:

- Approved graduate medical education (GME) programs in medicine, osteopathy, dentistry, and podiatry. Current policy on Medicare payment for GME costs is found at 42 CFR 413.86, which was added by a final rule published in the **Federal Register** on September 29, 1989 (54 FR 40286). In general, for each hospital cost reporting period beginning on or after July 1, 1985, GME costs are paid on the basis of a hospital-specific per resident amount multiplied by the hospital's weighted number of full-time equivalent (FTE) residents for that cost reporting period.
- Approved nursing and allied health (paramedical) education programs operated by the provider. The costs of these programs are excluded from the definition of inpatient operating costs and are not included in the calculation of payment rates under the prospective payment system or in the calculation of the target amount subject to the rate of increase ceiling for hospitals and hospital units excluded from the prospective payment system. These costs are separately identified and "passed through" (that is, paid on a reasonable cost basis).
- Other educational programs and activities.

All other costs that can be categorized as educational programs and activities are considered to be part of normal operating costs and have been covered by the per case payments made under the inpatient hospital prospective payment system for hospitals subject to that system or on the basis of reasonable cost subject to the rate-of-increase limits for hospitals and hospital units excluded from that system.

This proposed rule discusses the history of Medicare and the costs associated with approved nursing and allied health education programs and sets forth our proposed policy on payment for these costs.

A. The Social Security Amendments of 1965 (Pub. L. 89–97)

The subject of Medicare payment for a provider's costs of educational activities arose during the committee hearings prior to the establishment of the Medicare program with the enactment of Public Law 89–97. In January and February 1965, a representative from the American Hospital Association (AHA) testified before the House Committee on Ways and Means. The representative testified that the AHA advocated that third parties pay a reasonable amount for education within the hospitals, not only for nurses but also for interns, residents, technicians, and the other allied health fields (H.R. Rep. No. 213, 89th Cong., 1st Sess. 33 (1965)). At the same hearing, the Commissioner of the Social Security Administration testified that, on the matter of educational costs, the principles of the AHA would be followed.

Thus, in complying with the reports of the committee, the drafters of the regulations implementing title XVIII of the Act were guided by the "Principles of Payment for Hospital Care" first published by the AHA in 1953, with slight modification in 1961 and 1963. The AHA's Reimbursement Principle No. 2.302 stated that, "In determining reimbursable cost, a reasonable amount for medical, nursing and other education not reimbursed through tuition, or through scholarships, grants, and other community sources is a legitimate inclusion in the interest of continuing to upgrade quality of service to the community." The publication went on to comment that—

> Ideally, the cost of educating and training the technical and professional health services personnel needed for community service, for industry, or for other health activities should be financed by the whole community through a combination of public resources and private contributions, rather than by the sick patient representing a small percentage of the community who is usually in the poorest position to meet such cost. It will be necessary, however, that the cost of such programs be considered as a factor in determining reimbursable cost of hospital service until the community is prepared to assume this educational responsibility. Hospitals and third-party purchasers must seek methods for transferring this cost to the whole community through concerted joint effort. It must be borne in mind that nursing education traditionally has been supported by hospital income and by the service rendered by student nurses in hospitals. While financing from other methods must be developed, nothing must be done to discourage the education of increasing numbers of nurses prior to the time that such cost can be transferred to other sources.

Title XVIII of the Act created a 16-member body to provide advice in the formulation of Medicare regulations. This group, the Health Insurance Benefits Advisory Council, met in December 1965 and included the costs of educational activities in its discussion of Medicare reimbursable costs. The minutes of this meeting show that the Council considered the following principle: "A part of the net cost of educational activities shall be included as an element of reimbursable cost." The Council accepted the principle, subject to the inclusion of the word "approved" before the words "educational activities." It asked the staff to study further the problem of differentiating between teaching related to patient care and teaching unrelated to patient care. In January 1966, when the Council met again, comment was made that the resolutions comprise only a basic statement of policy and that the Administration would have to refine the policies to adapt them to various situations, formulate and publish regulations, and establish guidelines and procedures, both to implement the policy recommended by the Council and to prevent abuses. This position was consistent with the definition of "reasonable cost" in the original section 1861(v)(1)(A) of the Act, which authorizes the Secretary to define "reasonable costs" in various circumstances by issuing implementing regulations. The Council confirmed by formal voting procedures that "the net cost of approved educational activities should be included as an element of reimbursable cost."

There was no statutory requirement in Public Law 89-97 nor in any subsequent amendment to title XVIII of the Act specifying the types of nursing and allied health education programs for which Medicare should pay its share of the costs. However, both the House and Senate Committee reports accompanying Public Law 89-97 indicate that Congress favored including a part of educational expenses as allowable costs:

> Many hospitals engage in substantial educational activities, including the training of medical students, internship and residency programs, the training of nurses and the training of various paramedical personnel. Educational activities enhance the quality of care in an institution and it is intended, until the community undertakes to bear such education costs in some other way, that a part of the net cost of such activities (including stipends of trainees as well as compensation of teachers and other costs) should be considered as an element in the cost of patient care, to be borne to an appropriate extent by the hospital insurance program.
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> (S. Rep. No. 404, 89th Cong., 1st Sess. 36 (1965); H.R. Rep. No. 213, 89th Cong., 1st Sess. 32 (1965))

(In this document, we have substituted the term "allied health" for "paramedical," since Medicare currently allows the costs of approved training programs for medical records librarians, medical technologists, and other disciplines for which the term "allied health" is more appropriate, and this is the term most commonly used to refer to this category of health care professions.)

B. Net Cost of Approved Educational Activities

The regulation that evolved from this legislation, 20 CFR 405.421 (redesignated as 42 CFR 405.421 on September 30, 1977 and as 42 CFR 413.85 on September 30, 1986), was first published in the **Federal Register** on November 22, 1966 (31 FR 14814). In the original regulation (20 CFR 405.421(b)(2)), net cost was defined as "the cost of approved educational activities (including stipends of trainees, compensation of teachers, and other costs), less any reimbursements from grants, tuition, and specific donations." The regulations also defined approved educational activities as "formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of patient care in an institution." (20 CFR 405.421(b)(1).)

The types of costs that were allowable as costs of approved educational activities early in the Medicare program were set forth in both the applicable regulation and in Chapter 4 of the Provider Reimbursement Manual (HCFA-Pub. 15-1). The original regulation specifically excluded "orientation" and "on-the-job training" from the definition of approved educational activities (20 CFR 405.421(d)). Further, as early as 1971, Chapter 4 of the Provider Reimbursement Manual stated that "any costs of usual patient care" are also excluded from that definition (§ 404.2). The Provider Reimbursement Manual specified that the costs of usual patient care were allowable, but only as normal operating costs and not as educational costs. On the other hand, during this time, the Provider Reimbursement Manual did include within the scope of allowable educational activities, under certain conditions, such other educational expenses as costs associated with refresher and postgraduate programs, part-time education for bona fide employees of the provider, travel expenses for educational workshops, and training in the use of medical appliances for patients or their care-givers.

Both the regulation and the Provider Reimbursement Manual repeated the congressional committee report language from 1965 that Medicare would share in the costs of educational activities until communities bore them in some other way. Neither of these sources, however, included any criteria to use in determining whether responsibility for a program had been assumed by a community. Nonetheless, it was clearly stated in both the regulation and the Provider Reimbursement Manual that it was not intended that Medicare should pay for increased costs resulting from a redistribution of costs from educational institutions to providers (20 CFR 405.421(c) and § 404.2 of the Provider Reimbursement Manual).

C. The Social Security Amendments of 1972

A significant change to Medicare reasonable cost reimbursement rules occurred with the enactment of section 223 of the Social Security Amendments of 1972 (Pub. L. 92-603), which authorized the Secretary to set prospective limits on the costs reimbursed by Medicare. Under that authority, limits on hospital general inpatient routine service costs were published in the **Federal Register** on June 6, 1974 (39 FR 20164). The costs of approved educational activities were not, at this time, excluded from costs subject to the limits. Instead, the regulations allowed a provider to apply for an exception to the limits for costs attributable to the operation of an approved medical education program (20 CFR 405.460(f)(2)).

D. The November 1975 Provider Reimbursement Manual Revision

In the early 1970's, it became apparent that Medicare's liability for the costs of nursing and allied health education activities was expanding to programs that were actually college or university programs to which the providers furnished some degree of support. In November 1975, § 404.2 of the Provider Reimbursement Manual was revised to specify that an approved nursing or allied health education program had to be operated by a provider for its costs to be allowable as the costs of approved educational activities. Further, the revision attempted, for the first time, to give guidance to intermediaries in determining when the community had undertaken the financing of an educational program. The pertinent part of the revision reads as follows:

> However, it is not intended that Medicare should be responsible for expenditures by a

provider in subsidizing such programs that are operated by other organizations. Under Medicare principles of reimbursement, an approved nursing or paramedical education program must be operated by a provider (or jointly by a group of providers) for Medicare to recognize the costs of the program as allowable costs of the provider(s).

Where a provider furnishes financial or other support (e.g., donated classroom or clinical space) to an approved nursing or paramedical education program of which it is not the legal operator, expenses attributable to the provider's support of the program are considered to be a contribution to a community effort, and may not be included in the hospital's allowable costs for Medicare reimbursement purposes.

Example: A hospital furnishes support to approved RN and Licensed Practical Nursing education programs, but is not the legal operator of these programs. The RN program is operated by a local university and the LPN program is operated by the county public school system. The students in both programs are enrolled as students of these organizations rather than of the hospital. The facilities and financial support needed to operate the programs come from various sources. The hospital allows its facilities to be used for the clinical training of students in both programs and, in addition, makes an annual cash contribution to the RN program. The remaining costs of the programs are met through the use of county and State tax revenues and other funds received by the programs' operators. Therefore, operational responsibility for the RN and LPN programs is considered to be borne by the community, and the hospital's financial support of the programs, including both its cash contribution and costs attributable to the donated clinical facilities and supplies, is considered to be a contribution to a community effort which may not be included in the hospital's allowable costs for Medicare reimbursement purposes.

Since the students in the nursing education programs receive their clinical training on location at the hospital, however, costs the hospital incurs for patient care services furnished by the students during this part of their training are includable in the hospital's allowable costs.

Over the next several years, attempts by intermediaries to apply this policy were consistently overruled by the Provider Reimbursement Review Board (PRRB). These PRRB decisions were consistently reversed by the Administrator of HCFA. Several of these cases were then litigated in the Federal courts, and in each case that went to a decision on the merits, the courts upheld the PRRB.

E. The St. John's Hickey Memorial Hospital Decision

The most significant of these decisions is generally considered to have been *St. John's Hickey Memorial Hospital, Inc.* v. *Califano*, 559 F.2d 803 (7th Cir. 1979). In that case, the U.S. Court of Appeals for the Seventh Circuit sustained the decision of the PRRB that § 405.421(c) (now § 413.85(c)) does not require the provider to be the operator of the associate degree nursing program, but only requires the provider to engage in such activity. The court gave little deference to the policy issuance set forth in the Provider Reimbursement Manual, considering it a policy guide that was neither published in the **Federal Register** nor part of the regulations.

HCFA policy was amended to correspond with the ruling of the court on October 1, 1979, in the HCFA Administrator's decision on PRRB Decision No. 79–D50. In that Administrator's decision, the Deputy Administrator stated that he "* * * believes in the continued validity of Medicare reimbursement policy on nursing education costs. However, in light of the Hickey decision the Board's decision is affirmed." The Provider Reimbursement Manual was subsequently revised to reflect the new policy (see section I.H. of this preamble, below).

F. The Exclusion of Costs of Approved Educational Activities From the Cost Limits

In 1979, a significant change in routine cost limits policy was made that affected the costs of approved educational activities. In the final notice establishing the schedule of limits on hospital inpatient general routine operating costs, effective for cost reporting periods beginning on or after July 1, 1979, which was published in the **Federal Register** on June 1, 1979 (44 FR 31806), the costs of "approved medical education programs" were excluded from the costs subject to the limits. Thus, for cost reporting periods subject to these limits, it was to the advantage of providers to properly classify educational costs to avoid the effects of the limits.

G. The Tax Equity and Fiscal Responsibility Act of 1982 Limits

Section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) replaced the existing cost limits with an expanded overall limit on hospital inpatient operating costs and a limit on the rate of increase of these costs for cost reporting periods beginning on or after October 1, 1982. Section 101 of Public Law 97–248 added section 1886(a)(2)(A) of the Act, which requires the Secretary to provide for such exemptions from, and exceptions and adjustments to, the hospital cost limits as he deems appropriate to take into account "medical and paramedical education costs" in implementing these limits. This expression of Congressional intent was reflected in the interim final notice with comment period, published in the **Federal Register** on September 30, 1982 (47 FR 43296), which implemented section 101 of Public Law 97–248. In that document, the "costs a hospital allocates to the interns and residents (in approved programs) or nursing school cost centers on its Medicare cost report" were excluded from the hospital cost limits (47 FR 43298). Correspondingly, the interim final rule with comment period implementing the rate of increase ceiling in the same **Federal Register** issue excluded these costs from the costs subject to the ceiling (47 FR 43292).

H. The January 1983 Provider Reimbursement Manual Revision

The portions of Chapter 4 of the Provider Reimbursement Manual that deal with the costs of approved nursing and allied health education programs were extensively revised in January 1983. The revisions followed several Federal court decisions (see sections I.D. and I.E. of this preamble, above) on the allowability of costs of nursing and allied health education programs operated by entities other than Medicare providers (usually colleges and universities) that received support for the program from the provider. (See section I.E. of this preamble, above.) The revisions were issued to distinguish between those costs that would and would not be allowed as costs of approved educational activities and served to clarify the change in policy that was effective with the HCFA Administrator's decision of October 1, 1979.

Section 404.2 of the Provider Reimbursement Manual, as revised in January 1983, specified that provider costs incurred for clinical training associated with an approved program operated by an entity other than a provider could be allowable. Further, it specified that costs incurred by a provider that were associated with the classroom portion of the program could be allowable if the following three criteria were met:

- The provider's support does not constitute a redistribution of nonprovider costs to the provider. The support must be in addition to the costs already being incurred by the nonprovider-operated program. If the nonprovider entity reduced its costs due to receiving provider support, this reduction constitutes a redistribution of costs from an educational institution to a patient care institution and is a nonallowable provider cost.
- The provider receives a benefit for the support it furnishes.

• The cost of the provider's support is less than the cost the provider would incur were it to operate the program.

These criteria adopted in January 1983 addressed the allowability of costs incurred by a provider in support of a nonprovider-operated educational program. Since the revision to Chapter 4 of the Provider Reimbursement Manual predated the Medicare prospective payment system for inpatient hospital services, it did not address the issue of whether such costs were to be considered part of normal operating costs or treated as a "pass-through cost."

I. The September 1, 1983 Interim Final Rule

The Social Security Amendments of 1983 (Pub. L. 98–21), enacted on April 20, 1983, added section 1886(d) of the Act to provide for Medicare payment for the operating costs of hospital inpatient services under a prospective payment system rather than on a reasonable cost basis. Generally, under that system, payment is made for each hospital discharge at a predetermined, specific rate.

Section 601(a)(2) of Public Law 98–21 amended section 1886(a)(4) of the Act to specify that the costs of approved educational activities were excluded from the definition of inpatient hospital operating costs that applies under the prospective payment system. Therefore, these costs were not included in the calculation of the prospective payment rates or in the calculation of the target amount for hospitals not subject to the prospective payment system. Instead, these costs were to be separately identified and "passed-through", that is, paid on the basis of reasonable cost. This approach was similar to the treatment that these costs had received since July 1, 1979 for purposes of the cost limits, although the term "direct medical education pass-through" was used to describe the method of payment under the prospective payment system.

However, the interim final rule (48 FR 39752, September 1, 1983) that implemented the prospective payment system amended § 405.421(d) (now § 413.85(d)) to provide that costs relating to six types of educational activities were outside the scope of the pass-through provisions. Included among these costs were those related to "other activities which do not involve the actual operation or support (except through tuition or similar payments) of an approved education program." Hence, effective October 1, 1983, only the costs of programs operated directly by a hospital were excluded from the prospective payment system and paid on the basis of reasonable cost.

J. The January 3, 1984 Final Rule

In responding to comments on the September 1, 1983 interim final rule, the final rule (49 FR 234, January 3, 1984) further clarified the circumstances under which the costs of approved educational activities would be eligible for pass-through and payment on a reasonable cost basis. In response to questions concerning whether a hospital had to actually operate an approved training program for the program's costs to qualify for pass-through, we stated:

> We believe that only the costs of those approved medical education programs operated directly by a hospital [should] be excluded from the prospective payment system. If a program is operated by another institution, such as a nearby college or university, if [it] must be noted that by far the majority of the costs of that program are borne by that other institution, and not by the hospital. While it is true that the hospital may incur some costs associated with its provision of clinical training to students enrolled in a nearby institution, the hospital also gains in return. For example, it obtains the services of the trainee (often at no direct cost to itself). We do not believe that this type of relationship was what Congress intended when it provided for a pass-through of the costs of approved medical education programs. Rather, we believe that Congress was concerned with those programs that a hospital operates itself, and for which it incurs substantial direct costs.
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> We are revising § 405.421(d)(6) to clarify that the costs of clinical training for students enrolled in programs, other than at the hospital, are normal operating costs. (49 FR 267)

An issue that has arisen with regard to this classification concerns the assumption that a hospital either operates the program, incurring substantial costs, or does not operate the program, incurring minimal costs. There are many instances in which the hospital functions only as a site for students to gain clinical experience and, in fact, incurs minimal expenses. However, there are hospitals, particularly those that have moved from diploma programs to associate and baccalaureate nursing programs, that have become, under agreement with a college or university, a partner in a dual or sequential operation of an approved program.

K. The Omnibus Budget Reconciliation Act of 1989

Section 6205 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on December 19, 1989, contained three provisions on nursing and allied health education. Section 6205(a) created a temporary category of "hospital-based nursing schools." Costs incurred by hospitals for training nursing students in these schools are to be paid on the basis of reasonable cost as though the hospital met the criteria at § 413.85. This provision is effective only for cost reporting periods beginning on or after December 19, 1989 and before the issuance of the final regulations required by section 6205(b)(2) of Public Law 101–239 (discussed in detail below). We implemented this provision in a final rule with comment period published in the **Federal Register** on April 20, 1990 (55 FR 15159) and made further revisions in the final rule that implemented changes to the inpatient hospital prospective payment system for FY 1991, which was published on September 4, 1990 (55 FR 35998). In summary, under this provision, a hospital may claim the costs incurred in training students from a nursing school as pass-through costs if all of the following criteria are met:

• The hospital incurs at least 50 percent of the net costs, that is, the costs after deduction of tuition revenues incurred for classroom and clinical training provided to students enrolled in an approved nursing education program at the hospital-based nursing school.

• At least 50 percent of the board of directors with the fewer members (either the hospital or the nursing school) or 4 members, whichever results in a smaller number, are also members of the board of the other entity

• All instruction is provided at, or on the immediate grounds of, the hospital.

• The preceding three criteria were met on June 15, 1989, and have been met continuously since that date.

Section 6205(b)(1) of Public Law 101–239 imposed a moratorium for the period on or after December 19, 1989 and before October 1, 1990 on the recoupment of overpayments attributable to a determination by a provider's intermediary that costs claimed by a provider for the operation of a school of nursing or allied health are not eligible for payment on a reasonable cost basis. The basis for such a determination is generally that a neighboring or related college or university, not the hospital, is the operator of the program. We announced the provisions of the moratorium in a program memorandum issued to our fiscal intermediaries (Transmittal No. A–90–9; June 1990).

Section 6205(b)(2) of Public Law 101–239 directs the Secretary to publish proposed regulations clarifying the rules governing which costs of approved educational activities are allowable and when those costs are eligible for pass-through under the prospective payment system. More specifically, the statute requires the regulations to specify—

- The relationship required between an approved nursing or allied health education program and a hospital for the program's costs to be attributed to the hospital;
- The types of costs related to nursing or allied health education programs that are allowable by Medicare;
- The distinction between costs of approved educational activities as recognized under section 1886(a)(4) of the Act and educational costs treated as operating costs of inpatient hospital services; and
- The treatment of other funding sources for the program.

L. The Omnibus Budget Reconciliation Act of 1990

On November 5, 1990, prior to issuance of the proposed regulations required by section 6205(b)(2) of Pub. L. 101–239, Congress enacted the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). Section 4004(b) of Public Law 101–508 contains several provisions affecting Medicare policy for payment of a reasonable cost basis under Medicare Part A for nursing and allied health education costs. Section 4159(b) of Public Law 101–508 sets forth a parallel provision concerning payment on a reasonable cost basis under Medicare Part B for these costs. The language in section 4159(b) is identical to the language in section 4004, except that section 4004(b) applies to Part A and section 4159(b) applies to Part B. For ease of reference in this document, we refer only to the provisions of section 4004(b); however, each of these references is deemed to be a reference to the corresponding provision of section 4159.

Section 4004(b)(1) provides that, effective with cost reporting periods beginning on or after October 1, 1990, if certain conditions are met, the costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) for clinical training (as defined by the Secretary) conducted on the premises of the hospital under an approved nursing or allied health education program that is not operated by the hospital are treated as pass-through costs and paid on the basis of reasonable cost. Section 4004(b)(2) of Public Law 101–508 sets forth the following conditions that a hospital must meet to receive payment on a reasonable cost basis:

- The hospital must have claimed and have been paid for clinical training costs as described in section 4004(b)(1) during its latest cost reporting period that ended on or before October 1, 1989.
- The proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program and allowable under section 4004(b)(1) during a cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the hospital's latest cost reporting period that ended on or before October 1, 1989.
- The hospital receives a benefit for the support it furnishes to the education program through the provision of clinical services by nursing and allied health students participating in the program.
- The costs incurred by the hospital for the program do not exceed the costs that would have been incurred by the hospital if it had operated the program.

This proposed rule includes provisions to implement the payment provision of section 6205(b)(2) of Public Law 101–239, as well as the changes mandated by sections 4004(b) (1) and (2) of Public Law 101–508.

In addition to the new payment provision under sections 4004(b) (1) and (2) of Public Law 101–508, section 4004(b)(3) indefinitely prohibits the recoupment of Medicare overpayments made to hospitals for pass-through costs related to approved nursing and allied health education programs for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1990. This section also requires us to refund previously recouped overpayments for these costs. We have issued two program memoranda (Transmittal No. A–91–3, May 1991 and No. A–92–____, _____ 1992) to our fiscal intermediaries providing instructions on implementing the provisions of section 4004(b)(3) of Public Law 101–508. These program memoranda also explained specifically how we understand section 4004(b)(3) to apply, as discussed below.

Section 4004(b)(3) of Public Law 101–508 does not provide for recognition of costs for nursing and allied health education programs unless those costs would be allowable under the principles of reasonable cost reimbursement if the provider had been the operator of the program and had incurred the cost. That is, to be payable under section 4004(b)(3) of Public Law 101–508, the costs must have been directly incurred by the hospital (or a related organization) for a nonhospital-operated approved program and must be costs that would have been allowable if directly incurred by a hospital in connection with a hospital-operated program. In addition, revised cost reports submitted after the date of enactment of Public Law 101–508 (November 5, 1990) containing costs for nursing and allied health education that were not included in the originally submitted cost report for that fiscal year are not to be accepted for purposes of this provision.

We relied on the statute and the accompanying conference report (H.R. Rep. No. 964, 101st Cong., 2d Sess. (1990)) to determine the circumstances under which refunds are to be made of amounts recouped because of overpayments for nursing and allied health education costs under section 4004(b)(3). Section 4004(b)(3(B) requires refunding of payment amounts that were previously recouped from hospitals because of overpayments described in section 4004(b)(3)(A). Section 4004(b)(3)(A) provides that the Secretary "may not recoup from (or otherwise reduce or adjust payments * * * to) a hospital because of alleged overpayments to such hospital" that relate to a determination that costs of approved nursing and allied health education programs are not payable on a reasonable cost basis as pass-through costs. We note that the conference report (p. 719) states that section 4004 is a further modification of section 6205 of Public Law 101–239. We considered that closely related legislation in construing section 4004(b)(3).

As we stated in the program memoranda, we have concluded that the overpayments referred to in the statute relate to those instances in which a hospital has received interim payments throughout its cost reporting period for nursing and allied health education costs that subsequently were determined during the cost report settlement process (or on reopening) to be unallowable as pass-through costs because the hospital was not the operator of the program. In these cases, the hospital actually received the interim payment for the costs throughout its fiscal year and had reason to expect that the costs were allowable and the monies were due the hospital. In addition, most of these hospitals generally received reimbursement for these costs for several years prior to the year in which the costs were determined to be unallowable. Therefore, disallowance of these costs results in the hospital being burdened with an unanticipated overpayment.

We believe that it was Congressional intent that these hospitals be protected from paying back amounts they actually received for nursing and allied health education costs. The use of the terms "recoup" and "refund" in the statutory language supports this interpretation. On the other hand, nursing and allied health education costs that were not included in interim payments during the year and that were disallowed when included on the hospital's cost report are not representative of payment amounts that would be considered overpayments under section 4004(b)(3). These claimed but disallowed amounts are not

overpayments in the commonly understood meaning of the term because the hospital never actually received payments for these costs during the cost reporting period. For payment oversight purposes, we sometimes loosely refer to costs that were claimed on the cost report but disallowed as "overpayments" because they are considered to represent program savings by fiscal intermediaries. The disallowed amounts are amounts that would have been paid out but for the adjustments made by the intermediaries. However, although these amounts may be termed overpayments for this limited program purpose, they do not come within the common definition of overpayment. We do not believe that the language of the statute supports the inclusion of these disallowances in the amounts to be refunded to hospitals.

Similarly, a hospital will not be considered to have incurred an overpayment for purposes of the refund provision merely because it received excess interim payments during a cost reporting period. The controlling consideration is whether those interim payments included an amount for nursing and allied health education costs.

Therefore, a hospital will be considered to have incurred an overpayment for purposes of the refund provision only if the hospital received interim payments throughout the cost reporting period that included an amount for nursing and allied health education costs and the costs were subsequently disallowed. If a hospital received no amount for these costs in any of its interim payments for the cost reporting period, the hospital is not due any refund on amounts that were included on the cost report and disallowed in the final notice of program reimbursement (NPR), regardless of costs included in any tentative settlements prior to issuance of the NPR.

In some situations, a hospital may have received interim payments that included an amount for nursing and allied health education costs only for a portion of its cost reporting period. In determining the amount of the refund, it will be assumed that the costs claimed on the cost report were incurred uniformly throughout the period. Thus, in making any refund, the intermediary was instructed to prorate the amount based on the period of time before the interim payments were reduced because the costs were not allowable. That is, if the hospital received 10 of the 26 interim payments, then only 10/26 of the costs claimed in the cost report that would be payable under this provision are to be refunded (if already recouped) or to be forgiven (if not recouped). The remaining 16/26 of these costs represent an amount that was not payable to the provider and therefore did not give rise to an overpayment that could be recouped. If a hospital can provide documentation to its intermediary that costs were not incurred on a uniform basis, then the intermediary is to refund (or not recoup) the amounts actually incurred during the period of time the interim payments for nursing and allied health education costs were received.

In order to implement the provisions of section 4004(b)(3)(B) of Public Law 101–508, intermediaries were instructed to notify all hospitals they service of the provisions of section 4004(B)(3) of Public Law 101–508. Hospitals were to be advised that, if they believe that they qualify for a refund for the costs of nursing and allied health education for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1990, each hospital must notify its intermediary of the fiscal year or years affected and the costs for which additional payment is requested. This was necessary to assist intermediaries in identifying amounts to be refunded under this provision. Upon receipt of hospitals' requests, intermediaries were instructed to reopen cost reports as necessary and issue revised NPRs.

II. Proposed Revisions

A. Initial Consideration

In response to the mandate of section 6205(b)(2) of Public Law 101–239 and in light of the enactment of Public Law 101–508, we reviewed our current policy on payment for the costs of approved nursing and allied health education programs. We considered allowing as a pass-through the costs incurred by all providers for the clinical training of students in an approved program whether or not the program is operated by the provider. As noted above, prior to the enactments of Public Law 101–239 and Public Law 101–508, we considered clinical training costs associated with nonprovider-operated programs, to the extent allowable, to be part of normal operating costs. As such, they are covered by the usual per discharge payment under the prospective payment system. However, this means that all hospitals realize some benefit for the costs incurred by only a portion of these hospitals.

The recent legislation provides for recognition of clinical training costs for certain classes of nonprovider-operated programs. First, hospitals that meet the requirements for reasonable cost payment under the "hospital-based nursing school" provision set forth in section 6205(b) of Public Law 101–239 are to be paid for the costs incurred in training nursing students, including the clinical training costs, until the issuance of the final regulations required by section 6205(b)(2) of Public Law 101–239. Second, effective with cost reporting periods beginning on or after October 1, 1990, sections 4004(b) (1) and (2) of Public Law 101–508 mandate payment on a reasonable cost basis for clinical training costs of nonprovider-operated programs for providers that meet certain criteria.

Payment on a reasonable cost basis for the clinical training costs of all nonprovider-operated programs would have two advantages. First, it would allow us to target the payments to those hospitals that actually incur costs for nonprovider-operated programs. Secondly, it would establish a uniform payment policy for the allowable clinical training costs of all nonprovider-operated programs. However, if we were to pay for the clinical training costs of nonprovider-operated programs on a reasonable cost basis, we would need to reduce the standardized amounts in order to avoid paying twice for the same costs. Since hospitals that do not incur clinical training costs for nonprovider-operated programs would be disadvantaged by the reduction in the standardized amounts, we believe it would be inappropriate to implement such a substantial policy change by regulation. Therefore, except with respect to the clinical training costs of programs that meet the requirements of section 4004(b)(2) of Public Law 101–508, we are proposing to continue our current policies with respect to payment for clinical training costs.

Since some "hospital-based nursing school" programs may not meet the criteria set forth in section 4004(b)(2) of Public Law 101–508, we considered continuing reasonable cost reimbursement for the clinical training costs of hospital-based programs that meet the criteria for payment on a pass-through basis set forth in section 6205(a) of Public Law 101–239. (That section's requirement that payment for these costs be made on the same basis as provider-operated programs expires with cost reporting periods beginning on or after the date the final rule setting forth our payment policies for nursing and allied health education is published.) However, we rejected this approach because we believe that, except when the statute expressly provides otherwise, our payment policy should be consistent for all nonprovider-operated programs. Moreover, in the

absence of a reduction in the standardized amounts, we would be continuing to pay twice for the costs of the hospital-based programs.

We also considered discontinuing payment on a pass-through basis for classroom costs for providers that operate their own programs. We would favor such a policy for two reasons. First, we believe that these are costs that are not directly related to patient care and should be borne by the community. Nursing and allied health education programs are the only undergraduate programs subsidized from the Medicare trust fund. Diploma programs now produce only about 15 percent of all nursing graduates. Nursing education takes place increasingly in university or college degree programs, which do not receive Medicare subsidies. Furthermore, the major nursing interest groups endorse this trend away from diploma programs. Secondly, as a general principle, we believe it would be appropriate to have a consistent payment policy for provider-operated and nonprovider-operated programs. However, discontinuing payment for classroom costs would be a fundamental change to our current policy and would result in a large reduction in revenues for providers that currently operate their own approved education programs. We concluded that it would be inappropriate to implement this change through regulation. Therefore, at this time, we are proposing to continue our current policy of paying on a reasonable cost basis for classroom costs incurred for provider-operated programs.

In summary, we believe that the best course would be to pay for clinical training costs of all nonprovider-operated programs on a reasonable cost basis, with an appropriate reduction in the standardized amounts, and to discontinue payment for classroom costs of provider-operated programs. Taken together, these changes would establish consistent payment policies for provider and nonprovider-operated programs. However, since our payment policies must conform to the current statute, we propose to continue our current policies with respect to payment for nursing and allied health education, except for certain costs that meet the requirements of section 4004(b) of Public Law 101–508. That section requires changes with respect to the clinical training costs of certain nonprovider-operated programs, and we would revise our payment rules accordingly. With respect to payment for other nursing and allied health education costs, we propose to codify in the regulations the policy interpretations that we have previously set forth in the Provider Reimbursement Manual and other documents.

B. General Payment Policy

We are proposing to revise § 413.85 to set forth our policies on paying providers for the costs they incur for education activities. In addition, we are proposing to make several other changes to § 413.85.

The current § 413.85 states that, except for payment for graduate medical education costs, a provider's allowable cost may include its net cost of approved educational activities and that the net cost is subject to apportionment based on Medicare utilization as described in § 413.50. Net cost is determined by deducting from a provider's total costs of these activities the revenues it receives for tuition. Total costs include trainee stipends, compensation of teachers, and other direct and indirect costs. We are proposing to set forth in a new § 413.85(a) the general rule that payment for a provider's net cost of approved educational activities is made on a reasonable cost basis.

We would set forth the exceptions to the general rule in § 413.85(b). We would retain the current exception which states that, for cost reporting periods beginning on or after July 1, 1985, payment to hospitals for approved residency programs in medicine, osteopathy, dentistry, and podiatry is determined as provided in § 413.86. In addition, we would add two other exceptions:

- We would codify our current policy for nonprovider-operated programs. Section 413.85(b)(2) would state that, effective for cost reporting periods beginning on or after October 1, 1983, any costs incurred by a provider associated with the clinical training of students in an approved program not operated by that provider are allowable as normal operating costs rather than as costs of approved educational activities, unless the provider meets the conditions for payment on a reasonable cost basis for clinical training costs as set forth in sections 4004(b) (1) and (2) of Public Law 101–508. (This policy also applies to clinical training or clerkships of undergraduate medical school students that take place in providers.) In addition, any costs claimed by a provider for the classroom portion of a nonprovider-operated program that meet the criteria currently set forth in § 404.2 of the Provider Reimbursement Manual also would be allowable as normal operating costs.
- In § 413.85(b)(3), we would include an exception for certified registered nurse anesthetist programs. On January 26, 1989, HCFA published a proposed rule (54 FR 3803) to implement section 9320 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). That rule proposed to change the classification of patient care services of certified registered nurse anesthetists (CRNAs) to permit payment on a Part B reasonable charge basis for such services furnished on or after January 1, 1989. This change has implications for Medicare payment for the costs of approved CRNA educational activities similar to those that have existed over the years with respect to payment for the services of provider-compensated teaching physicians. Specifically, there would be difficulties involved in distinguishing between the training and patient care activities of teaching CRNAs. As such, the potential exists for duplicate payments with respect to activities that could be classified as both patient care activities payable on a reasonable charge basis and teaching activities payable as provider services. For example, a CRNA may be paid a salary by a provider for all of his or her activities in connection with an approved CRNA training program. The Part A intermediary would pay the provider for its share of those costs. The CRNA may also bill the Part B carrier for patient care services furnished during the clinical training of students conducted during surgical procedures. The carrier would have no way of knowing that the services of the CRNA were also subject to payment by the intermediary on a cost-basis as costs of approved educational activities.

To minimize the possibility of duplicate payments, we are proposing to modify § 413.85(a) to recognize the special circumstances that exist with regard to the costs of approved CRNA training programs. While, for the most part, the costs of these programs would continue to be paid under the generally applicable rules at § 413.85, we are proposing to exclude from allowable costs the costs providers incur in connection with compensating teaching CRNAs for the time spent with student anesthetists in clinical training during surgical procedures. These activities involve the provision of patient care services that are payable on a Part B reasonable charge basis.

In order to implement this proposal, we considered a requirement that all teaching CRNAs complete allocation agreements, similar to those completed for provider compensated physicians, detailing the way the CRNAs spend their time at the provider. In the interest of administrative simplicity and reducing provider recordkeeping burden, we are proposing that it is sufficient that providers present audible documentation to intermediaries justifying CRNA faculty compensation costs related to hours spent in classroom instruction or in administrative activities related to the approved program. No other compensation costs for CRNA faculty members would be allowable. Compensation costs for faculty members who are not CRNAs

would continue to be allowable since the duplicate payment potential would not exist for these personnel. We are specifically seeking comments on whether this proposal is an equitable way to deal with the problems arising from the change in the payment method for the services of CRNAs.

The exception relating to CRNAs would state that the net costs of approved CRNA programs are allowable except that allowable compensation costs for faculty members who are CRNAs are limited to the compensation costs directly related to hours spent in classroom instruction or administrative activities related to the educational programs. No compensation costs are allowable for the time CRNAs spend in the clinical training of student anesthetists in operating rooms. Payment for the activities of CRNAs in connection with the clinical training of student anesthetists during surgical procedures in approved training programs is determined as provided in § 405.553 ("Reasonable charges for anesthesiology services").

C. Proposed Provisions Resulting from Public Law 101–508

In implementing the provisions of sections 4004(b) (1) and (2) of Public Law 101–508, we would provide that the net costs incurred by a provider, or by an educational institution that is related to the provider by common ownership or control (that is, a related organization as defined in § 413.17(b)), for the clinical training of students enrolled in an approved nursing or allied health program that is not operated by the provider are paid on a reasonable cost basis if certain conditions are met. The proposed regulations state that, in order for these costs to be paid as a pass-through, the following conditions would have to be met:

- The clinical training must occur on the premises of the provider.
- The provider must have claimed and been paid for clinical training costs on a reasonable cost basis during its most recent cost reporting period that ended on or before October 1, 1989. As described in § 413.64 of the regulations, under reasonable cost reimbursement, actual costs reimbursable to a provider cannot be determined until the cost reports are filed and the costs are verified by the intermediary. Providers receive interim payments approximating as closely as possible the actual costs of the provider throughout the cost reporting period. A retroactive adjustment based on actual allowable cost is made at the end of the cost reporting period. To properly pay the provider as quickly as possible, the intermediary makes an initial retroactive adjustment, or tentative settlement, when the cost report is initially filed to bring the interim payments made to the provider during the cost reporting period into agreement with the final reimbursable amount payable to the provider for the services furnished to Medicare beneficiaries during that period. For this purpose, the intermediary accepts the costs as reported, unless there are obvious errors or inconsistencies, subject to further review and audit. When the final determination of the amount of Medicare reimbursement for the cost reporting period is made, the intermediary makes a final retroactive adjustment and issues an NPR.

In establishing criteria for determining if the provider was "paid" for the clinical training costs, we considered the three junctures in determining provider payments. It is clear that if the provider has been issued an NPR for its most recent cost reporting period ending on or before October 1, 1989 that includes the clinical training costs as an allowable cost payable on a pass-through basis under section 1861(v)(1)(A) of the Act, the provider has been "paid" for the clinical training costs. In other situations, it is more arguable whether the provider was or was not paid for the clinical training costs. For example, the intermediary may have included the clinical training costs in the interim payments and on the tentative settlement, but determined that the costs were not allowable when the NPR was issued, or an initial NPR that allowed the clinical training costs may have been subsequently revised to exclude the costs from pass-through costs payable on a reasonable cost basis.

We believe that if an NPR had been issued by November 5, 1990 for the most recent cost reporting period ending on or before October 1, 1989, and the intermediary included the clinical training costs as pass-through costs, then we would consider the provider to have been paid for those costs. In this case, it is clear that, as of the date of enactment of Public Law 101–508, the provider had been paid for the costs.

In determining an appropriate policy for all other providers, that is, those who did not receive an NPR by November 5, 1990 for their most recent cost reporting period ending on or before October 1, 1989, or those that received an NPR but the clinical training costs were not allowed in the pass-through costs, we are relying on the language of the conference committee report that accompanied Public Law 101–508. That report stated that payment to a provider for the clinical training of students enrolled in an approved nursing or allied health education program that is not operated by the provider is "limited to those programs for which a hospital claimed costs and was paid, *at least on an interim basis,* * * * on its most recent cost reporting period ending on or before October 1, 1989," [Emphasis added.] (H.R. Rep. No. 964, 101st Cong., 2d Sess. 719 (1990).)

Thus, we are proposing that we would consider a provider to be "paid" for clinical training costs if, for its most recent cost reporting period ending on or before October 1, 1989, the provider's intermediary included the clinical training costs in the allowable costs used to determine the interim payment rate for that cost reporting period and the provider subsequently claimed the clinical training costs as a pass-through cost on its submitted cost report for that period. We note that this policy is consistent with the policy set forth in our instructions implementing the prohibition on recoupment of overpayments from providers for nursing and allied health costs under section 4004(c) of Public Law 101–508. (See the detailed discussion of those instructions above in section I.L. of this preamble.)

- In any cost reporting period, the percentage of total allowable provider cost attributable to allowable clinical training cost cannot exceed the percentage of total allowable cost attributable to clinical training in the provider's most recent cost reporting period ending on or before October 1, 1989.
- The students in the educational program must provide a benefit to the provider through the provision of clinical services to patients of the provider.
- The clinical training costs must be incurred by the provider or by an educational institution related to the provider by common control on ownership as defined in paragraph (b) of § 413.17 ("Cost to related organizations"). Costs incurred by a third party, regardless of its relationship to either the provider or the educational institution, would not be allowed.
- The costs incurred by a provider do not exceed the costs the provider would incur if it operated the program itself.

Section 4004(b)(1) of Public Law 101–508 also requires that we define the clinical training costs that would be allowable. We are proposing to define these costs as incremental costs that, in the absence of the students, would not be incurred by the provider. These incremental costs would include the costs of clinical instructors and administrative and clerical support staff whose function is to coordinate rotations with a nursing school and to schedule clinical rotation for each student nurse. They would not, however, include the costs of a charge or floor supervisor nurse who may spend a portion of his or her time supervising student nurses but who, in the absence of the students, would still have to be employed by the provider. In general, these costs are payroll and related

salary costs. Although some provider-incurred overhead costs directly related to the cost of the students would be allowable, overhead costs incurred by the related organization generally would not be considered allowable. We also are proposing separate specific definitions of clinical training and classroom instruction to allow providers and intermediaries to differentiate between the two. These definitions are as follows:

- Clinical training. Clinical training involves the acquisition and use of the skills of a nursing or allied health profession or trade in the actual environment in which these skills will be used by the student upon graduation. While it may involve occasional or periodic meetings to discuss or analyze cases, critique performance, or discuss specific skills or techniques, it involves no classroom (didactic) instruction.

Classroom costs. Classroom costs are those costs associated with formal, didactic instruction on a specific topic or subject in a class that meets at regular, scheduled intervals over a specific time period (for example, semester or quarter), and for which a student receives a grade.

We note that costs incurred by providers for classroom instruction are not paid on a reasonable cost basis unless the provider is the operator of the program. That is, those providers being paid on a reasonable cost basis for clinical training services under the provisions of section 4004(b) (1) and (2) of Public Law 101–508 are not paid on that basis for classroom costs.

If, after implementation of the provisions of sections 4004(b) (1) and (2) of Public Law 101–508, we find that there is a wide variation in the clinical cost per student among different hospitals' nursing and allied health programs, we will consider methods to narrow that variation under the definition of reasonable cost as set forth in section 1861(v)(1) of the Act. In anticipation of this action, we are interested in receiving public comment on how we could best evaluate the reasonable cost of these programs.

D. Definition of Net Costs

We are proposing to revise the current definition of net costs. The definition currently states "net costs of approved educational activities are determined by deducting, from a provider's total costs of these activities, revenues it receives from tuition."

When the regulations were revised, it was assumed that the tuition paid by students enrolled in approved educational programs was intended to cover all facilities and services for which a provider would incur costs. It was not our intention to imply that costs for which a provider charges a separate fee, in addition to tuition, were not to be considered as part of the cost of the approved educational activity. Two examples of such costs are the purchase of textbooks for resale to students and the provision of housing or room and board in exchange for an additional fee. We are proposing to clarify in the regulations that the term "tuition" was intended to include these additional charges and fees.

We also are clarifying the definition of net costs in the proposed regulations to indicate that "total costs" was intended to include only direct and indirect costs incurred by a provider that are directly attributable to the operation of an approved educational activity. Such costs do not include usual patient care costs that would be incurred in the absence of the educational activity, such as the salary costs for nursing supervisors who oversee the floor nurses and student nurses. Moreover, we believe that such costs do not include costs incurred by a related organization. The current regulation concerning related organizations at § 413.17 was established to avoid program recognition of artificially inflated costs that might be generated from less than arm's length bargaining. This policy was not intended to expand the range of items and services for which a provider could claim payment. With respect to educational costs (with the limited exception for certain graduate medical education costs incurred by a related medical school as provided in Intermediary Letter 78–7), our policy has been that the provider, rather than the related organization, must directly incur the costs on its books and records before the costs will be recognized for Medicare payment purposes. Otherwise, the principle that Medicare payment for medical education costs should not result in a redistribution of costs from the educational institution to the provider would be violated.

We note that, in the case of those providers that are receiving reasonable cost payment under the provision of section 4004(b) of Public Law 101–508 for clinical training of students in an approved education program that is not operated by the provider, the law specifically provides that total costs include costs of the educational institution related to the provider. We realize that this results in inequitable treatment of these costs; however, we believe that the language included in the committee report that accompanied Public Law 101–508 supports such a policy. In that report, the conferees noted that—

in the case of hospital-operated nursing and allied health education programs, the Secretary does not recognize costs incurred by a related educational organization as allowable educational costs since such costs are a redistribution of costs from the educational institution to the hospital. Although [section 4004 of Public Law 101–508] provides for recognition of the costs incurred by a related educational organization for clinical training on the hospital's premises in the case of a hospital-supported program, the conferees intend that nothing in [section 4004 of Public Law 101–508] should be construed as requiring the Secretary to modify his current policy in regard to the determination of reasonable costs for a hospital-operated program. (H.R. Rep. No. 964, 101st Cong., 2nd Sess. 719 (1990)]

We believe that this clear statement of congressional intent allows us to continue our policy of not recognizing the costs of related organizations in determining a provider's total costs of approved educational programs.

In the final rule of January 3, 1984 (49 FR 234), the definition of net costs in paragraph (g) of § 405.421 (now § 413.85(g)) was revised by eliminating grants and donations from revenues that were to be offset against the cost of approved educational activities. This revision was made in response to a public comment to ensure that the policy on net cost of educational activity would be consistent with the policy that deals with the treatment of grants, gifts, and income from endowments under reasonable cost payment under § 413.5(c)(3). However, we are reconsidering our position on this issue. As a result, we are requesting public comment on whether the net costs of approved educational activities should be defined as the costs determined by deducting the revenues that a provider receives from tuition, student fees, and the allocable amounts from any donations, grants, and non-Medicare public funding from the provider's total allowable costs that are directly related to approved educational activities.

E. Proposed Revisions to the List of Approved Programs

As part of this document, we are proposing to revise the list of approved educational programs. We would expand the current list of approved programs to include approved perfusionist training programs. We would recognize the Committee on Allied Health, Education, and Accreditation in collaboration with the American Board of Cardiovascular Perfusion as the national approving body for perfusionist programs.

In addition, although not currently included on the list of approved

programs, we have approved pastoral care education programs on a case-by-case basis over the years. We are proposing to formally include these programs in the regulations. The Association for Clinical Pastoral Education would be recognized as the national approving organization. We would, however, be interested in receiving public comment on the advisability of paying for the education costs of these types of programs.

We considered including Emergency Medical Technician-Paramedics (EMT-P) programs on the list of approved programs. Our decision not to include these programs on the list was based primarily on our policy that the program must enhance the quality of care in an institution. More specifically, we approve programs for inclusion on the list only if the services that will eventually be provided by the individual being trained are services that are recognized under Medicare policy as related to patient care in the institution. We find that there is, at the very best, a tenuous relationship between the services of EMT-Ps and the quality of patient care in a hospital because, in general, the services provided by EMT-Ps are furnished outside the hospital setting before the patient is admitted. However, we are particularly interested in receiving comments on this issue.

We are also proposing that only those nursing and allied health education programs listed in the regulations may be paid as approved educational activities. We are proposing to add a new provision to the regulations that would state that national approving bodies or State licensing authorities for other types of programs may apply to HCFA for inclusion on our list of approved programs. Such requests must contain a justification for the recognition of the educational activity. In line with this change, we are proposing to revise the list of approved programs to include the specific title or titles used by the appropriate accrediting organization. The Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association cooperates with 19 committees and collaborates with 52 academies, associations, boards, and societies in its accreditation process. In the interest of brevity, and for the convenience of those entities seeking approval for those programs accredited by CAHEA in collaboration with other organizations, we have listed only CAHEA. Although we are proposing to retain the list of accrediting organizations in the regulations, we would be interested in receiving comments from the public on the usefulness of this practice.

Since the provisions of section 4004(b) of Public Law 101-508 require that Medicare pay for the clinical costs incurred by providers of nursing and allied health education programs other than those operated by the provider, we would like to clearly state that we will continue to approve only those programs that are operated by providers as well as by educational institutions. That is, even though the statute requires that we pay some of the costs of programs that are nonprovider operated on a reasonable cost basis, we would not expand the list of approved programs to include those programs that are operated only by nonprovider institutions. We believe that it is important to clearly state this policy because, before the enactment of Public Law 101-239 and 101-508, we were only concerned with provider-operated programs receiving the reasonable cost pass-through and have not had to make this distinction. That is, the only programs we were required to consider for inclusion on the list were provider-operated programs. Therefore, before submitting a new program for our approval, entities should ascertain that it is the type of program that is or can be operated by a provider. This would eliminate any degree programs that must be provided by an educational institution in order for the graduates to be recognized as qualified or licensed health care providers.

F. Determining Provider-Operated Programs

We would set forth in a new § 413.85(e) of the regulations the criteria that have been used to identify programs operated by a provider, since this requirement was established in January 1984. The regulations would reflect that, except as provided in section 4004(b) of Public Law 101-508, the key factor to be considered in determining whether the classroom and clinical costs of approved nursing and allied health educational programs are eligible to be passed-through is the degree to which the provider controls all aspects of the program. For example, where there is a clear separation of function, such as when a college or university directs and operates the classroom portion of the program and the provider furnishes only the setting for clinical training, the educational program costs are not eligible to be paid on a pass-through basis. In such cases, clinical instruction flows from the part of the program conducted by the institution other than the provider. Thus, the majority of the training costs are borne by the college or university and not by the provider. While the provider may incur some costs associated with its provision of clinical training to students enrolled in a nearby institution, the provider also gains in return. For example, it obtains the services of the trainee, often at no direct cost to itself. The provider may also receive payments from the educational institution to defray the additional costs it incurs.

In addition to the value of the services of students in an approved program, providers receive a number of other benefits from participation in an approved educational program operated by another entity. One benefit is the fact that a significant percentage of the graduates of these programs become employees of the provider at which they trained. This allows the provider to avoid costs it would otherwise have to incur for nursing recruitment. It also avoids the even more significant cost of using agency nurses to meet staffing deficiencies.

For purposes of determining the operator of an approved nursing or allied health education program, the fact that a provider and a college or university are considered related organizations under § 413.17 ("Cost to Related Organizations") is not considered. As explained above, our policy concerning related organizations was established to avoid program recognition of costs of a provider for goods or services furnished by a related organization in excess of the costs incurred by the related organization. This policy does not permit an interpretation that would allow a provider to be considered the operator of an educational program that is operated by a related organization.

We are proposing that to be considered the operator of a nursing or allied health education program, all of the following criteria must be met:

- The provider must incur the costs associated with the training, for example, the costs for books, supplies, and faculty salaries.
- The provider must directly control the curriculum, that is, the provider must determine the requirements to be met for graduation. In meeting this requirement, a provider may enter into an agreement with a college or university to provide the basic academic course requirements leading to a degree, diploma, or other certificate, while the provider is directly responsible for providing the courses relating to the theory and practice of the nursing or allied health profession that are required for the degree, diploma, or certificate awarded at completion of the program.
- The provider must control the administrative duties relating to the program. These duties include the collection of tuition,

maintaining payroll records for the teaching staff, and being responsible for the day-to-day operation of the entire training program.

- The provider must employ the faculty.
- The provider must provide and control both classroom and clinical instruction.

In order to determine the operator of a program, the first consideration is State licensure of the program and accreditation certificates conferred by the appropriate approving bodies. An entity that is licensed or accredited to operate the program and to issue degrees, diplomas, or certificates to its students upon graduation is assumed, absent evidence to the contrary, to meet the criteria listed above and to be the operator of the program.

In certain situations, providers are entering into agreements with colleges and universities that, in many cases, have involved provider representation on a joint committee with certain oversight responsibilities. However, these provider/college educational agreements have not given the providers direct responsibility for the curriculum and control of day-to-day operation of the training programs. We are proposing that unless the provider can demonstrate that it meets the requirements enumerated above, the costs incurred by the provider in connection with such joint programs would not be paid as a separate pass-through cost.

There are other situations, however, that involve sequential operation of a program by an educational institution and a provider. These situations frequently involve providers that are changing from offering a certificate or diploma program to offering an associate or baccalaureate degree. The provider may enter into an agreement with a college or university in which instruction in general academic requirements leading to a degree is provided by the educational institution, and subsequent specialized didactic and clinical training is given by the provider. While the provider establishes and controls the curriculum and requirements for graduation, the college or university grants the degree upon graduation. To the extent that the provider meets all the criteria for the operator of a program given above (except for granting the degree), the provider is the operator of that portion of the program that it directly provides. However, no costs incurred by the college may be claimed as provider costs.

G. Costs of Educational Activities Considered To Be Normal Operating Costs

As discussed above, the final rule published January 3, 1984 attempted to clarify the Medicare policy for the classification of training costs incurred by providers as costs of approved educational activities paid on a reasonable cost basis. Since that time, questions have arisen about some types of training programs that are neither listed as approved programs in the current § 413.85(e) nor readily identifiable as the types of programs discussed in the current § 413.85(d) as activities not within the scope of approved educational activities.

The programs included in our list of approved programs are generally programs of long duration that are designed to develop trained practitioners in a nursing or allied health discipline, such as professional nursing or occupational therapy. This is contrasted with a continuing education program of a month to a year in duration in which a practitioner such as a registered nurse receives training in a specialized skill such as enterostomal therapy. While such training is undoubtedly valuable in enabling the nurse to treat patients with special needs and in improving the level of patient care in a provider, the nurse, upon completion of the program, continues to function as a registered nurse, albeit one with special skills. Further distinction can be drawn between such a situation and one in which a registered nurse undergoes years of training to become a CRNA.

We believe that the costs of continuing education training programs should not be classified as costs of approved educational activities that are passed-through and paid on a reasonable cost basis. Rather, they should be classified as normal operating costs covered by the prospective payment rate or, for providers excluded from the prospective payment system, as costs subject to the target rate-of-increase limits. Accordingly, in the proposed § 413.85(e)(3), we would modify the current language at § 405.85(d)(3) to include continuing educational programs in the same category as "educational seminars and workshops that increase the quality of medical care or operating efficiency of the provider."

The proposed § 413.85(g) would, like the current § 413.85(d), provide that the costs of certain activities are not within the scope of the principle on approved programs enunciated by these regulations, but would be recognized as normal operating costs and be paid in accordance with applicable principles. These activities are the following:

- Orientation and on-the-job training.
- Part-time education for bona fide full-time employees at properly accredited academic or technical institutions (including other providers) devoted to undergraduate or graduate work.
- Costs, including associated travel expense, of sending employees to educational seminars, workshops, and continuing education programs (the current § 413.85(d) does not specifically include continuing education programs) that increase the quality of medical care or operating efficiency of the provider.
- Maintenance of a medical library.
- Training of a patient or patient's family in the use of medical appliances.
- Except for those providers that meet the special conditions in section 4004(b) of Public Law 101–508, clinical training of students enrolled in an approved educational program that is not operated by the provider.
- Classroom instruction of students enrolled in an approved educational program that is not operated by the provider.
- Other activities that do not involve the actual operation of an approved educational program. (The current § 413.85(d) specifically includes the costs of interns and residents in anesthesiology who are employed to replace anesthetists.)

III. Regulatory Impact Analyses

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers are treated as small entities. The provisions set forth in this proposed rule conform the regulations to the statute and to our current policy as set forth in the Provider Reimbursement Manual and other instructions. In general, these provisions would have no impact on those providers that operate their own

programs. However, a large number of hospitals that do not operate their own programs would be affected by this proposed rule.

As discussed in detail above, the provisions of sections 4004(b)(1) and (2) require that we make payment on a reasonable cost basis for clinical training costs of nonprovider-operated programs for providers that meet certain criteria. We are prevented from making a reasonable estimate of the impact of these provisions for two reasons. Of the more than 2,000 hospitals that are associated with nursing and allied health education programs that they do not operate, we do not know how many of these hospitals would meet the criteria set forth in the law and this proposed rule that would permit them to receive payment of clinical costs as a pass-through. In addition, since these costs are currently considered to be operating costs that are paid through the prospective payment rate, we are unable to determine the amount any hospital would be due under reasonable cost payment. Therefore, we are unable to complete any meaningful analyses.

We note that the hospitals that would benefit under the provisions of sections 4004(b)(1) and (2) of Public Law 101–508 have previously claimed reasonable cost payment for clinical and, in many cases, classroom costs for education programs they do not operate. Some have incurred overpayments because of a finding by the hospitals' intermediaries that these costs do not meet the definition of allowable costs for purposes of the pass-through. Section 6205(b)(1) of Public Law 101–239 imposed a moratorium on the collection of these overpayments before October 1, 1990. Subsequently, section 4004(b)(3) of Public Law 101–508 permanently prohibited the recoupment of these overpayments and required us to refund previously collected overpayments. Because the provisions of sections 4004(b)(1) and (2) of Public Law 101–508 limit a hospital's payment for pass-through costs to only clinical costs and also set a limit on the amount a hospital can claim in any cost reporting period beginning on or after October 1, 1990, the amount of trust fund monies that would be paid to these hospitals under the provisions of this proposed rule would be less than the amounts these hospitals have received for cost reporting periods beginning before October 1, 1990.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 50 beds.

We are not preparing a rural impact statement, since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

Regulations at § 413.85(b)(3) and (d) contain information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements concern the need to identify the compensation costs of CRNA faculty members for administrative activities related to the educational program and the compensation costs directly related to hours spent in classroom instruction, and the requests by national approving bodies or State licensing authorities not on the list of approved programs to be included under § 413.85(d). The first requirement necessitates that providers maintain audible records that may be accessed and verified by HCFA's fiscal intermediaries. We believe that this information is already maintained and no additional time will be required to satisfy this requirement. The second requires that approving bodies seeking inclusion on the list of approved programs submit an application to HCFA that contains a justification for recognizing the educational activity. The public reporting burden for this collection is estimated to be no more than two hours per request. We anticipate receiving no more than one request per year. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official whose name appears in the "ADDRESS" section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

We are proposing to amend 42 CFR part 413, subpart F as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

Subpart F—Specific Categories of Care

1. The authority citation for part 413 continues to read as follows:

Authority: Sec. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 13951(a), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww.

2. Section 413.85 is revised as follows:

§ 413.85 Cost of approved educational activities.

(a) *General payment rule.* Except as provided in paragraph (b) of this section, payment for a provider's net cost of approved educational programs is determined on a reasonable cost basis.

(b) *Payment on other than a reasonable cost basis.* (1) *Graduate medical education programs.* For cost reporting periods beginning on or after July 1, 1985, payment to hospitals and hospital-based providers for approved residency programs in medicine, osteopathy, dentistry, and podiatry is determined as provided in § 413.86.

(2) *Nonprovider-operated programs.* Except as provided in paragraph (f) of this section, effective for cost reporting periods beginning on or after October 1, 1983, allowable costs incurred by a provider that are attributable to an approved program not operated by that provider are allowable as normal operating costs rather than as costs of approved educational activities in accordance with paragraph (g)(6) of this section.

(3) *Certified registered nurse anesthetist programs.* The net costs of approved certified registered nurse anesthetist (CRNA) educational programs are determined as set forth in paragraph (a) of this section, except that allowable compensation costs for faculty members who are CRNAs are limited to the compensation costs for administrative activities related to the educational program and the compensation costs directly related to hours spent in classroom instruction. No compensation costs are allowable for the time CRNAs spend in the clinical

training during surgical procedures of student anesthetists in operating rooms. The activities of CRNAs in connection with the clinical training during surgical procedures of student anesthetists in approved training programs are paid for as patient care activities in accordance with § 405.553 ("Reasonable charges for anesthesiology services").

(c) *Definitions.* (1) *Net costs.* Net costs of approved educational activities means the costs determined by deducting the revenues that a provider receives from tuition and student fees from the provider's total allowable costs that are directly related to approved educational activities. For this purpose, a provider's total allowable costs include costs incurred by the provider for trainee stipends, compensation of teachers, and other direct and indirect costs of the activities as determined under the Medicare cost-finding principles in § 413.24. Except as provided in paragraph (f) of this section, total allowable educational costs do not include usual patient care costs, costs incurred by a related organization, or costs that constitute a redistribution of costs from an educational institution to a provider. Net cost is subject to apportionment for Medicare utilization as described in § 413.50.

(2) *Redistribution of costs.* Redistribution of costs is defined as an attempt by a provider to increase the amount, or to expand the types, of the costs of educational activities that are allowed for Medicare payment purposes by claiming costs that previously were not claimed by the provider and were considered costs of an educational institution. For example, costs for a school of nursing or allied health education that were incurred by an educational institution rather than the provider in its prospective payment or rate-of-increase limit base year cost report are not allowable costs in subsequent fiscal years.

(3) *Clinical training.* Clinical training involves the acquisition and use of the skills of a nursing or allied health profession or trade in the actual environment in which these skills will be used by the student upon graduation. While it may involve occasional or periodic meetings to discuss or analyze cases, critique performance, or discuss specific skills or techniques, it involves no classroom instruction.

(4) *Classroom costs.* Classroom costs are those costs associated with formal, didactic instruction on a specific topic or subject in a class that meets at regular, scheduled intervals over a specific time period (for example, semester or quarter), and for which a student receives a grade.

(5) *Approved educational activities.* Approved educational activities means formally organized or planned programs of study operated by providers in order to enhance the quality of inpatient care in an institution. These activities must be licensed if required by State law. If licensing is not required, the institution must receive approval from the recognized national professional organization for the particular activity. Only accredited programs for the following nursing and allied health occupations are included as approved educational activities:

Training program	Approving body
Cytotechnologist	Committee on Allied Health Education and Accreditation (CAHEA).
Cardiovascular perfusionist.	CAHEA.
Clinical pastoral counselor.	Association for Clinical Pastoral Education.
Dietetic intern	The American Dietetic Association.
Health Services administrator.	Accrediting Commission on Education for Health Services Administration.
Histologic technician/ technologist.	CAHEA.
Medical laboratory technician (Associate degree and certificate).	CAHEA.
Medical record administrator and technician.	CAHEA.
Medical technologist	CAHEA.
Nuclear medicine technologist.	CAHEA.
Nurse anesthetist	Council on Accreditation of Nurse Anesthesia Educational Programs.
Occupational therapist	CAHEA.
Pharmacy resident	American Society of Hospital Pharmacists.
Physical therapist	Commission on Accreditation in Physical Therapy Education.
Practical nurse	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
Professional nurse	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
Radiation therapy technologist.	CAHEA.
Radiographer	CAHEA.
Respiratory therapist and therapy technician.	CAHEA.

(d) *Request for recognition of other educational programs.* The programs listed in paragraph (c)(5) of this section constitute all programs recognized as approved educational activities, other than graduate medical education programs payable as set forth in § 413.86. National approving bodies or State licensing authorities for other types of programs or for additional subspecialties within the approved programs, may apply to HCFA for inclusion of those programs or subspecialties in paragraph (c)(5) of this section.

(e) *Criteria for identifying programs operated by a provider for cost reporting periods beginning on or after October 1, 1983.* (1) *General rule.* Except as provided in paragraph (e)(2) of this section, to be considered the operator of an approved nursing or allied health program, a provider must meet all of the following requirements:

(i) Directly incur the training costs.

(ii) Have direct control of the curriculum. (A provider may enter into an agreement with an educational institution to furnish some academic courses required for completion of the program, but the provider must provide the courses relating to the theory and practice of the nursing or allied health profession involved that are required for the degree, diploma, or certificate awarded at the completion of the program.)

(iii) Control the administration of the program including collection of tuition, maintenance of payroll records for the teaching staff, and responsibility for the day-to-day operation of the program. (A provider may contract with another entity to perform some administrative functions, but the provider must maintain control over all aspects of the contracted functions.)

(iv) Employ the teaching staff.

(v) Provide and control both classroom and clinical instruction.

(2) *Special rule when provider issues degree.* Absent evidence to the contrary, a provider that issues the degree, diploma, or other certificate upon successful completion of an approved educational program is assumed to meet all of the criteria set forth in paragraph (e)(1) of this section and to be the operator of the program.

(f) *Payment on a reasonable cost basis for certain nonprovider-operated programs.* Costs incurred by a provider, or by an educational institution that is related to the provider by common ownership or control (that is, a related organization as defined in § 413.17(b)), for the clinical training of students enrolled in an approved nursing or allied health program that is not operated by the provider, are paid on a reasonable cost basis if all of the following conditions are met:

(1) The clinical training must occur on the premises of the provider.

(2) The provider must have claimed and been paid for clinical training costs on a reasonable cost basis during its most recent cost reporting period that ended on or before October 1, 1989. This condition is met if a notice of program reimbursement (NPR) was issued for that cost reporting period by November 5, 1990 and the clinical training costs were included as pass-through costs. If an NPR was not issued by that date or an NPR was issued but did not treat the clinical training costs as a pass-through, then this condition is met if both of the following criteria are met:

(i) The intermediary included the clinical training costs in the allowable costs used to determine the interim rate for the most recent cost reporting period ending on or before October 1, 1989.

(ii) The provider claimed the clinical training costs as a pass-through cost when the cost report for the most recent cost reporting period ending on or before October 1, 1989 was initially submitted.

(3) In any cost reporting period, the percentage of total allowable provider cost attributable to allowable clinical training cost cannot exceed the percentage of total cost for clinical training in the provider's most recent cost reporting period ending on or before October 1, 1989.

(4) The students in the educational program must provide a benefit to the provider through the provision of clinical services to patients of the provider.

(5) The clinical training costs must be incurred by the provider or by an educational institution related to the provider by common control on ownership as defined in paragraph (b) of § 413.17 ("Cost to related organizations."). Costs incurred by a third party, regardless of its relationship to either the provider or the educational institution, are not allowed.

(6) The costs incurred by a provider do not exceed the costs the provider would incur if it operated the program itself.

(g) *Costs of educational activities considered normal operating expenses.* The costs of the following activities are recognized as normal operating expenses and are paid in accordance with applicable principles:

(1) Orientation and on-the-job training.

(2) Part-time education for bona fide full-time employees at properly accredited academic or technical institutions (including other providers) devoted to undergraduate or graduate work.

(3) Sending employees to educational seminars, workshops, and continuing education programs that increase the quality of medical care or operating efficiency of the provider.

(4) Maintenance of a medical library.

(5) Training of a patient or patient's family in the use of medical appliances.

(6) Except as provided in paragraph (f) of this section, clinical training and classroom instruction of students enrolled in an approved educational program that is not operated by the provider. Allowable costs are the following:

(i) Costs incurred in the clinical training of students, including the clinical training or clerkships of undergraduate medical school students that takes place in providers.

(ii) Classroom costs incurred by the provider that meet the following criteria:

(A) The provider's support does not constitute a redistribution of nonprovider costs to the provider. The support must be in addition to the costs already being incurred by the nonprovider-operated program. If the nonprovider entity reduces its costs due to receiving provider support, this reduction constitutes a redistribution of costs from an educational institution to a patient care institution and is a nonallowable provider cost.

(B) The provider receives a benefit for the support it furnishes.

(C) The cost of the provider's support is less than the cost the provider would incur were it to operate the program.

(7) Other activities that do not involve the actual operation of an approved educational program.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance

Dated: September 9, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: September 14, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-22627 Filed 9-21-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Proposed Rule To Delist the Plant Hedeoma apiculatum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to remove the plant *Hedeoma apiculatum* (McKittrick pennyroyal) and its critical habitat from the Federal List of Endangered and Threatened Plants (50 CFR 17.12 and 17.96). The species is endemic to the Guadalupe Mountains in Culberson County, Texas and Eddy County, New Mexico. Because of the range, the number of known populations, and the remote and inaccessible nature of the habitat, the Service believes that McKittrick pennyroyal is not in danger of becoming extinct throughout all or a significant portion of its range now or in the foreseeable future. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 23, 1992. Public hearing requests must be received by November 6, 1992.

ADDRESSES: Comments, requests for public hearing, and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American, NE., suite D, Albuquerque, New Mexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully, at the above address (505/883-7877).

SUPPLEMENTARY INFORMATION:

Background

Hedeoma apiculatum (McKittrick pennyroyal) was first collected in 1882, but remained undescribed until 1939 (Epling and Stewart 1939). The plant is a perennial herb, 10–15 cm (4–6 in) tall, with dense tufts of leaves growing from woody rootstocks. The showy pink flowers are about 2 cm (0.8 in) long, solitary or in clusters, and emerge from among the leaves towards the apex of stems (Irving 1980).

McKittrick pennyroyal is endemic to the Guadalupe Mountains in Eddy County, New Mexico and Culberson County, Texas. It is found in fissures and weathered pockets in open limestone rock outcrops at elevations above 1,660 m (5,400 ft). The species prefers north facing cliffs and slopes, but can occur on any aspect of sheltered relatively moist outcrops (Irving 1980, Knight and Cully 1988, Sivinski and Lightfoot 1992).

McKittrick pennyroyal was listed July 13, 1982 (47 FR 30440) as a threatened species under the authority of the Endangered Species Act of 1973 (Act),

as amended (16 U.S.C. 1531 *et. seq.*). Threats to the species at the time of listing were described as limited distribution, low numbers, and low reproductive potential, which made the species vulnerable to habitat disturbance. Since the listing, additional surveys in the Guadalupe Mountains in New Mexico and Texas have shown the plant to be more widespread and abundant than previously known.

Irving (1980) reported seven locations of McKittrick pennyroyal, from near Hunter Peak in Guadalupe Mountains National Park (GMNP), Texas, to Big Canyon, Guadalupe Mountains, New Mexico. Since 1980, the range has been extended north to Double Canyon, Guadalupe Mountains, New Mexico, with many new locations being discovered. New populations were reported by the National Park Service (NPS) in 1986 (Richard B. Smith, GMNP, *in litt.* 1986), New Mexico Energy, Minerals and Natural Resources Department (Knight and Cully 1988), U.S. Forest Service (Hayes 1988), Bureau of Land Management (BLM) (Dunmire 1990), and other sources. This information is summarized in Sivinski and Lightfoot (1992). A total of 13 Texas and 23 New Mexico locations are known at this time in an area approximately 21 km (13 mi) north to south by 8 km (5 mi) east to west in the Guadalupe Mountains of New Mexico and Texas. At the time of listing in 1982, plant numbers were estimated at 1,100. Although accurate counts and estimates are difficult to make, about 5,000 counted plants now comprise the 36 known locations.

Approximately 5–10 percent of an estimated 5,668 ha (14,000 ac) of potential habitat has been surveyed for the McKittrick pennyroyal, mostly along trails and canyon bottoms. Potential habitat is abundant, but very difficult to survey because of the steep broken terrain and the remoteness of the areas. It is likely that numerous groups of plants remain undiscovered throughout the suitable habitat and that additional surveys will continue to result in the discovery of new locations for the species (Sivinski and Lightfoot 1992).

At the time of listing, threats to the known locations, in addition to perceived vulnerability because of low numbers and limited distribution, included trail development and impacts from hikers. Management for the species in GMNP has included the designation of special management areas with limited public use, banning the use of horses on particular trails, and reducing levels of camping in certain sensitive areas (William P. Dunmire, Carlsbad Caverns and Guadalupe Mountains National Parks, *in litt.* 1984; Robin Wobbenhorst, GMNP pers. comm. 1992). These management activities have reduced the human threats to McKittrick pennyroyal. The additional locations found since listing are in areas remote from human impacts, which provides a measure of security for the species.

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, which included McKittrick pennyroyal in the threatened category, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27832) accepting the Smithsonian Institution report as a petition within the context of section 4(b)(3) of the Act, and its intention thereby to review the status of the plant taxa named therein. McKittrick pennyroyal was proposed for listing as a threatened species with critical habitat on August 15, 1980 (45 FR 54682). The final rule listing McKittrick pennyroyal as a threatened species and designating its critical habitat was published July 13, 1982 (47 FR 30440). The McKittrick Pennyroyal Recovery Plan was completed in 1985 (U.S. Fish and Wildlife Service 1985).

Federal involvement with McKittrick pennyroyal subsequent to listing has included surveys for new locations, monitoring of known populations, protection from human impacts through limiting use in sensitive areas, and inclusion in the development of the U.S. Environmental Protection Agency's (EPA) pesticide labeling program for protection of endangered species. The species has been included in all section 7 consultations over Federal projects occurring in suitable habitat in Eddy County, New Mexico and Culberson County, Texas. Except for consultations with EPA on pesticide labeling, there have been no other formal section 7 consultations involving this species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened and endangered species. The same procedures apply to reclassifying a species or removing it from these lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hedeoma apiculatum* W.S. Stewart (McKittrick pennyroyal) are as follows:

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

McKittrick pennyroyal populations are scattered throughout a 166 square km (65 square mi) range. Surveys since listing have increased the known distribution and abundance of the species. At the time of listing, most of the few known populations were located adjacent to hiking trails. Management actions to protect the species and the discovery of a significant number of populations that are remote from human activity have significantly reduced the threat from recreational activities.

Potential threats to this species from modification or destruction of habitat included exploratory drilling for natural gas or other resources, and wildfire. Exploratory drilling is excluded from most McKittrick pennyroyal habitat because of the steepness of the outcrops upon which the species occurs. Little was known about the response of McKittrick pennyroyal to fire until 1990, when a fire burned 13,000 ha (33,000 ac) on the Lincoln National Forest, including much of the McKittrick pennyroyal habitat. In 1991, these areas were surveyed and numerous healthy plants were observed on canyon walls. Lack of fuel in these locations had apparently protected the McKittrick pennyroyal and associated plant species. Thus, it appears that wildfire is not a serious threat to the long-term survival of the species (Sivinski and Lightfoot 1992).

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

The final rule listing McKittrick pennyroyal identified collection for cultivation in gardens as a potential threat. No evidence for this kind of activity has come to light since the species was listed. Because of the increase in distribution and numbers of plants that are now known, the potential threat from this activity has been reduced.

C. Disease or Predation

In the final listing rule, grazing was noted to have occurred at a single location. However, livestock are excluded from most of the habitat because of the steepness of the slopes. No other predators or disease organisms are known at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

McKittrick pennyroyal is on the New Mexico State Endangered Species list (9–10–10 NMSA 1976; NMFRCD Rule No. 91–1) and the Texas list of Endangered, Threatened or Protected Native Plants (chapter 88, Texas Parks and Wildlife Code). It is considered a sensitive species by the U.S. Forest Service, and has received special management consideration by the NPS. All States and agencies will have the option of retaining this species on their various lists should it be removed from the Federal List of Endangered and Threatened Plants. The Forest Service will monitor the populations on Lincoln National Forest for at least the 5-year period required by the Endangered Species Act. The BLM is committed to monitoring the status of the species on their lands for at least the 5-year period required by the Act. Management actions taken by the NPS to protect the species will be left in place in Guadalupe Mountains National Park, and the status of the populations there will be monitored as required.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Long-term climate change from the more mesic Pleistocene to the present-day dry conditions may have caused the McKittrick pennyroyal to retreat from a more widespread distribution to the moist protected habitats of canyon walls and cliff faces. Further drying trends may pose a serious threat to the relictual habitats of this species. However, the rate of climatic change is sufficiently slow (and uncertain) that this threat is not expected to occur in the foreseeable future (Sivinski and Lightfoot 1992).

The regulations in 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that the data supporting the original classification were incomplete, and new data show that removing *Hedeoma apiculatum* from the List of Endangered and Threatened Plants is warranted.

The Service believes the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given the expanded range, increase in numbers of known locations and individuals, remote habitat, and the protection provided by that remoteness and difficulty of access, the Service believes that *Hedeoma apiculatum* does not warrant the protection of the Act.

Effect of Rules

The proposed action would result in removal of this species from the List of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Service to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of McKittrick pennyroyal. Federal prohibitions under section 9 of the Act would no longer apply.

The 1988 Amendments to the Act require monitoring for at least 5 years after the determination that a species no longer needs the protection of the Act and its subsequent removal from the List of Threatened and Endangered Species (section 4(g)(1)). The Service and other federal agencies with responsibility for this species are committed to monitoring the status of the species and to determine the effect, if any, of removing the species from the protection provided by the Act. Monitoring standards and guidelines will be developed by the Service, NPS, BLM, Forest Service, and the States of Mew Mexico and Texas prior to delisting.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments pertaining to possible monitoring standards and guidelines to address the 5-year post-delisting are also requested. The Service particularly requests any information that would support retaining McKittrick pennyroyal as a threatened species. Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife 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 Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 26, 1983 (48 FR 49244).

References Cited

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Sivinski, R. and K. Lightfoot. 1992. Status summary for the McKittrick pennyroyal (*Hedeoma apiculatum*). U.S. Fish and Wildlife Service, Ecological Services Field Office, Albuquerque, New Mexico. 31 pp.

U.S. Fish and Wildlife Service. 1985. McKittrick pennyroyal (*Hedeoma apiculatum* W.S. Stewart) Recovery Plan. U.S.D.I. Fish and Wildlife Service, Albuquerque, New Mexico. 46 pp.

Author

The primary author of this proposed rule is Anne Cully (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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.

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by removing the entry "*Hedeoma apiculatum*" under LAMIACEAE, from the List of Endangered and Threatened Plants.

§ 17.96 [Amended]

3. It is further proposed to amend § 17.96(a) by removing the entry of "*Hedeoma apiculatum*" under LAMIACEAE in the designation of critical habitat.

Dated: September 4, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-22618 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Finding on Petition to List the Paddlefish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-Month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service has found that listing of the paddlefish (*Polyodon spathula*) as "threatened" is not warranted. Because of the uncertainty of the species' status in several portions of its range, the Service intends to reclassify the paddlefish from a category 3C to a category 2 species under the authority of the Endangered Species Act of 1973, as amended. The Service believes that this classification change will encourage further investigation and biological research of the species' status throughout its range.

Paddlefish occur in 22 States and are primarily inhabitants of large rivers like the Missouri, Mississippi, and Ohio, but they are also found in several of the large river tributaries and in several Gulf Coast streams. Threats to the species include habitat modification, an apparent lack of natural reproduction in some areas, and overexploitation of their eggs as a source of caviar in national and international markets. Although the status review is complete and the period for receiving official comments has expired, the Service remains interested in receiving comments, suggestions, and current scientific information applicable to the status of these species as it becomes available.

DATES: Comments my be submitted until further notice.

ADDRESSES: Questions or comments and materials concerning this notice should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 1500 Capitol Avenue, Bismarck, North Dakota 58501.

The petition, finding, and supporting documents are available for public inspection, by appointment, during normal business hours at the above address and at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Allardyce, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 420 South Garfield Avenue, suite 400, Pierre, South Dakota 57501-5408, telephone (605) 224-8693.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), requires 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. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Petition: The Service has received and made a 90-day finding on the following petition:

A petition dated June 29, 1989, was received from Mr. Steven G. Moore on July 6, 1989. The petition requested that the Service add the paddlefish to the List of Threatened and Endangered Species under provisions of the Endangered Species Act of 1973, as amended. A 90-day finding published in the April 25, 1990, **Federal Register** indicated that the petitioner had provided sufficient and substantial information indicating that listing of the species may be warranted over portions of its range. The petitioner indicated that there is a significant loss of historic range of the paddlefish, inadequate control of commercial harvest, inadequate State programs for protection, and continual habitat loss and degradation. Wild populations are being supplemented with hatchery raised fish. Concurrent with publishing the 90-day finding in the **Federal Register**, the Service initiated a status review.

The period of the Service's status review was extended because of the complexities of determining the status of the paddlefish. The range of the paddlefish currently spans 22 States and overlaps 5 of the Service's Regions which has complicated coordination and response time. In addition, initial response to the Service's 90-day finding and request for specific status information was limited. In most cases, additional requests were required for clarification of current status information on paddlefish from Federal and State agencies, necessitating a further extension of the review period. The proposed action in this notice and the following supporting information constitute the 1-year finding on the petition to list the paddlefish.

In 1792, Walbaum described the American paddlefish as a new shark species, and in 1820, Rafinesque wrote an extensive description of it as an "entirely new shark genus." Sharks, however, are cartilaginous fish (Chondrichthyes), while the paddlefish belongs to that group of fish known as the bony fish (Osteichthyes). The paddlefish is a smooth-skinned, bizarre-looking creature with a long paddle-like snout and a tail with an elongated dorsal lobe. Only one other species is known from this family: The Chinese sturgeon, *Psephurus gladius*, which inhabits the Yangtze-Kiang River in the Chinese lowlands and feeds on other fish, whereas the American paddlefish feeds on plankton (Becker 1983). Paddlefish are one of the largest freshwater fish, attaining lengths of more than 1.8 m (6 ft) and weights of more than 45 kg (100 lbs). They may attain an age of over 30 years.

Paddlefish were historically abundant in most of the large rivers of the Mississippi River drainage; specifically noted were such rivers as the Missouri, Ohio, Tennessee, Cumberland, White, Arkansas, Red, and the Mississippi itself. They also were considered abundant in many of the Gulf Coast river drainages in Texas, Louisiana, Mississippi, and Alabama. Before the turn of the century, relict populations occurred in some of the Great Lakes and in Ontario, Canada. They have been extirpated from the Great Lakes and Canada and from some of the peripheral range States such as Pennsylvania, New York, Maryland, and North Carolina.

Paddlefish are known as filter feeders, are generally associated with large river systems, and frequently occur in large groups. They can be found in a variety of habitats but prefer to spend much of their time feeding in quiet backwater areas or other slow-moving water sites,

such as the downstream end of large sandbars. The natural, unaltered, free-flowing conditions that existed on the big rivers in the late 1800's and early 1900's (with their braided channels, extensive backwater areas, and oxbow lakes) provided ideal habitat and supported large paddlefish populations (Russell 1986). Populations or segments of populations have developed in some large, man-made impoundments which provided greatly improved and expanded feeding areas, but paddlefish must have access to free-flowing rivers to spawn.

The following information is a summary and discussion of the five factors or listing criteria as set forth in section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the paddlefish and threats to their habitat.

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

Thomas W. Gengerke (1986) noted that paddlefish still occur over most of their historic range and, in some instances, appear to be reinvading previously lost habitat. He also noted that, with few exceptions, the reduction in range has been confined to peripheral reaches of the historical distribution. Generally, the same analysis on range can be made today. However, interpretation of the available biological information (empirical, commercial, and statistical) applicable to the assessment of the viability of those paddlefish remaining within this historical range raises very serious questions about the future ability of these big-river inhabitants to maintain viable populations throughout a significant portion of the species' range. North Dakota, South Dakota, Nebraska, Missouri, Kentucky, and Tennessee rely to some degree on supplemental stocking efforts to maintain either sport and/or commercial fisheries within their boundaries. Texas has proposed a restoration plan that will be entirely dependent on a stocking program.

Initial declines in paddlefish populations after the turn of the century were a result of the impact of water resource projects, primarily reservoir construction, on paddlefish habitat. Dam and reservoir construction has altered most of the original paddlefish habitat in the United States by modifying temperature and flow regimes, eliminating spawning sites, disrupting spawning behavior and migration, and eliminating feeding and nursery areas (Sparrowe 1986). This problem has not been resolved. It continues to be a serious factor directly impacting the status and overall viability of paddlefish populations throughout all the major river habitats of the species. Several snag fisheries that had developed in the tailwaters of reservoirs after initial closure of dams on the upper Missouri River in North Dakota and South Dakota and in other major rivers in Missouri, Texas, Kansas, and Oklahoma and along the Tennessee River System have disappeared in the last 10 to 12 years because of a lack of recruitment (Pasch and Alexander 1986 and Unkenholz 1986). The very specific spawning requirements needed at critical times to ensure successful spawning and fry dispersal are no longer available above or below many major dams.

Several newly authorized dam construction sites both in Texas and Oklahoma will be located on waterways within the historic range of the paddlefish and can be expected to cause problems for proposed restoration plans by the State of Texas. Paddlefish were listed by Texas as "endangered" prior to 1983. Paddlefish populations in four major Gulf Coast drainages in Texas have been so reduced because of reservoir construction that they are seldom seen by biologists or commercial and sport fishermen. Paddlefish are believed to be extirpated from the Texas' San Jacinto drainage. Oklahoma's paddlefish populations have been so decimated by the impounding of its waterways by 46 major reservoirs since the early 1950's that the anticipated construction of 8 new reservoirs in the State (7 of which will be on historic paddlefish waters) is now expected to have minor impacts on this species, according to biologists in that Region.

The Service's recent status review also revealed that a number of additional threats may also pose serious problems for paddlefish habitat and range. Some of these threats may be more regional in nature, and others, like declining water quality, appear to be more ubiquitous. Proposed irrigation projects for the Arkansas River and future water allocation issues are presently a significant concern in Arkansas. Also, future expansion of navigation projects that will involve significant dredging and channelization activities can be expected to further degrade paddlefish habitat in Texas, Arkansas, and possibly other southern States.

Sand and gravel mining operations in Oklahoma waters and along certain sections of the Mississippi River are a concern, as these activities undoubtedly have impact not only on spawning and nursery activities but also on water quality. The significance of these activities on paddlefish reproductive success is presently unknown, as few States have been able to either positively identify specific spawning sites for protection or have been unable to commit resources for adequate management programs necessary to more accurately verify population status and trends.

Contaminants appear to be an increasing concern for many States. Kentucky has indicated, for example, that they believe paddlefish populations may be increasing in the Ohio River because of a general improvement in water quality in recent years. However, they are now considering closing commercial fishing for paddlefish in their portion of the Ohio River because of high levels of chlordane and polychorinated biphenols (PCB) that exceed the Environmental Protection Agency's (Agency) standards for human consumption (Ted Crowell, Kentucky Department of Fish and Wildlife Resources, 1990, personal communication). Missouri has issued consumption advisories for paddlefish from Table Rock Lake Reservoir (upper White River) because chlordane levels in both eggs and fillets from paddlefish were also found to exceed the Agency's standards. Similarly, Arkansas has issued consumption advisories for portions of several major rivers because of high levels of dioxin and chlordane, and closures are also currently being considered. Texas has also indicated concern about the presence of dioxin, PCB, heavy metal, and a number of other pollutants in former paddlefish waters like the Trinity, the Neches, and the Sabine Rivers now proposed for restoration. Many of the contaminants of concern are highly persistent organochlorines that are known to cause severe problems for fish and invertebrate organisms making up the aquatic food chain.

Despite the ubiquitous habitat destruction and modification problems associated with hydropower, irrigation, navigation, contaminants, and other industrial activities discussed above, there is a cause for some optimism. Researchers and field biologists from several States have reported the presence of what are believed to be stable and self-sustaining paddlefish populations; or, in some cases, paddlefish are now being seen or collected in rivers where they have been seen for several years.

In a 64 km (40 mi) stretch of the Tallapoosa River below Thurlow Dam in Alabama, researchers at Auburn University were able to collect "large numbers" of subadult paddlefish during a 1989 electrofishing survey. Paddlefish had not been taken in this area for several seasons. Paddlefish larval collections also have been made in the Tallapossa River above Montgomery, Alabama, in recent years. On the lower Alabama/Mobile River system, a District State biologist has described paddlefish as being "very abundant" in oxbows. A Missouri biologist reported taking paddlefish larve from the Lamine River (tributary of the Missouri River just below Omaha, Nebraska) and from two or three other locations on the Missouri River near the Osage River during 1986 and 1987 larval studies. Arkansas Game and Fish Commission research biologist, Steve Filipek (1990 personnel communication), reported that, despite growing problems, paddlefish populations in the major river systems are regarded as self-sustaining.

In Louisiana, there are uncertainties about the status of populations in some of the western drainages, but populations in Lake Pontchartrain and in other lakes and drainages in eastern Louisiana are regarded as being stable. There is no further indication of habitat destruction or modification activities occurring in Mississippi, and biologists in that State regard paddlefish populations in the upper Pearl River as being abundant in oxbows. Also, recent larval and young-of-the-year collection of paddlefish from the Homochitto, Big Black, and Mississippi Rivers are indications of the existence of reproducing populations within the State of Mississippi. Even in Oklahoma, where populations have been severely impacted by reservoir construction, there are recent reports by biologists of paddlefish snag fisheries that recently have developed on tributaries of the Eufaula Reservoir where no fish have been collected for several years.

Illinois biologists believe that their paddlefish populations are stable based on the fact that the reported commercial harvest (primarily from the Mississippi River) between 1980 and 1987 remained at 24,000 to 29,500 kg (53,000 to 65,000 lbs per year). The paddlefish is fully protected in Wisconsin, but the State has reported the existence of what is believed to be a fairly stable population of 3,000 to 4,000 fish in the Wisconsin River below Prairie du Sac Dam. Also, more paddlefish are being seen (both live and dead as a consequence of boat strikes) in Lake Pepin (Mississippi River) in recent years. Both Ohio and Kentucky believe they are seeing more paddlefish, in relative terms, in the Ohio River in recent years as a consequence of improved water quality in that river. Paddlefish larval stages recently have been collected during lock and dam studies in those two States, and Ohio has recovered subadult paddlefish from a tributary in south central Ohio in 1989 or 1990. Montana has reported that all its paddlefish populations in the upper Missouri River and the lower Missouri/Yellowstone River segments are considered to be in good condition. This assessment was based on several years of data collection in research from 1973 through 1989.

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

Commercial exploitation has been and continues to be a major factor affecting the viability of paddlefish populations throughout their range, but it has been particularly prevalent in southern reservoirs since the 1970's when the price of roe increased to over $44 a kg ($20 a lb) (Pasch and Alexander 1986). The incentive for illegal harvest has increased tremendously in recent years. Demand and price for paddlefish roe have continued to increase through the 1980's, and Federal law enforcement agents have indicated that it is not unusual for premium quality eggs within the United States to now retail at $110 to $154 per kg ($50 to $70 per lb). Demand for caviar in the United States has increased from about 5,450 kg (12,000 lbs) to 10,000 kg (22,000 lbs) per year. On the international market, processed paddlefish caviar is now selling for $1,100 per kg ($500 per lb) (Terry L. Grosz, Fish and Wildlife Service, 1990, personal communication). Another indication of the demand for paddlefish caviar in this country was recently noted by Service agents at the San Francisco airport where 28 g (1 oz) tins of paddlefish caviar were selling for $56 plus tax. This amounts to about $1,990 per kg ($900 per lb).

The vulnerability of paddlefish to commercial (legal and illegal) operations because of certain behavioral characteristics and their low recruitment rate (slow maturation) is well documented in Pasch and Alexander (1986). They noted that, during their studies in the early 1980's on southern reservoirs, it was possible to decimate adult paddlefish stocks in three seasons. Even when mature fish are abundant, paddlefish reproductive success can be highly variable and dependent on river discharge and temperature during the spawning season (Alexander and McDonough 1983). When a population is depleted, adverse environmental conditions can increase both the time required for recovery and the probability that the remaining stock will die without successfully reproducing.

The Service regards the illegal harvest of paddlefish and their eggs as a serious threat to the survival and recovery of this species across most of its range. Fortunately, the majority of the States have also begun to recognize the magnitude and seriousness of the problem and have made a number of classification and/or regulatory changes since 1983.

Six of the seven States sharing management responsibilities on the Missouri River no longer have a commercial season on paddlefish. North Dakota, Iowa, Missouri, and Kansas closed their commercial seasons after 1983. South Dakota and Nebraska have not had a commercial season on paddlefish. Only Montana, where paddlefish populations are believed to be maintaining good age class structure and growth, has allowed commercial handling of roe.

Commercial markets for the handling of paddlefish roe and meat exist in several southern States. Within the last 3 years, two additional States (Louisiana and Alabama) have moved to fully protect the paddlefish because of indications of overexploitation. Minnesota, Wisconsin, Texas, and Ohio (hook and line fishing only) also classify the paddlefish as "protected." Commercial fishing had been unrestricted in Arkansas and Mississippi. Both of these States, within the past 2 to 3 years, have placed seasonal restrictions on commercial paddlefish fishing; they have closed their border waters (Mississippi River) in a cooperative effort with adjacent States where the paddlefish is fully protected. Iowa closed its commercial season for paddlefish on the Mississippi River in 1987. Kentucky and Tennessee still maintain a commercial paddlefish season on the Mississippi River, but it is a small percentage of the States' overall harvest (Tennessee—3 percent in 1989). Both of these States have implemented gear restrictions, and Tennessee has indicated that a higher priority on enforcement has been initiated on commercial activities. West Virginia classifies the species as "threatened" but also lists the paddlefish as a "sport" fish; only hook and line fishing is allowed. Virginia does not regulate the paddlefish but is now considering classifying the species as "endangered." Oklahoma has been considering additional protection of its only remaining viable paddlefish population

in the Grand River (Neosho River in Kansas), but no action has been taken.

The Service believes that the classification and regulatory changes discussed above have decreased overutilization of the paddlefish. To further decrease the possibility of overutilization of the species, the paddlefish was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; see discussion under Factor D) in March 1992. This will help to eliminate any illegal international trade.

C. Disease or Predation

Diseases and parasites of wild paddlefish populations have not been studied to any great extent. Within the past couple of years, Dr. Harry Halloway, Jr., of the University of North Dakota has identified the presence of various external and internal parasites in paddlefish taken from the Yellowstone River in Montana (a population shared with North Dakota). He is presently trying to determine the significance of the occurrence of these parasites on the overall condition and well-being of the species.

Dr. Halloway's studies showed heavy infestation of the gills by a monogenetic trematode and heavy infestation of the intestinal tract with a nematode encysted in the walls and free in the intestinal tract. Also of interest was a discovery that the egg masses of paddlefish examined were parasitized by a coelenterate, *Polypodium hydriforme*. This parasite was found to diminish the number of viable eggs; however, further examination and counts indicated that only about 1 percent of the eggs were affected.

The conclusion by Dr. Halloway and the Service is that parasite infestations in wild populations are a normal occurrence and by themselves do not constitute a significant threat to the paddlefish. Various types of stress factors, such as poor water quality, rapid temperature changes, contaminants, poor condition factors (from an inadequate food supply), or overcrowding in a hatchery situation, are known to predispose fish to a variety of parasites, diseases, and secondary infections. The significance of parasitic infestations may be dependent upon the presence or interaction of the paddlefish with other environmental factors.

D. The Inadequacy of Existing Regulatory Mechanisms

There is a significant need for a coordinated, joint Federal/State interagency management plan across the range of the paddlefish because of the complexity of the issues and the difficulty in obtaining specific population status information on the species due to its mobility, large size, and tendency to live in large rivers. Management problems are compounded along the Missouri, Mississippi, and Ohio Rivers where many States often share a paddlefish population. Within the last 3 to 5 years, several States along the Missouri and Mississippi Rivers have attempted to coordinate regulatory actions by eliminating or restricting legal commercial fishing for paddlefish. For example, Louisiana and Alabama have closed all commercial and sport fishing for paddlefish until additional information can be collected to verify status and trends.

There is evidence that, as a consequence of the very high demand for paddlefish caviar both on the national and international market and the current price per pound being received for processed eggs, the threat of overexploitation of paddlefish for their roe has increased and will likely continue to increase in the future.

The Service is encouraged by the fact that many States, within the past 3 to 5 years, have responded to this threat and have developed needed regulatory actions that should help to reduce illegal harvest impacts. Despite the best of intentions, the combination of legal marketing operations within the United States and the demands for premium caviar by the international trade market will continue to exert tremendous pressure on Federal and State law enforcement authorities to be able to distinguish illegally taken paddlefish roe from legal sources. It is too soon to tell whether these more recent regulatory changes have had any impact on quelling the illegal trade issue. In the judgment of the Service, it is unrealistic to expect that regulatory actions within the United States alone will be able to adequately protect the paddlefish from this type of pressure. The history of the illegal harvest problem has been that highly organized, illegal operations have been at least 2 to 3 years ahead of law enforcement authorities and have decimated paddlefish populations well before a problem was detected.

To help stop the illegal harvest, the Service recommended that the paddlefish be added to appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora at the Conference of Parties meeting held in Kyoto, Japan, on March 2–3, 1992. The addition of the paddlefish to appendix II was approved at that meeting. As an appendix II species, it will be necessary that an export permit be issued for any export of paddlefish, their parts, or derivatives (which includes eggs). A reexport certificate will have to accompany any subsequent shipment from the importing country. Export permits will only be issued when the action is not detrimental to the survival of the species. This control of exports will make it easier to curtail the illegal aspects of the caviar market.

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

The paddlefish is vulnerable to illegal harvest because of certain behavioral characteristics. Predictable spawning runs and schooling tendencies during the spring and winter months at readily identifiable deep water locations within reservoirs make paddlefish fairly easy to locate and capture and have contributed to the depletion of many commercially exploited populations (Pasch and Alexander 1986).

Also, the relatively low reproductive potential of the paddlefish in combination with the narrow range of conditions necessary to ensure a successful spawn, extremely low numbers of naturally reproducing populations, and relatively small numbers of individuals comprising some populations reduces the species' ability to maintain viable populations (without supplemental stocking).

When these factors are combined with the cumulative impact of the other factors affecting paddlefish range and viability (discussed under factor A), the probability that remaining, segmented populations will recover is greatly reduced. Nevertheless, if overharvest can be controlled and other environmental problems mitigated or resolved, the information received from the individual States during the status review indicates that the viability of some paddlefish populations can be recovered. Missouri's reservoir stocking program has proven to be successful, and several other States (as discussed above under factor A) like Alabama, Oklahoma, Ohio, Kentucky, Arkansas, and Mississippi have reported either increased sightings or catches of either larval stages, young-of-the-year, or subadult fish from waters where populations have been considered to be greatly reduced.

The petitioner referred to seven States where the status of the paddlefish was listed as declining in the 1983 Gengerke report. These States are Alabama, Illinois, Kansas, Ohio, South Dakota, Texas, and West Virginia. The status of paddlefish in one State, Oklahoma, was listed as unknown. Since 1983, there have been some important changes.

These States, including several others bordering the upper Missouri and upper Mississippi River drainages, have taken regulatory actions on their own to protect populations. Based on primarily empirical information from these States and/or our Service Regions, there is an apparent improvement in the status of seven of the above eight States. These States believe their populations to be stable or expanding, except for Texas where there is an apparent continued decline despite full protection.

Alabama has closed both commercial and sport fishing. State biologists are now reporting large numbers of paddlefish in the lower Alabama River/Mobile River delta complex and increased numbers of subadults below Thurlow Dam in the Tallapoosa River, including paddlefish larval collections near the Tombigbee River. The States of Ohio, Kentucky, and West Virginia believe that paddlefish may be increasing in the Ohio River and some of its tributaries because of a general improvement in water quality and the fact that more paddlefish juveniles and young-of-the-year are being taken on the Ohio River during lock and dam studies. In 1989, Ohio biologists captured 30 subadult paddlefish from a tributary of the Scioto River several miles above the Ohio River. Kentucky considers some of its most significant populations to be in the Ohio River below Louisville, Kentucky. West Virginia also believes that paddlefish numbers are increasing on the upper Ohio and Kanawha Rivers based on increased captures, improving water quality, and an indication that some spawning may be occurring within 80 km (50 mi) of its border on the Ohio River.

Both the States of South Dakota and Nebraska share management responsibilities for the Missouri River population below Gavins Point Dam and its reservoir, Lewis and Clark Lake. Paddlefish larvae have been collected in Lewis and Clark Lake (from the free-flowing section below Fort Randall Dam) nearly every year for the past several years and appear to be increasing. The paddlefish population below Gavins Point Dam is regarded as having stabilized at approximately 8,000 fish, and the current annual harvest quota of 1,600 fish may be further reduced. A prohibition against snagging immediately below Gavins Point Dam, where most fish are taken, was initiated in October 1991. Population segments in South Dakota's remaining Missouri River reservoirs are regarded as having declined since 1983. Adequate spawning habitat in tributaries of these reservoirs is not available.

Kansas, which closed its portion of the Missouri River to commercial paddlefish operations in January 1991, shares its populations with Oklahoma (Grand River/Meosho River) and Missouri (the Marais des Cygnes/Osage River in Missouri), and paddlefish were recently discovered in the Marmaton River (Little Osage River in Missouri). The State believes that these populations are "healthy and sustainable." Kansas also made an attempt in September 1991 to reestablish paddlefish in the upper Arkansas River by stocking Kaw Reservoir in a cooperative agreement with Oklahoma. Adequate spawning habitat is available on the Walnut and Arkansas Rivers above this reservoir.

Illinois has assessed the status of its populations as stable based on the fact that commercial harvest has consistently been between 24,000 and 29,500 kg (53,000 and 65,000 lbs) between 1980 and 1987, although the 1986 harvest was slightly higher at 35,200 kg (77,500 lbs). The majority of this harvest is reported to be from the lock and dams on the Mississippi River, but paddlefish are also reported in other major rivers, like the Illinois, Little Wabash, Sangamon, Kaskaskia, and the Big Muddy.

Oklahoma believes that its populations are stable. The major fishery is in the Grand River system where commercial harvest is allowed only from Grand Lake. The State believes that downstream areas of the Grand River at Fort Gibson and Markham Ferry could sustain some commercial harvest if illegal fishing could be eliminated. Young-of-the-year paddlefish have been collected from the Grand River and on the Arkansas River below Keystone Reservoir. There is now evidence that populations are present and increasing in Keystone Reservoir as a snag fishery was observed to have developed upstream of the reservoir during the spring high water period in 1990.

Paddlefish populations in Texas, although protected, are apparently still in decline. Restoration efforts were initiated in 1989 above B.A. Steinhagen Reservoir (Neches River), and additional restoration reservoir construction and multipurpose navigation projects in the State could jeopardize future restoration plans, however.

The petitioner also identified the use of hatchery raised fish as a potential threat to the genetic diversity of the species. Unless a management and propagation program for a particular species is closely monitored, there is always the potential threat that weakening of the gene pool and loss of identity from original stocks could become a problem. However, genetic information on the paddlefish is presently quite limited, and the propagation program technology is still developing on a national basis. Consequently, the availability of hatchery raised paddlefish fingerling to those States that use this source to supplement existing stocks is quite limited.

Although several States currently utilize a stocking program as a management tool, it would be inaccurate to characterize these programs as being overreliant on hatchery produced fingerling. Generally, the degree of stocking occurring on a national basis is not at a level that could be expected to maintain population segments at viable levels. Nearly all States that utilize supplemental stocking receive fingerlings that have originated from wild broodstock taken from river systems geographically common to that State. The only known exception to this would be the Texas program. Also, the Food and Drug Administration has recently cancelled the restricted Investigational New Animal Drug (INAD) permit at selected Federal and State hatcheries. A number of chemicals essential to the success of hatchery production programs may no longer be available. This will have a major impact on the paddlefish production programs and the availability of fingerlings in the immediate future.

The Act requires the Service to make its determinations regarding listing solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts being made by States or others to protect the species. It is the opinion of the Service that, although the empirical information reviewed suggests an apparent decline for some population segments of the paddlefish, scientific and commercial evidence to list the species as threatened throughout its range is not available.

The primary difficulty encountered by the Service in attempting to assess the current status and/or trends was a nearly complete absence of any population data addressing population size, age structure, growth data, or harvest rates across the range of the paddlefish. This was particularly true for those States bordering the upper Mississippi and Ohio Rivers where the only significant information available was commercial data from Illinois, Iowa, and Missouri. Also, a paucity of current population data exists from most

of the States bordering the Missouri River and the Gulf Coast States. In many cases, States have had to make assessments based primarily on empirical data, sightings by biologists incidental to other fishery activities, and general information from commercial or sport fishermen. Generally, the biological and statistical evidence was not available to conclusively verify specific trends or to verify that the status of paddlefish populations is indeed stable or viable. Of concern is the fact that since the 1983 status survey was completed by Gengerke (1986), 19 of 22 States where paddlefish still occur have recognized indications of overharvest and continued habitat degradation problems; however, they have made changes in either the classification, status, and/or regulatory status of their sport and/or commercial paddlefish fishery to overcome these problems.

The Service has concluded that, because of the apparent viability of some populations or population segments and apparent increases in the species' numbers in parts of its range, listing the species across its range is not warranted. In attempting to assess the species-wide threats or impacts on the paddlefish, the Service considered both the limited amounts of empirical and biological data and relied very heavily on personal interviews with many State and Federal field biologists who work closely with the resource. The overwhelming opinion of these professionals is that, while they recognize that severe threats have caused significant population declines in parts of the species' range, their observations, limited surveys, and conversations with commercial and sport fishermen also indicate that some paddlefish populations appear to be holding their own (also based on collections of both paddlefish larvae and fry from several systems) and may be increasing.

Most of the southeastern States also believe that regulatory changes made within the last 3 to 5 years along with increased enforcement activities may allow recovery of paddlefish populations in river systems where adequate habitat conditions still exist. Some field biologists also indicated that, if adequate funding and manpower were available to expand survey efforts to some of the more complex river systems and bayous where paddlefish have been seen on a regular basis, a more accurate and possibly a more favorable accounting of the species' status would be possible.

The Service also had difficulty in attempting to define a distinct population segment for listing purposes. The Service has the authority to list a distinct population segment for any vertebrate fish or wildlife species which interbreeds when mature. However, congressional language indicates that the Service is "to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted" (Senate Report No. 96–151, 96th Congress, 1st Session 7, 1979).

Genetic information available on the paddlefish is also extremely limited. Only two studies are known to have been done on the species, one by Carlson (1982) using electrophoretic (protein analysis) techniques, and the other study by the Illinois Natural History Survey (Epifanio, Nedbal, and Philipp 1989) which used both protein electrophoresis and restriction endonuclease fragment analysis of mitochondrial DNA (mtDNA analysis).

Carlson (1982) was the first assessment of the genetic structure of paddlefish populations, and the study found that the species exhibited a lower genetic variability (seen only in a few other animal groups) than that reported for other vertebrates and other Osteichthyes. Possible explanations for this low genetic variability described by the study were that the environmental stability of the Mississippi River system through geologic time may have led to the fixation of a highly adaptive genotype. Also, the paddlefish, which is regarded as a primitive and genetically conservative organism and is a rather large, long-lived species with the capacity to travel great distances, may be responding to its environment in a much less fine-grained fashion than smaller, short-lived, less mobile species. The lack of electrophoretic differences does not necessarily imply a lack of genetic differences, but it does suggest that any such genetic differences that might be present would be present at only low levels. One paddlefish taken from the Alabama River drainage was noted as being genetically distinct because it was homozygous for one allele not found in the Mississippi River drainage paddlefish.

The study by Epifanio, Nedbal, and Philipp (1989) showed slightly more genetic variability during protein electrophoresis work but indicated that this variability was still low compared to other fishes "and that stock structure of the paddlefish is not exactly clear." The qualitative mtDNA analysis, which is described as being more useful than protein electrophoresis for monitoring paddlefish population genetic dynamics, reflects a clonal mode of inheritance. This work identified a north-south distribution of three clone types. The "C" clones were observed primarily north of the mid-Missouri River; the "B" clones were observed in the southern portion of the range; and the "A" clone was observed uniformly throughout the range and probably indicates that multiple stocks were sampled over the species' range. Additional work is necessary to determine if paddlefish in some areas are genetically distinct from paddlefish in other areas.

In many portions of the species' range, there is an apparent isolation (as a result of dams, reservoirs, and different drainage basins) from neighboring members of the same taxon. The question remains unanswered as to whether these isolation factors have been significant enough to produce genetically distinct populations. However, the most recent population studies done by Reed (undated) did show that Louisiana paddlefish populations exhibited both morphological differences and significantly different fecundity estimates from other paddlefish populations found throughout river systems of the Mississippi River drainage. Many of the paddlefish collected by Reed were taken from Gulf Coast streams or other water bodies which either have no apparent connection with the Mississippi River or perhaps only seasonal ties during flood events. Sexual dimorphism between sexes in Louisiana paddlefish was considerably less pronounced (females and males being equally slender at sexual maturity), and fecundity estimates (number of eggs produced per kilogram of body weight) for Lake Pontchartrain paddlefish were found to be considerably lower than fecundities reported in the literature. Also, there is some evidence (based on conversations with field biologists in several southeastern States) that paddlefish in the southern portion of their range may mature slightly earlier and are generally smaller (in weight) than their counterparts in more northern ranges.

The scientific evidence is not conclusive that morphological, behavioral, and biochemical characteristics of the "population segments" are distinctly different from other members of the taxon. Genetic variability of the species is regarded as low, and there is some documentation and evidence of population segment exchanges between reservoir and lock and dam systems across the species' range. On a national basis, the reliance

of the States on a stocking program constitutes a very small portion of the species' reproductive potential. Therefore, the Service does not believe that either the current stocking program or future programs, given the production program constraints and considering the above discussion, are likely to jeopardize the genetic variability of the species.

Studies by Tennessee Valley Authority biologists in the late 1970's and early 1980's documented an exchange of paddlefish larval stages between some Tennessee Valley Authority reservoirs. Oklahoma biologists believe that there is a strong possibility that paddlefish now occurring below Keystone Reservoir on the Arkansas River originated from the Grand River/Grand Lake stock. A similar exchange of paddlefish larval stages and fry may be taking place within some upper Missouri River basin reservoirs. Biologists are presently engaged in studies to confirm the possibility or extent of this exchange, particularly below Gavins Point Dam on Lewis and Clark Lake, South Dakota. Similarly, the apparent isolation of paddlefish populations endemic to several Gulf Coast streams in Texas, Louisiana, and Alabama from the Mississippi River drainage is not conclusive and can be questioned. There is the possibility of exchange between the Tennessee River system and the Alabama River via the newly completed Tombigbee River Canal. Some biologists believe that there is a strong possibility that there has been an exchange of several other Gulf Coast river paddlefish populations with the Mississippi River drainage via the Intercoastal Waterway, specifically in Louisiana.

Although paddlefish have very specific spawning requirements, the Service does not believe that the information and data available demonstrates that habitat utilized by several apparently isolated paddlefish populations is "unique." In fact, the literature shows that paddlefish have been able to adapt from the free-flowing river environment to a reservoir situation (at least for feeding purposes) and still be able to maintain population viability if provided access to the riverine environment, if adequate spawning conditions are maintained, and if harvest is adequately controlled.

The Service, after fully evaluating all of the above information, has concluded that there is not sufficient scientific evidence to conclusively demonstrate that any population segments are in fact "distinct" from other members of their taxon. Listing of the paddlefish by "population" is, therefore, not possible.

The status review revealed that there is a severe lack of population data and scientific information on the species which hinders an accurate assessment of the status of the species. Therefore, the Service intends to reclassify the paddlefish from a category 3C to a category 2. This classification change should encourage further investigation and biological research of the species' status.

The reclassification from a category 3C to a category 2 species and the recent addition of the paddlefish to Appendix II of the convention on International Trade in Endangered Species of Wild Fauna and Flora is an acknowledgment of the Service's concern for the future status of the paddlefish across its range. The status review has revealed that there is a severe lack of population data and scientific information on the species, without which an accurate assessment of the magnitude and future implications of the many threats discussed above cannot be accurately determined. The Service believes that its findings are appropriate at this time, and we will continue to monitor the species' status. If appropriate data becomes available in the future which indicate that the species may qualify as a threatened or endangered species, or that distinct populations as defined in the Act can be distinguished, the Service will reassess the status and propose listing as necessary.

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Author

This notice was prepared by David A. Allardyce (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

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

Dated: September 2, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–22418 Filed 9–21–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB68

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Ipomopsis Sanctispiritus (Holy Ghost Ipomopsis), Without Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plant *Ipomopsis Sancti-spiritus* (Holy Ghost ipomopsis) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This plant occurs in low numbers at only one location in the Sangre de Cristo Mountains in New Mexico. Its survival is threatened by limited distribution, low population numbers, the proximity of development, and intensity of human activity in the area. Potential threats include road maintenance, chemical herbicide and pesticide use, biological pest controls, and any natural or man-made factors that would reduce the already low numbers or significantly alter the habitat. This proposal, if made final, would implement Federal protection under the Act for the Holy Ghost ipomopsis. Critical habitat is not being proposed. The Service seeks data and comments from the public on the proposed rule.

DATES: Comments from all interested parties must be received by November 23, 1992. Public hearing requests must be received by November 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 3530 Pan American Highway, NE., Suite D Albuquerque, New Mexico, 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully, at the above address (Telephone: 505/883-7877).

SUPPLEMENTARY INFORMATION:

Background

Ipomopsis sancti-spiritus is an erect, biennial to short-lived perennial, known only from the Pecos Mountains of San Miguel County, in north-central New Mexico. It was first collected by Dr. Edward F. Castetter in 1929. Mr. Reggie Fletcher, U.S.D.A. Forest Service, collected the species in 1977. Wilken and Fletcher (1988) later described the plant as a species distinct from the closely related *Ipomopsis aggregate*.

The Holy Ghost ipomopsis is a member of the phlox family (Polemoniaceae). It is 30–80 cm (12–31 in) tall, with mostly solitary stems, occasionally branched from the base. The leaves are oval in outline, 3–6 cm (1–2.4 in) long, with 9–15 linear divisions. The basal leaves form a loose to compact rosette that dies back at flowering. The leaves are gradually reduced in size up the length of the stem. The flowers are pink, tubular, and about 2–2.5 cm (0.8–1 in) long. The stamens are included within the corolla tube.

The Holy Ghost ipomopsis occurs at elevations of approximately 2,440 m (8,000 ft). The species is found only from a 3.2 km (2 mi) segment of a canyon in the Sangre de Cristo Mountains. The plants are restricted to steep, south or southwest facing slopes primarily in openings under *Pinus ponderosa* (ponderosa pine), *Pseudotsuga menziesii* (Douglas fir), *Quercus gambellii* (Gambel oak), and *Populus tremuloides* (quaking aspen). The substrate is a sandy to pebbly limestone conglomerate derived from the Terrero and Espritu Santo formations (Wilken and Fletcher 1988). The plant grows in small openings or clearings on the forested slopes, and it is likely that fire may have played a role in the past in maintaining open habitat for this species. Plants have colonized the cut-and-fill slopes of a Forest Service road indicating some preference for open disturbed areas.

The entire known population of the Holy Ghost ipomopsis consists of approximately 1,200–2,500 individual plants, located on Forest Service and private lands within the boundaries of the Santa Fe National Forest. Approximately 80 percent of the population occupies the cut-and-fill slopes along a Forest Service road; the remaining 20 percent of the population occurs on the natural, dry, and open habitat higher up on the canyon slopes. Most of the occupied habitat is along a Forest Service road which provides access to summer homes and Forest Service campgrounds. In this location, the plants and their habitat are vulnerable to harm from road maintenance, wildfire and fire management, and pesticide spraying. Surveys conducted by Forest Service personnel and New Mexico Energy, Minerals and Natural Resources Department botanists within a 24 km (15 mi) radius of the known population have failed to locate any additional populations of the species (Sivinski and Lightfoot 1991).

The Holy Ghost ipomopsis was included as a Category 2 species in a February 21, 1990, notice (55 FR 6184) of plants under review for classification as threatened or endangered species. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there is not enough date to support listing proposals at that time. A status report was completed on the Holy Ghost ipomopsis in 1991 (Sivinski and Lightfoot 1991). This report along with other available data provided sufficient biological information to support the appropriateness of proposing the Holy Ghost ipomopsis for listing as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act, set forth the procedure for adding species to the Federal lists of threatened and endangered species. A species may be determined to be endangered or threatened based on the best scientific and commercial data available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Ipomopsis sancti-spiritus* Wilken and Fletcher (Holy Ghost ipomopsis) are as follows:

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

The Holy Ghost ipomopsis occurs in an area that has been heavily used for recreation for at least the last 50 years. This includes approximately 36 recreation cabins and a Forest Service campground. A nearby trout stream receives significant use by anglers. These high-use recreational values have been protected by the almost complete exclusion of timber harvest and forest fire. As the forest has become more mature and natural openings less frequent, the majority of the known population of the Holy Ghost ipomopsis has become associated with the man-made disturbance associated with the forest road.

Road maintenance poses a potential threat to the species. An example is a nearby Forest Service road that was graveled using crushed waste rock from an abandoned mine. The sulfides in this mine waste created highly acid road runoff that killed the surrounding vegetation. If this or other toxic materials had been used for the Forest Service road occupied by Holy Ghost ipomopsis, approximately 10 percent of the now occupied roadside habitat would have been rendered useless for this rare species. Although the Forest Service road is not presently sprayed with herbicides, this type of weed control could be a future maintenance threat.

The Forest Service road occupied by Holy Ghost ipomopsis was straightened and paved in 1989. The 111 plants that would have been destroyed by the activity were moved in mid-June of that

year to a similar habitat at Elk Mountain. All of the transplants quickly died.

The control of spruce budworm is a potential pest management threat to the Holy Ghost ipomopsis. The spruce budworm is a moth larva that can defoliate large areas of spruce and douglas fir. When infestations occur in residential areas, the State of New Mexico receives numerous requests for large area aerial broadcast of *Bacillus thuringiensis* as a pesticide. This pesticide kills not only the spruce budworm moth, but all other Lepidopterans that serve as pollinators for the Holy Ghost ipomopsis. If this treatment were repeated for more than one year, it might have a serious impact on seed production and population recruitment for the short-lived Holy Ghost ipomopsis.

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

No economic uses for the Holy Ghost ipomopsis are known. However, the low population numbers make the species vulnerable to harm from both scientific and nonscientific collecting. The species produces a very attractive flower which may make the plants more likely to be picked by visitors to the canyon, and if the plants become well known, there may be interest in propagating the species for commercial purposes.

C. Disease or Predation

No significant disease or predation has been observed for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

There is no Federal law presently protecting the Holy Ghost ipomopsis. The plant is protected by the New Mexico Plant Protection Act. This act prohibits the collection of the species unless a permit is granted by the New Mexico Energy, Minerals and Natural Resources Department. The Forest Service has included the Holy Ghost ipomopsis on its Sensitive Species List. The species is considered in Forest Service environmental assessments and planning. The Act would provide additional protection for this species through section 7 (interagency cooperation) requirements and through section 9 which prohibits malicious damage, destruction, or removal and reduction to possession of plants occurring on areas under Federal jurisdiction.

E. Other Natural or Man-Made Factors Affecting its Continued Existence

Low numbers and limited distribution make this species vulnerable to extinction from natural and man-made threats. Reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

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 propose this rule. Based on this evaluation, the preferred action is to list *Ipomopsis sancti-spiritus* as endangered without critical habitat. The status of endangered is appropriate because of the species' limited distribution, low population numbers, proximity of human development, and intensity of human use of the area. Potential threats include road maintenance, wildfire and fire management policy, habitat alteration, and pesticide applications. Critical habitat is not being proposed for the reasons discussed below.

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 presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *Ipomopsis sancti-spiritus* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Ipomopsis sancti-spiritus* more vulnerable and increase enforcement problems. Therefore, it would not now be prudent to determine critical habitat for *Ipomopsis sancti-spiritus*.

Available Conservation Measures

Conservation measures provided to those 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 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 certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is 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 to result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorized, 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 Act and its implementing regulations found in 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying endangered plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to

carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. However, because of its beauty, local demands for the species for garden cultivation may increase as the species becomes better known. Requests for copies of the regulations on listed plants and inquires regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia, 22203 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species.

(2) The location of any additional populations of this species and reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act.

(3) Additional information concerning the range, distribution, and population size of this species.

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Jennifer Fowler-Propst, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Service (see **ADDRESSES** section).

National Environmental Policy Act

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. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Sivinski, R., and K. Lightfoot. 1991. Status report on *Ipomopsis sancti-spiritus*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 17 pp.

Wilken, D.H., and R. Fletcher. 1988. *Ipomopsis sancti-spiritus* (Polemoniaceae), a new species from northern New Mexico. Brittonia 40(1):48-51.

Author

The primary author of this proposed rule is Anne Cully (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.12(h) for plants by adding the following entry in alphabetical order under the family Polemoniaceae-Phlox, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species						
Scientific name	Common Name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	
Polemoniaceae—Phlox family:						
*	*	*	*	*	*	
Ipomopsis sancti-spiritus	Holy Ghost ipomopsis	U.S.A. (NM)	E		NA	NA
*	*	*	*	*	*	

Dated: September 3, 1992.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 92-22417 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AA95

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Revised Proposal to Designate Critical Habitat for the Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that two public hearings will be held on the revised proposal to designate critical habitat for the least Bell's vireo (*Vireo bellii pusillus*). The hearings will allow all interested parties to submit oral or written comments on the proposal.

DATES: Two public hearings will be held, each from 1 to 4 p.m. and from 6 to 8 p.m. Hearings will be held on Tuesday, October 20, 1992, in Anaheim, California, and on Thursday, October 22, 1992, in San Diego, California. Comments from all interested parties must be received by November 5, 1992.

ADDRESSES: The hearing on Tuesday, October 20, 1992, will be held at the Hyatt Regency Alicante, 100 Plaza Alicante at Harbor and Chatman, Garden Grove (Anaheim), California. The Thursday, October 22, 1992, hearing will be held at the San Diego Concourse, 3d Avenue and B Street, San Diego, California. Written comments and materials may be submitted at the hearing or may be sent directly to Mr. Jeffrey Opdycke, Field Supervisor, U.S. Fish and Wildlife Service, Southern California Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffrey Opdycke, Field Supervisor, at the address listed above (Telephone: 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The least Bell's vireo (*Vireo bellii pusillus*) is a small, migratory songbird that breeds in riparian woodlands at a few localities in southern California and northwestern Baja California, Mexico. This subspecies has experienced a significant population decline and reduction of range in the United States that has been attributed largely to widespread destruction of its habitat and high rates of nest parasitism by the brown-headed cowbird (*Molothrus ater*). The current breeding population of the least Bell's vireo in California consists of about 500 pairs. Several hundred pairs are estimated to occur in Mexico.

On May 2, 1986, the least Bell's vireo was listed as endangered (51 FR 16483). A final decision on designation of critical habitat was deferred at that time and a revised proposal was published in the **Federal Register** on August 7, 1992 (57 FR 34892). Public comments on the revised proposed rule to designate critical habitat for the vireo will be accepted until November 5, 1992. Subsection 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of publication of a proposed rule.

Because of the level of interest in this proposed action, and in anticipation of requests for a hearing on the revised proposal, the Service has scheduled public hearings at the following locations:

Tuesday, October 20, 1992: Hyatt Regency Alicante, 100 Plaza Alicante at Harbor and Chatman, Garden Grove (Anaheim), California (1 to 4 p.m. and 6 to 8 p.m.)

Thursday, October 22, 1992: San Diego Concourse, 3rd Avenue and B Street, San Diego, California (1 to 4 p.m. and 6 to 8 p.m.)

Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the ADDRESSES section of this notice. The comment period closes on November 5, 1992.

Author

The primary author of this notice is Larry Salata, U.S. Fish and Wildlife Service, Southern California Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (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.).

List of Subjects in 50 CFR Part 17

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

Dated: September 8, 1992.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–22972 Filed 9–21–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Notice of 6-month Extension and Reopening of Public Comment Period on the Proposed Rule to List the Coastal California Gnatcatcher as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension and reopening of comment period on proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) extends for not more than 6 months the time to make a decision on its proposal to list the coastal California gnatcatcher (*Polioptila californica californica*) as an endangered species. The Service proposed endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the coastal California gnatcatcher on September 17, 1991 (56 FR 47053). The Service will use the 6-month extension provided in the Act to obtain and review information regarding the taxonomy of the coastal California gnatcatcher. The comment period is reopened for a period of 30 days.

ADDRESSES: Data, information, comments, or questions concerning this species should be submitted to the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. The complete file for this action is available for public inspection, by appointment, during normal business hours at the above address.

DATES: Data and comments must be submitted by October 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Opdycke, Field Supervisor, Carlsbad Field Office, at the above address (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1991, the Service proposed endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the coastal California gnatcatcher throughout its range in southern California and northern Baja California, Mexico. The coastal California gnatcatcher is a resident of the coastal sage scrub plant community. The primary reason for proposing this action was habitat loss and fragmentation from urban and agricultural development. About 65 percent of the historical coastal sage scrub has been lost in southern California.

The coastal California gnatcatcher is a small long-tailed member of the thrush family. It is dark blue-gray above, and grayish white below. Its tail is mostly black, as is the male's cap during the spring and summer. The coastal California gnatcatcher's call consists of three mew notes similar to those of a kitten.

The California gnatcatcher was originally described by Brewster (1881) as a distinct species. Thereafter it was regarded as a subspecies of the black-tailed gnatcatcher (*Polioptila malanura*) (Grinnell 1926). However, in his review of the black-tailed gnatcatchers, Atwood (1988) concluded that the California gnatcatcher (*P. californica*) was distinct

from the black-tailed gnatcatcher (*P. melanura*). The fact that the two are reproductively isolated where they overlap in distribution coupled with pronounced vocal differences and subtle contrasts in morphology and ecology formed the basis of this conclusion. This taxonomic treatment was formally accepted by the American Ornithologists' Union (1989).

The American Ornithologists' Union, however, has not formally reviewed the subspecific taxonomy of the California gnatcatcher. Two other subspecies of the California gnatcatcher, *P. c. pontilis* and *P. c. margaritae* occur in the central or southern portions of Baja California (Atwood 1991). In response to its proposed rule, the Service received comments from scientists questioning the scientific validity of the taxonomy of the subspecies of the California gnatcatcher. In a letter dated August 19, 1992, the Service formally asked the American Ornithologists' Union Committee on Classification and Nomenclature to review the validity of the taxon *Polioptila californica californica*.

The Act requires the Service to make a final decision within 1 year of the date of the proposal. If the Service finds that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Service may extend the 1-year period for not more than 6 months for purposes of soliciting additional data.

In part because of comments questioning the scientific validity of the subspecies, the Service is extending for not more than 6 months the time to make the final decision on the proposed listing of the coastal California gnatcatcher. The Service seeks comments and data from the scientific community and public regarding the subspecific taxonomy of the coastal California gnatcatcher.

References Cited

American Ornithologists' Union. 1989. Thirty-seventh supplement to the American Ornithologists' Union Check-list of North American birds. Auk 106: 532–538.

Atwood, J.L. 1988. Speciation and geographic variation in black-tailed gnatcatchers. Ornithol. Monogr. No. 42.

Atwood, J.L. 1991. Subspecies limits and geographic pattern of morphological variation in California gnatcatchers (*Polioptila californica*). Bull. S. Calif. Acad. Sci. 90: 118–133.

Brewster, W. 1881. On the affinities of certain Polioptilae, with a description a new species. Bull. Nuttall Ornithol. Club 6: 101–107.

Grinnell, J. 1926. A critical inspection of the gnatcatchers of the Californias. Proc. Cal. Acad. Sciences. 15(16):493–500.

List of Subjects in 50 CFR Part 17

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

Authority

The Authority for this action is: 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.

Dated: September 17, 1992.

Acting Director, U.S. Fish and Wildlife Service.

Jay L. Gerst,

[FR Doc. 92–23035 Filed 9–21–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amount and Quota Period for Tariff-Rate Quota for Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice affirms the Secretary of Agriculture's announcement of August 27, 1992 establishing the total amount of 1,231,000 metric tons, raw value, of sugars, syrups, and molasses that may be entered under subheadings, 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS) during the period of October 1, 1992 through September 30, 1993.

EFFECTIVE DATE: August 27, 1992.

ADDRESSES: Inquires may be mailed or delivered to Carol Harvey, Director, International Trade Policy, Import Policies and Trade Analysis Division (ITP/IPTAD), Foreign Agricultural Service, room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Carol Harvey, ITP/IPTAD 202–720–2916.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 3 to chapter 17 of the HTS provides as follows:

"The total amount of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11, during such period as shall be established by the Secretary of Agriculture (hereinafter referred to as "the Secretary"), shall not exceed in the aggregate an amount (expressed in terms of raw value) as shall be established by the Secretary. The Secretary shall determine such total amount as will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Such total amount shall consist of: (1) a base quota amount, (2) a quota adjustment amount, and (3) an amount reserved for the importation of specialty sugars as defined by the United States Trade Representative, to be allocated by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 3 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish a total amount (expressed in terms of raw value) for imports of sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties [1] of the tariff-rate quota and to establish the time period for entry of such total amount.

The Secretary is required to determine such total amount as will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT). The total amount, including a base quota amount, a quota adjustment amount, and an amount reserved for the importation of specialty sugars, is to be allocated by the United States Trade Representative (USTR), in accordance with paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS.

On August 27, 1992, I determined and announced by press release that the total amount of sugars, syrups, and molasses that may be entered under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS) during the period of October 1, 1992 through September 30, 1993, is 1,231,000 metric tons, raw value. The purpose of this notice is to affirm that determination.

[1] Pursuant to paragraph (a) of additional U.S. note 4 to chapter 17 of the HTS the duty-free treatment accorded to the importation of sugars, syrups and molasses from the beneficiary countries of the Generalized System of Preferences (GSP) and Caribbean Basin Economic Recovery Act (CBERA), entered under the subheadings of the HTS subject to the lower tier of the tariff-rate quota, is limited to the quantities as established by the Secretary and allocated by the United States Trade Representative pursuant to paragraphs (a) and (b), respectively, of additional U.S. note 3 to chapter 17. Currently, imports of sugars, syrups, and molasses from all beneficiary countries for purposes of the GSP and CBERA, except Brazil, are eligible for duty free entry in amounts not exceeding those allocated by the United States Trade Representative pursuant to paragraph (b) of additional U.S. note 3 to chapter 17 of the HTS.

Notice

This notice affirms my determination that in accordance with paragraph (a) of additional U.S. note 3 to chapter 17 of the HTS, a total amount of up to 1,231,000 metric tons, raw value, of sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1992 through September 30, 1993. I have further determined that the base amount is 1,166,000 metric tons, raw value; 92 metric tons, raw value, are reserved as a quota adjustment amount; and the amount reserved for the importation of specialty sugars is 1,656 metric tons, raw value. The minimum quota allocation is set at 72,580 metric tons, raw value. These amounts will be allocated among supplying countries and areas by the United States Representative.

I have also determined that such total amount will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Signed at Washington, DC, on September 18, 1992.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92–23161 Filed 9–18–92; 5:02 pm]

BILLING CODE 3410–10–M

Farmers Home Administration

Redelegation of Authority to Approve Debt Settlements and Releases of Liability in Connection with Voluntary Liquidations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: On October 17, 1991, the Farmers Home Administration (FmHA) Administrator redelegated certain authorities to all State Directors dealing with the settlement of and/or the release of liability on FmHA debts owed

by borrowers who made application to settle their FmHA debts or request of liability. Notice of this redelegation was published in 56 FR 55886 (October 30, 1991). The redelegation authority, granted on October 17, 1991, expires on September 30, 1992, and the Administrator now gives notice to extend that redelegation until September 30, 1993. All debt settlement/release of liability cases in excess of $1,000,000 (including principal, interest and other charges) must be submitted to the National Office for approval by the Administrator. This action is taken to expedite the processing of debt settlement applications/requests of borrowers who are unable to repay all of their FmHA debts.

The effect of the extension of the redelegation of the Administrator's authority is to continue to expedite the administrative review process for debt settlements and releases of liability, permitting more timely debt relief to FmHA borrowers, and to consequently reduce the Agency's portfolio of inactive uncollectible accounts.

EFFECTIVE DATE: October 1, 1992, through September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Phillip D. Elder, Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, room 5444, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 690–4020.

SUPPLEMENTARY INFORMATION:

Programs Affected

This action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low-Income Housing Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants.
10.428 Economic Emergency Loans.

The notice of the delegation of authority for approving debt settlement/release of liability cases reads as follows:

This extends the authority given under the unnumbered memorandum dated October 17, 1991, entitled "Extension of the Delegation of Authority for Approving Debt Settlement/Release of Liability Cases."

Pursuant to authority delegated to me as Administrator of the Farmers Home Administration, I hereby redelegate to State Directors authority to approve the following:

1. Debt settlement cases in accordance with § 1956.58(a) of subpart B of part 1956 of title 7 of the Code of Federal Regulations, entitled "Debt Settlement-Farmer Programs and Housing."

2. Releases of liability in accordance with §§ 1955.10(f)(2) and 1955.20(b)(2) of subpart A of part 1955 of title 7 of the Code of Federal Regulations, entitled "Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property."

3. Releases of liability in accordance with § 1962.34(h) of subpart A of part 1962 of title 7 of the Code of Federal Regulations, entitled "Servicing and Liquidation of Chattel Security," and §§ 1965.26(f)(5)(ii) and 1965.27(f) of subpart A of part 1965 of title 7 of the Code of Federal Regulations, entitled "Servicing of Real Estate Security for Farmer Programs Loans and Certain Note Only Cases."

This authority Does Not extend to debt settlement of Nonprogram loans, Economic Opportunity loans, and claims against third party converters. Cases where the borrower's total indebtedness, including principal, interest, and other charges, exceeds $1,000,000 must be submitted to the National Office for approval by the Administrator.

This extension of the redelegation shall be effective through September 30, 1993, unless revoked or otherwise modified in writing. The authority delegated to the State Director cannot be further delegated.

Dated: September 11, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–22859 Filed 9–21–92; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Exemption of Flat Salvage Timber Sale From Appeal, Gifford Pinchot National Forest, Lewis County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Flat Salvage Timber Sale in the area of the Cispus River on the Gifford Pinchot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342–3370.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ted C. Stubblefield, Forest Supervisor, Gifford Pinchot National Forest, 6926 E. 4th Plain Blvd., Vancouver, WA 98661.

SUPPLEMENTARY INFORMATION: In January 1990, a severe windstorm occurred within the Randle Ranger District of the Gifford Pinchot National Forest and haphazardly leveled patches of timber in various locations throughout the District. Consideration for harvest in many of these areas was deferred during the remainder of 1990 due to the difficulty in adding to or altering the list of timber sales to be sold. All proposed timber sales during this period had to be reviewed by the Forest Advisory Board as mandated by the Section 318 Budget Amendment process of 1989–1990.

In the fall of 1990, an interdisciplinary team (IDT) was assigned to assess the affected areas within the vicinity of the Cispus River and to conduct initial scooping to determine the depth of analysis needed for an informed decision. At this time, the Randle Ranger District sent out a scoping letter that briefly described the proposed Flat Salvage project, its location, approximate volume of timber to be removed, estimated acres, and general goals for the project. The letter, which requested public involvement, was sent to all individuals and organizations on the District's environmental assessment mailing list.

Based on the scoping for this proposal and considering input received from the public, the following was identified as the driving issue for this project: The effect of the project on water quality and fisheries.

Current analysis for this proposed project indicates that considerable insect and fungus infestation of the dead and down timber has taken place. The resulting decay has reduced the original merchantable sawtimber volume by approximately 55 percent. Delay of harvest of this material beyond 1992 will likely result in further deterioration to the extent that virtually none of the original merchantable sawtimber volume will remain.

The IDT developed three alternatives for analysis, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 182 acres of down, dead, and dying timber with a harvest volume of approximately 330 thousand board feet (MBF). No new permanent roads will be constructed for this project, and the landings and one short temporary road

that need to be constructed will be obliterated following their use for this project.

The U.S. Fish and Wildlife Service (USFWS) was consulted in January 1991 about the effects of this proposal on the northern spotted owl and northern bald eagle. This consultation and the Biological Evaluation produced by the District Wildlife Biologist in conjunction with the environmental analysis for this project has indicated the project would have no effect on northern spotted owl and northern bald eagle populations or habitat.

This proposal is consistent with the March 3, 1992, Record of Decision and Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests. The project is not within a Habitat Conservation Area, critical habitat area, and does not harvest suitable spotted owl habitat. This project is not affected by the current injunction by Judge Dwyer on the harvest of spotted owl habitat within the National Forests.

The Flat Salvage Timber Sale and accompanying work is designed to accomplish the timber salvage objectives as quickly as possible and minimize the loss of additional merchantable timber volume. To expedite this timber sale project and the accompanying work this project is exempt from appeal (36 CFR part 217). Under this Regulation, and following is exempt from appeal:

Decisions related to rehabilitation of National Forest system lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decision from review under this part.

Upon publication of this notice, the Decision Notice for the Flat Salvage Timber Sale will be signed by the Forest Supervisor. This project will not be subject to review under 36 CFR part 217.

Dated: September 16, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-22889 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Jackpot Salvage Timber Sale From Appeal, Gifford Pinchot National Forest, Lewis County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Jackpot Salvage Timber Sale in the area of the North Fork Cispus River on the Gifford Pinchot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4 (a) (11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ted C. Stubblefield, Forest Supervisor, Gifford Pinchot National Forest, 6926 E. 4th Plain Blvd., Vancouver, WA 98661.

SUPPLEMENTARY INFORMATION: In January, 1990, a severe windstorm occurred within the Randle Ranger District of the Gifford Pinchot National Forest and haphazardly leveled patches of timber in various locations throughout the District. Consideration for harvest in many of these areas was deferred during the remainder of 1990 due to the difficulty in adding to or altering the list of timber sales to be sold. All proposed timber sales during this period had to be reviewed by the Forest Advisory Board as mandated by the Section 318 Budget Amendment process of 1989-1990. Consequently, it was not until the summer of 1991 that all of the impacted areas were identified and surveyed to determine the extent of the blowdown and damaged timber.

In July, 1991, an interdisciplinary team (IDT) was assigned to assess the affected areas within the North Fork Cispus River drainage and to conduct initial scoping to determine the depth of analysis needed for an informed decision. On October 15, 1991, the Randle Ranger District sent out a scoping letter that briefly described the proposed Jackpot Salvage project, its location, approximate volume of timber to be removed, estimated acres, and general goals for the project. The letter, which requested public involvement, was sent to all individuals and organizations on the District's environmental assessment mailing list.

Based on the scoping for this proposal and considering input received from the public, four major issues were identified for this project. These were: (1) The effect of the project on northern spotted owl habitat; (2) the effect of the project on riparian areas and fisheries; (3) the effect of the project on deer and elk winter range; and (4) the economic cost versus benefit for the project.

The analysis for this proposed project indicates that considerable insect and fungus infestation of the dead and down timber has already taken place. The resulting decay has reduced the original merchantable sawtimber volume by approximately 20 percent. An additional 15 percent of the merchantable sawtimber volume could be lost if salvage of this timber is delayed until 1993. In addition, bark beetles which originated in the down timber have begun to attack live standing timber nearby. Standing trees adjacent or near to the areas of blowdown show evidence of bark beetle attacks or have died as a result. If this condition is allowed to continue, the insect population could reach epidemic levels, resulting in the death of a significant number of live, healthy trees.

The IDT developed three alternatives for analysis, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment which was prepared for the proposal. The Proposed Action (Alternative 3) would harvest about 46 acres of down, dead and dying timber with a harvest volume of approximately 1.1 million board feet. No new permanent roads will be constructed for this project, and the few temporary roads and landings that need to be constructed will be obliterated following their use for this project.

The U.S. Fish and Wildlife Service (USFWS) has been consulted about the effects of this proposal on the Northern spotted owl. The biological opinion of the USFWS concerning this project is pending. the Biological Evaluation produced by the District wildlife biologist in conjunction with the environmental analysis for this project indicates that the proposed action is not likely to adversely affect spotted owls or their habitat.

This proposal is consistent with the March 3, 1992, Record of Decision and Final Environmental Impact Statement on Management for the Northern Spotted Owl in the National Forests. The project is not within a Habitat Conservation Area, critical habitat area, and does not harvest suitable spotted owl habitat. This project is not affected by the current injunction by Judge Dwyer on the harvest of spotted owl habitat within the National Forests. The timber sale and accompanying work is designed to accomplish the timber salvage objectives as quickly as possible and minimize the amount of merchantable timber volume lost. To expedite this timber sale project and the accompanying work, this project is exempt from appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to

exempt such decisions from review under this part.

Upon publication of this notice, The Decision Notice for the Jackpot Salvage Timber Sale will be signed by the Forest Supervisor. This project will not be subject to review under 36 CFR part 217.

Dated: September 16, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-20888 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Flatiron Salvage and Rehabilitation Project Umatilla National Forest, Wheeler County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Flatiron Salvage and Rehabilitation Project, located on the Heppner Ranger District, Umatilla National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4 (a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Jeff Blackwood, Forest Supervisor, Umatilla National Forest; 2517 SW. Hailey Avenue; Pendleton, Oregon 97801, or Delanne Ferguson, District Ranger, Heppner Ranger District; P.O. Box 7; Heppner, Oregon 97836.

SUPPLEMENTARY INFORMATION: From the early 1980's to the present, an infestation of western spruce budworm and other insects has been affecting major forested portions of the Umatilla National Forest. Much of the heaviest infestation has been on the Heppner Ranger District. The infestation level has dramatically increased in the Flatiron area in the last 3 years. In the Fall of 1990, a District interdisciplinary team (IDT) surveyed much of the infested area to assess the damage to the resources that had occurred. Insect damage included defoliation and mortality among host species (Douglas-fir and white fir), loss of wildlife habitat and cover, loss of riparian and instream habitat, and increased risk of catastrophic fire.

The IDT identified the need to salvage the insect-killed trees in as short a time as possible while the logs are still merchantable. Rapid deterioration of insect-killed trees, especially those of the smaller diameter, will quickly reduce their merchantability and economic value. The IDT also identified the need and desirability to complete the logging quickly so that establishment of new forest stands and other restoration measures can take place promptly.

An environmental analysis of these actions for the Flatiron area began in early 1991. After public meetings and contacts with individuals, groups, state and federal agencies, and the Confederated Tribes of the Umatilla Indian Reservation, the following major issues were identified: Stand health, timber salvage, big game habitat and wildlife travelways, and riparian rehabilitation.

The IDT developed three alternatives, including a no-action, to meet the identified needs and address the issues. The effects of these alternatives are disclosed in an environmental assessment (EA) prepared for the proposal. A working copy of the EA was released for a 30 day review and comment period, to give the public an avenue for input on the proposal. The final EA incorporates information resulting from comment on the working copy.

The proposed action (Alternative B), as modified, will salvage harvest approximately 502 acres of high priority, insect damaged stands. Stands selected for harvest exhibited high to extreme levels of defoliation and mortality by western spruce budworm and other insects identified in a 1991 Forest Service survey. Within the stands, only dead and dying host species, Douglas-fir, and white fir will be selected for harvest. The proposed action would produce about 4 million board feet of timber. To access the damaged stands, approximately one-half mile of temporary road will be constructed and 2.1 miles of road will be reconstructed. Logging systems will include tractor yarding on 491 acres and cable pull on 11 acres. Reforestation with seral species will occur on 423 acres. Rehabilitation activites include: Planting hardwoods on 9 acres of riparian habitat; subsoiling to relieve soil compaction on 111 acres; fertilizing to promote a faster return of big game cover values; and developing three upland water sources to expedite the rehabilitation of three riparian water sources. Other proposed activities include: Installing protective tubing around seedlings; implanting select Doublas-fir seed trees with acephate (a systemic insecticide); precommercial thinning; underburning for site preparation; and applying porcupine and gopher damage control measures to protect tree regeneration.

Biological evaluations have been completed for all plant, wildlife, and fish Proposed, Endangered, Threatened and Sensitive species within the project area. All biological evaluations indicated that projects could proceed as planned.

The salvage sale and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR part 217 is being followed. Under this regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

This project will not be subject to review under 36 CFR part 217. Upon publication of this notice in the **Federal Register**, the Decision Notice for the Flatiron Salvage and Rehabilitation Project will be signed by the Forest Supervisor.

Dated: September 16, 1992.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 92-22890 Filed 9-21-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, October 8, 1992, and reconvene at 9 a.m. and adjourn at 2 p.m. on Friday, October 9, 1992 at the Federal Building Courthouse, 2nd Floor, room 209, 310 New Bern Avenue, in Raleigh. The purpose of these meetings are: (1) To discuss the status of the Commission; (2) to hear reports on civil rights progress and/or problems in the State; and (3) to discuss the current project on racial tensions in North Carolina with mayors from several key NC cities; and, (4) to discuss racial tensions in Raleigh with community leaders.

Persons desiring additional information, or planning a presentation to the Committee should contact North Carolina Chairperson, Joseph DiBona at 919/684-3924 or Bobby D. Doctor, Regional Director, Southern Regional

Office of the U.S. Commission on Civil Rights at (404/730–2476, TDD 404/730–2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington DC, September 14, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–22852 Filed 9–21–92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Increase in the Prohibition on Exports of Unprocessed Timber Harvested From Public Lands in Washington State

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: On December 29, 1991, the Secretary of Commerce, pursuant to section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (the Act) (16 U.S.C. 620 *et seq.*), issued an order prohibiting for the period beginning January 1, 1992, and ending December 31, 1993 the export of 75 percent of the unprocessed timber originating from non-Federal public lands located in states with annual timber sales volumes greater than 400 million board feet. The Secretary is also authorized by the Act to increase the amount prohibited from export provided certain determinations are made. In light of the current timber supply situation, the Secretary is considering an increase in the prohibition to 100 percent. This notice solicits comments on such an increase.

DATES: Comments must be received by October 22, 1992.

ADDRESSES: Written comments (three copies) should be sent to Bernard Kritzer, Senior Industry Analyst, Office of Foreign Availability, room H–1087, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Industry Analyst, Office of Foreign Availability, room H–1087, U.S. Department of Commerce, Washington, DC 20230, (202) 377–8074.

SUPPLEMENTARY INFORMATION:

I. Background

Section 491 of the Forest Resources Conservation and Shortages Relief Act of 1991 (the Act), contains prohibitions on the export of unprocessed timber harvested from state or other non-Federal public lands ("public lands") in the contiguous states located west of the 100th meridian. The Act requires the Secretary of Commerce to issue orders prohibiting the export of all unprocessed timber originating from public lands in states with annual timber sales volumes of 400 million board feet (MMBF) or less; and to restrict the export of 75 percent of the annual sales volume of unprocessed timber from public lands in any states with annual timber sales volumes exceeding 400 MMBF. The State of Washington is the only state that qualifies under the 75 percent standard.

On December 29, 1991, the Secretary of Commerce, pursuant to section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (the Act) (16 U.S.C. 620 *et seq.*), issued an order prohibiting for the period beginning January 1, 1992, and ending December 31, 1993 the export of 75 percent of the unprocessed timber originating from public lands located in states with annual timber sales volumes greater than 400 million board feet.

Since that Order was issued, the Department has been monitoring the timber supply situation in Washington State. Available information indicates that there has been a substantial drop in the supply of timber due principally to the reduction of the Federal timber supply in Washington State. Because this is adversely affecting the availability of forest resources and products, the Secretary is considering increasing the prohibition on exports from 75 to 100 percent.

Section 491(c) permits the Secretary of Commerce to increase the amount of unprocessed Washington State timber prohibited from export above the 75 percent minimum amount required by the Act, based on a determination that: (1) The purposes of the Act have not been adequately met; and (2) such an increase would further the purposes of the Act. In pertinent part, the statutory purposes that would be related to an increase are those that: (1) Promote the conservation of forest resources in conjunction with State and Federal resources management plans, and other actions or decisions, affecting the use of forest resources; and (2) take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States.

II. Scope/Definitions/Species Coverage

A. Scope

The Department invites written comments from interested parties that may assist the Secretary in making the determinations whether to increase the quantity of unprocessed timber subject to the prohibition. Specifically, we solicit information concerning the following:

(1) Actions or decisions taken, for the purpose of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products;

(2) Whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous 12 months;

(3) The probable effects of unprocessed timber exports on the ability of timber mills to acquire unprocessed timber;

(4) Whether the purposes of the Act are being adequately met; and

(5) Whether an increase in the prohibition on export to 100 percent would further the purposes of the Act.

B. Definitions

For purposes of this notice, the Department is using the following definitions:

(1) *Unprocessed timber* means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end-product use. The term *unprocessed timber* does not include timber processed into any one of the following:

(a) Lumber or construction timbers, meeting current American Lumber Standard Grades, sawn on 4 sides not intended for remanufacture;

(b) Lumber, construction timbers, or cants for remanufacture, meeting current American Standard Grades, sawn on four sides, not to exceed twelve inches in thickness;

(c) Lumber, construction timbers, or cants for remanufacture that do not meet the grades referred to in paragraph (b) above, and are sawn on four sides, with wane less than one-quarter of any face, not exceeding eight and three-quarters inches in thickness;

(d) Chips, pulp, or pulp products;

(e) Veneer or plywood;

(f) Poles, posts, or piling cut or treated with preservatives for use as such;

(g) Shakes or shingles;

(h) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;

(i) Pulp logs or cull logs processed at domestic pulpmills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

(2) The term *public lands* means lands located west of the 100th meridian in the contiguous 48 states, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(a) Held by the United States;

(b) Held in trust by the United States for the benefit of any Indian tribe or individual; or

(c) Held by any Indian tribe or individual subject to a restriction by the United States against alienation.

c. Species Coverage

This notice only pertains to unprocessed timber harvested from public lands in Washington State. The timber is described in Schedule B (Statistical Classification of Domestic and Foreign Commodities Exported from the United States) as wood in the rough whether or not stripped of bark or sapwood, or roughly squared, which includes:

4403.20.0025/2—Ponderosa Pine (Pinus ponderosa);
4403.20.0030/5—Pine Other;
4403.20.0035/0—Spruce (Picea spp.);
4403.20.0040/3—Douglas-fir (Psuedotsuga menziesii);
4403.20.0050/0—Western Hemlock (Tsuga metero-phylla);
4403.20.0060/8—Logs & Timber Other; and
4403.99.0050/6—Western Red Alder (Alnus rubra).

This notice does not pertain to unprocessed western red cedar timber harvested from Washington State public lands. (Under the Export Administration Regulations the Department maintains other quantitative restrictions on the export of unprocessed western red cedar logs harvested from Federal and state lands).

III. Procedure

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the statutorily-mandated limitation on the export of unprocessed timber, which would be continued or possibly be increased following consideration of the public comments on this notice, will not have a significant economic impact on a substantial number of small entities. This is because the range of possible limitations amounts to a small expansion of a preexisting export prohibition, and would affect only a small number of exporters.

This notice is intended to provide all interested parties, especially those in the forest products industry, consumer groups, environmental groups, the maritime industry, and all other industries, groups, or individuals likely to be affected by an increase in export restrictions on unprocessed timber harvested from public lands in the State of Washington with an opportunity to submit written comments.

The following procedures will apply for any comments submitted pursuant to this notice:

(1) Interested parties are invited to submit written comments (3 copies), opinions, data, information, or advice with respect to this notice to the address above by the dates specified above.

(2) All comments received before the close of the comment period will be considered by the Department in completing the review. While comments received after the end of the comment period will be considered if possible, this cannot be assured. All public comments, whenever received, will be a matter of public inspection and copying. (Communications from agencies of the United States Government or foreign governments will not be made available for public inspection).

(3) If oral comments are received during a meeting or telephone conversation, a written summary will be prepared. This summary will also be a matter of public record and will be available for public review and copying.

(4) Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a nonconfidential submission that can be placed in the file. If this procedure is not followed, the comments and materials that appear to be business confidential will be returned to the submitter and will not be considered.

(5) The comments received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Bureau of Export Administration, U.S. Department of Commerce, room H–4505, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Records held there, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Freedom of Information Officer, Bureau of Export Administration, at the above address or by calling (202) 377–5653.

Dated: September 18, 1992.

William L. Clements,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 92–23092 Filed 9–18–92; 3:26 pm]

BILLING CODE 3510–DT–M

Economics and Statistics Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Susanne H. Howard—Chair
Barbara E. Bryant
O. Bryant Benton
William P. Butz
Charles D. Jones
Robert D. Tortora
Charles A. Waite
Carol S. Carson
Allan H. Young
John E. Cremeans
Frederick T. Knickerbocker
Johnathan C. Menes
Henry P. Misisco
Katherine K. Wallman
Harry A. Scarr

James W. Moses,

Executive Secretary, Economics and Statistics Administration, Performance Review Board.

[FR Doc. 92–22853 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–BS–M

Foreign-Trade Zones Board

[Docket 53–91]

Foreign-Trade Zone 22, Chicago, IL; Application for Expansion Amendment

The pending application of the Illinois International Port District (IIPD), grantee of FTZ 22, requesting authority to expand its zone in the Chicago, Illinois, area (Docket 53–91, filed 9/16/91, 56 FR 48157, 9/24/91), has been amended to include an additional site.

The application originally requested authority to expand the zone to include a proposed warehouse facility (8 acres) located at Gerry Drive and Hansen Court in Wood Dale, Illinois, which would be operated by Meiko America, Inc. The amendment requests authority to extend temporary zone status to

December, 1994 for an existing warehouse facility (1 acre) located at 1351 Mark Street, Elk Grove Village, at which Meiko is conducting general-purpose zone warehousing activity. The extension will allow Meiko to continue offering zone services at the Elk Grove Village site until construction is completed on a warehouse at the Wood Dale site.

The comment period is reopened until November 6, 1992.

The application and amendment material are available for public inspection at the following locations:

U.S. Department of Commerce District Office, Room 1406, Mid-Continental Plaza Building, 55 E. Monroe Street, Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: September 14, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92-22982 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 29-92]

Foreign-Trade Zone 40, Cleveland, OH; Application for Subzone; Lincoln Electric Co.; Euclid and Mentor (Cleveland area), Ohio (Arc Welding Equipment, Rods and Other Supplies)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the arc welding equipment/supplies manufacturing facilities of the Lincoln Electric Company (Lincoln) in Euclid and Mentor, Ohio, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 8, 1992.

Lincoln's Cleveland area facilities are located at 2 sites (227 acres): *Site 1* (120 acres)—world headquarters and manufacturing facility, 22801 St. Clair Avenue, Euclid, Cuyahoga County; *Site 2* (107 acres)—manufacturing facility, 6500 Heisley Road, Mentor, Lake County.

The facilities (2,500 employees) are used to produce arc welding equipment, steel and steel alloy welding electrodes (rod and wire) and other welding consumables, such as flux. While Lincoln also produces industrial electric motors at these facilities, authority to manufacture the motors under zone procedures is not requested at this time. Up to 25 percent of the components used in the production of welding electrodes are sourced abroad, including nickel, iron, and steel bars (carbon, alloy, and stainless), stainless steel wire, mineral ores, metal powders, and welding rods and wire. Also, some 15 percent of the components incorporated into welding equipment are foreign-sourced, including diesel engines, industrial robots, ball bearings, and welder parts. Exports account for 15-20 percent of production.

Zone procedures would exempt Lincoln from Customs duty payments on foreign parts that are used in its export production. On its domestic sales, it would be be able to choose the duty rate that applies to the finished product (welding equipment—2%, welding rod—duty free). The duty rates on foreign components range from duty-free to 11 percent. The application indicates that zone savings will help improve the plant's competitiveness and increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 23, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 7, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Room 600, 668 Euclid Avenue, Cleveland, Ohio 44114.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 11, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-22980 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 30-92]

Foreign-Trade Zone 53, Tulsa, OK; Application for Expansion and Request for Manufacturing Authority Mercury Marine (Marine Engines)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tulsa-Rogers County Port Authority, grantee of FTZ 53, requesting authority to expand its zone in the northeastern Oklahoma area, and requesting authority on behalf of the Mercury Marine Division of the Brunswick Corporation (Mercury), to manufacture marine engines and drives under zone procedures within the expanded zone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 9, 1992.

FTZ 53 was approved on December 7, 1979 (Board Order 151, 44 FR 76382, 12/26/79), and currently consists of 57 acres within the 2,000-acre port terminal and industrial park of the Tulsa Port of Catoosa in Rogers County, on the Arkansas River Navigation system, some 15 miles east of the City of Tulsa.

The applicant is now requesting authority to expand the general-purpose zone by adding 4 new sites (3,100 acres) in the northeast Oklahoma area: *Site 1* (1,731 acres)—within the eastern portion of the 3,500-acre Tulas International Airport, owned by the City and operated by the Tulsa Airport Improvement Trust; *Site 2* (750 acres)—within the 9,000-acre MidAmerica Industrial Park in Mayes County, owned by the Oklahoma Ordnance Works Authority; *Site 3* (160 acres)—the Bartlesville Industrial Park on U.S. Highway 60 and Bison road, Bartlesville (Washington County), owned by the City of Bartlesville; *Site 4* (500 acres)—within the 1,500-acre Stillwater Industrial Park, east of U.S. Highway 177 in Stillwater (Payne County), to be operated by the Stillwater Industrial Foundation.

The Mercury plant is located at 3003 North Perkins Road, within the Stillwater Industrial Park. The facility is used for the manufacture of marine engines and stern drive units. Among the foreign components used by the company are: carburetors, diesel engines, trim cylinders, coil, alternators, bevel gear, transmissions, steering gear and pulleys. Some of the finished units are exported.

Zone procedures will exempt Mercury from Customs duty payments on foreign components used in production for export. On its domestic sales, the company would be able to choose the finished product duty rate (duty free). The duty rates on the foreign components range from 2 to 4 percent. The company also produces a limited number of customized auto engines, but does not request authority to use zone procedures for these engines.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 23, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 7, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Tulsa International Airport, Tulsa, Oklahoma 74115.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 11, 1992.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 92–22981 Filed 9–21–92; 8:45am]

BILLING CODE 3510–DS–M

[Docket 63–91]

Foreign-Trade Zone 61, San Juan, Puerto Rico; Application for Subzone Searle Pharmaceutical Plant, Caguas, Puerto Rico; Amendment

Notice was recently given (57 FR 38667, 8/26/92) that the Application submitted by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical products manufacturing facilities of Searle & Co. (Searle) (subsidiary of G.D. Searle & Co.) in Caguas, Puerto Rico (FTZ Doc. 63–91, filed 10/22/91, 56 FR 56187, 11/1/91), was amended to include additional end products and foreign-sourced materials used at the Caguas facility.

The original application and notice listed a number of specific end products and ingredients used in the production process. The amendment expanded the scope of end products and ingredients to be considered.

The first notice of the amendment referred to certain new end products. This further notice is being given to provide information on certain materials that could be sourced from abroad to be used in making products at the plant: protein concentrates, chlorides, bromides, amine-, carboxyamide-, and nitrile-function compounds, organo-sulfur and heterocyclic compounds, carboxylic acids, hormones, ketones, antibiotics, derivatives of hydrocarbons, vegetable alkaloids, natural polymers, certain medicaments and pharmaceutical products, and other related chemical products. Duty rates range from duty free to 23.5 percent.

The amended application remains otherwise unchanged.

The comment period is reopened until October 20, 1992.

The amendment is available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 14, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92–22983 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–583–023]

Clear Sheet Glass From Taiwan; Recission of Notice of Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Recission of notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public that it will not revoke the antidumping finding on clear sheet glass from Taiwan.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

In accordance with § 353.25(d)(4) of the Department of Commerce's (the Department) regulations, if for four annual anniversary months no interested party has requested an administrative review of a finding, under § 353.22(a) of the regulations, not later than the first day of the fifth consecutive annual anniversary month the Secretary will publish in the **Federal Register** a notice of "Intent to Revoke Finding." On August 3, 1992, the Department published a notice of intent to revoke the antidumping finding on clear sheet glass from Taiwan (36 FR 16508, August 21, 1971).

Because we conducted an administrative review of the antidumping finding on clear sheet glass from Taiwan for the period August 1, 1989 through July 31, 1990, and published the final results in the Federal Register on September 6, 1991 (56 FR 44075) this finding does not qualify for revocation pursuant to 19 CFR 353.25(d)(4), and we hereby rescind our intent to revoke the finding.

This notice is in accordance with 19 CFR 353.25(d).

Dated: September 14, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–22984 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–003]

Cotton Shop Towels From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 19, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cotton shop towels from the People's Republic of China (PRC) (57 FR 21229). We have now completed the review and determine the dumping margins to be 72.14 percent for Tianjin Arts & Crafts Import and Export Corporation (TAC), and 122.81 percent for Chinatex and China National Arts and Crafts Import and Export Corporation (CNART), based on best information available, during the period October 1, 1990 through September 30, 1991.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo, Elizabeth Levy or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 19, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 21229) the preliminary results of its administrative review of the antidumping duty order on

cotton shop towels from the PRC (48 FR 45277, October 4, 1983) covering the period October 1, 1990 through September 30, 1991. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On January 27, 1992, questionnaires were issued to the producers/resellers listed above. TAC, which until January 1, 1989, was named China National Arts and Crafts Import and Export Corporation, Tianjin Branch, was the only company that responded to the Department's questionnaire. In its response, TAC stated that it had made no sales or shipments of subject merchandise that entered the United States during the period of review. TAC has previously met the qualifications necessary for receiving a separate rate. Because there has been no indication that this status has changed, we have continued to apply a separate rate to TAC during the present administrative review.

See Cotton Shop Towels from the PRC: Final Results of Antidumping Duty Administrative Review (57 FR 30466, July 9, 1992).

Use of Best Information Available

We have assigned to all other PRC firms, for which a review was requested, a deposit rate based on the best information available (BIA), in accordance with section 776(c) of the Act, because no other named PRC exporter responded to our questionnaire. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department will assign to that company the highest margin calculated for any company in this review, any previous review or the original investigation. See, e.g., AntiFriction Bearings (Other than tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany: Final Results of Antidumping Duty Administrative Review (56 FR 31692, 31704, July 11, 1991). In this case, the highest margin is from a previous review.

Scope of the Review

The products covered by this review are cotton shop towels from the PRC. This merchandise is classifiable under item number 6307.10.2005 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers three producer/resellers of cotton shop towels to the United States and the period October 1, 1990 through September 30, 1991. TAC reported no shipments during the period of review. The Department requested all entry documentation for subject merchandise during the period of review from the United States Customs Service. Based on the information provided, we have confirmed that there were no entries of the subject merchandise into the United States by TAC during the review period. Therefore, for this review period, the Department is assigning TAC the deposit rate from the most recent final results of the review in which TAC had shipments. This was for the fifth administrative review covering the period October 1, 1989 through September 30, 1990 (57 FR 30466, July 9, 1992).

The Department is assigned all other exporters of cotton shop towels located within the PRC a single country-wide rate based on best information available. See Iron Construction Castings from the PRC; Final Results of Antidumping Duty Administrative Review (56 FR 2742, January 24, 1991); Shop Towels of Cotton from the PRC; Final Results of Antidumping Duty Administrative Review (56 FR 4040, February 1, 1991). The only company eligible to receive a separate rate, TAC, is also the only company to respond to the Department's questionnaire. Since the other two companies for which a review was requested, Chinatex and CNART, did not respond, the Department must rely on best information available as the basis for the country-wide rate.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of the Review

As a result of this review, we determine the dumping margins to be:

Producer/exporter	Margin (percent)
TAC	72.14
All other companies without specific rates	122.81

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate(s) for the reviewed company(ies) and any other company without a company-specific rate will be as listed above; (2) for previously reviewed or investigated companies with company-specific rates not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1992.

Rolf Th. Lundberg,

Acing Assistant Secretary for Import Administration.

[FR Doc. 92-22986 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 31, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers one firm, Sugiyama Chain Co., Ltd. (Sugiyama), and various Japanese exporters of Sugiyama products to the United States for the periods April 1, 1981 through March 31, 1987, and April 1, 1989 through March 31, 1990.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed some of the margins from those presented in our preliminary results.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Marenick or Michael J. Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 3745) the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226, April 12, 1973). The Department has now completed that administrative review with respect to Sugiyama Chain Co., Ltd. in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

The Department attempted to verify the information submitted by Sugiyama for the period April 1, 1985 through March 31, 1986, but was unable to do so. Therefore, for the 1985-1986 review period, we have used the best information available (BIA). As BIA we used 43.29 percent, the highest rate for any firm in a prior review period. (See Roller Chain, Other Than Bicycle, From Japan; Final Results of Administrative Review of Antidumping Finding (46 FR 44488, September 4, 1981).)

During the conduct of these reviews, we determined that Sugiyama and its primary home market customer are related parties pursuant to the antidumping law. On July 19, 1991, we issued a deficiency letter requesting that Sugiyama report its prices to its first unrelated customers in the home market for all review periods, since most of its reported home market sales were to related customers. We advised Sugiyama that since this was a deficiency letter, we would not be requesting further information or additions, and we would use what it submitted, to the extent such information was usable. On August 21, 1991, we received Sugiyama's response to our deficiency letter, accompanied by replacement computer tapes and printouts.

As a result of our review of Sugiyama's response to our deficiency letters, we have concluded that Sugiyama's new tapes, containing home market sales of unrelated customers, were inadequate and that we were unable to use them in our dumping calculations for each of the periods covered by this review. Sugiyama's August 21, 1991 submission did not identify quantities for each transaction and provided merely list prices rather than actual selling prices. Further, that submission provided on actual sales dates. Instead of providing a date of sale for each transaction, Sugiyama only listed the entire review period in question, e.g., April 1, 1989-March 31, 1990. Therefore, we were unable to use this submission and we resorted to BIA for the unmatched U.S. sales. Our source for BIA is discussed in our response to *Comment 20* of this notice.

Scope of the Review

Imports covered by these reviews are shipments of roller chain, other than bicycle. The term "roller chain, other than bicycle," as used in these reviews, included chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and Bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

These reviews also cover leaf chain, which consists of a series of link plates alternatively assembled with pins in such a way that the joint is free to articulate between adjoining pitches. These reviews further cover chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule (HTS) item numbers 7315.11.00 through 7616.90.00. During some of the review periods the merchandise was classified under various provisions of the Tariff Schedules of the United States Annotated (TSUSA) from item numbers 652.1400 through 652.3800. HTS and TSUSA numbers are provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover one manufacturer/exporter of roller chain, other than bicycle, from Japan, Sugiyama Chain Co., Ltd., and various Japanese exporters of Sugiyama products to the United States for the periods April 1, 1981 through March 31, 1987, and April 1, 1989 through March 31, 1990.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from Sugiyama and the petitioner, the American Chain Association (the ACA).

Comment 1

Sugiyama claims that it has been denied due process by incomplete disclosure of our preliminary results. Specifically, Sugiyama asserts that our calculation of total value and total dumping duties for the 1981-1982 period may be erroneous. Sugiyama asserts, however, that without a complete set of printouts, there is no way for it to determine whether our calculations are indeed erroneous.

Department's Position

We disagree with Sugiyama. We conducted a disclosure conference with Sugiyama on February 10, 1992. At that conference we released each of the computer programs used to calculate our preliminary results for the 1981-1982, 1982-1983, 1983-1984, 1984-1985, 1986-1987, and 1989-1990 reviews for Sugiyama. These computer programs include every calculation used to produce our preliminary results.

In addition to providing Sugiyama with the relevant computer programs, we released to Sugiyama sample pages of each of the calculations used in deriving our preliminary results. These printouts, together with the computer programs and analysis memoranda, provided Sugiyama with adequate opportunity to examine the results of our calculations, and to comment meaningfully and completely upon our preliminary results. Finally, because we used Sugiyama's own data to derive our preliminary results, Sugiyama could have replicated each of our calculations using its own data base, had it so desired.

Comment 2

Sugiyama argues that we have unduly prejudiced the company in these reviews. Specifically, Sugiyama argues that we (1) have vitiated its opportunity to obtain an early revocation, (2) created an environment where certain information requested in our July 19, 1991 deficiency letter is no longer available, and (3) retroactively applied rules and methodological changes in our margin calculations.

Department's Position

In these reviews we have tried to accommodate the needs of each of the interested parties while being mindful of our statutory obligation to complete these delayed reviews as promptly as possible. Section 353.25(a) of our regulations stipulates that a firm must have three consecutive years of no dumping to qualify for revocation. Because our analysis of Sugiyama's data reveals dumping margins, Sugiyama does not qualify for revocation. Sugiyama's dumping margins resulted from its pricing practices not from any improper or unfair action by the Department.

Our July 19, 1991 request for information was made necessary by our conclusion on July 16, 1991, that Sugiyama and its primary home market customer must be viewed as related parties. The information requested was needed, among other reasons, to enable us to determine whether sales to two of Sugiyama's home market customers were at arm's length. Sugiyama and its related companies are responsible for preserving relevant data for periods for which reviews have not been completed. A failure to do so does not justify an incomplete response, even when completion of a review is significantly delayed. *See Koyo Seiko Co., Ltd.* v. *United States*, (CIT Slip Op. 92-72, May 15, 1992). Finally, we note that our administration of the antidumping law is not subject to the Administrative Procedures Act. Thus, there is no requirement that we limit our changes in calculation methodology to "prospective" changes. (See our response to *Comment 1* in *Color Television Receivers from Korea: Final Determination of Sales at Less Than Fair Value (49 FR 7640, March 1, 1984).)*

Comment 3

Sugiyama claims that the 1985-1986 review was not requested by the ACA but rather by the ACA's attorney acting in concert with one of its members. Sugiyama argues that the request was not filed "on behalf of the ACA" because a majority of its members allegedly had not approved of the request. Sugiyama asserts that the ACA attorney does not qualify as an interested party pursuant to section 771(9) of the Tariff Act. Thus, Sugiyama concludes that we should not have initiated a review of Sugiyama for the 1985-1986 review period.

Department's Position

The request for the 1985-1986 review of Sugiyama was valid because it was timely filed by the ACA's counsel, who is the duly authorized representative for the ACA in this proceeding, and the ACA is an interested party pursuant to section 771(9) of the Tariff Act.

Comment 4

Sugiyama disputes the conclusion of the verification report for the 1985-1986 review period that it was impossible to determine the total value of sales of covered products in the United States and Japan. Sugiyama notes that the Department verified total sales of products within and outside the scope of the roller chain finding.

Sugiyama contends that it prepared its antidumping response by manually reviewing approximately 23,000 sales and consolidating the results of this review into worksheets. Sugiyama contends that these worksheets constitute the source documents that it used to prepare its U.S. and home market computer tapes. Sugiyama concludes that it was impossible for it to furnish an internal sales report breaking down covered and uncovered products because such a document does not exist.

Sugiyama contends, however, that it provided "internal sales reports" which showed the total sales values by customer for September 1985 and March 1986. Sugiyama claims that it could have tied these total value worksheets to specific invoices had the verifying officer asked Sugiyama to do so. Sugiyama argues that this exercise would have constituted verification of the completeness of its home market and U.S. sales listings.

Department's Position

Sugiyama's contention that we verified total sales of products within and outside the scope of the roller chain finding is without merit. Throughout verification, Sugiyama claimed that it was not possible to provide the volume and value of sales of covered products by market (DOC Verification Report of December 13, 1989 at page 6). We noted that Sugiyama did not report the total value and volume of sales of covered products in its questionnaire response or in any of its supplemental submissions (Verification Report at page 5). In addition, we determined that the figures reported in the questionnaire response were, in fact, the total volume and value of sales of all products, covered and uncovered, to all markets (Verification Report at page 3).

Nevertheless, in an attempt to work within the limits of the reported data and to verify the total volume and value of covered products, we requested that Sugiyama provide any or all of the following documents: A sales journal, purchase order ledger, or other listing of total sales for the months of June 1985 and March 1986; a chronological list of the bills of lading, packing tickets, shipping vouchers, and invoices for the months of June 1985 and March 1986; a sales listing for those two months or a complete set of the company's invoices for all sales made in June 1985 and March 1986. Sugiyama failed to produce any of these documents by the end of verification.

In addition, we requested Sugiyama to provide all of its invoices for June 1985 in order to tie the total value of Sugiyama's June 1985 invoices to its total value worksheets and to reconcile the appropriate invoices to the purchase price or home market sales tape, thereby simultaneously verifying sales within and outside the scope of the finding. In response, Sugiyama provided the invoices for a single customer for one month, but it ultimately failed to provide a set of all invoices for all customers by the end of verification (Verification Report at page 6).

Rather than providing the requested invoices at verification, Sugiyama offered to prepare a list of June 1985 sales "that would reconcile" to the sales value reported on its income statement after verification. This document was submitted more than a month later, and even then failed to quantify sales of covered products in the home or U.S. markets (Verification Report at page 6).

Sugiyama maintained a series of internal sales reports for management purposes which list the total value of sales by customer for each month, and which tie to the worksheets that Sugiyama prepared to reconcile its monthly figures to its income statement. However, because Sugiyama failed to provide the universe of invoices for the month of June 1985, we were unable to validate the figures reported in Sugiyama's internal sales reports or the worksheets used to reconcile Sugiyama's monthly data to the income statements. Furthermore, because these sales reports did not identify covered products and were not available for the period prior to July 1985, they could not be used to confirm the volume and value of sales of covered products for each market.

We disagree with Sugiyama's contention that tying total value worksheets back to specific invoices constitutes verification, because the completeness test requires both the tracing back from the questionnaire response to primary source documents such as invoices, and the tracing forward from the universe of primary source documents to the questionnaire response.

Therefore, despite numerous attempts to determine how Sugiyama prepared the questionnaire response and to confirm the total volume and value of sales of covered products, by the end of verification we were unable to determine, much less verify, the total volume and value of sales of covered products in the U.S. or home markets.

Because we were unable to verify the completeness of Sugiyama's reported home market and U.S. sales listing, we did not use Sugiyama's questionnaire response in these final results of review.

Comment 5

Sugiyama claims that, contrary to statements in the verification report, it did provide audited copies of its financial statements. Sugiyama asserts that Japanese law permits companies like itself to be audited by licensed tax accountants instead of by a certified public accountant. Sugiyama contends that while the balance sheets, income statements, and statements of changes in financial position lacked the official seal of an auditor, they were authenticated by the written statement of a licensed tax accountant.

Department's Position

At verification, Sugiyama provided the Department with unsigned photocopies of financial statements without identifying the source of the records. It failed to make available original, signed copies of financial statements containing the company's official seal or the seals of the officials responsible for their preparation. There was no evidence that the documents presented were audited by anyone. In addition, Sugiyama obtained its "authenticating" statement by sending the documents away from the verification site to a person whose identify and relationship to the corporation was unknown. Furthermore, the "authenticating" statement noted that the photocopied documents were the annual reports submitted to the regional tax office, and did not claim that the documents were the official financial statements of the corporation. Therefore, we cannot use these financial statements as the basis for determining the completeness of the questionnaire response.

Comment 6

Sugiyama contends that the verification report incorrectly stated that the licensed tax accountant who audited its financial statements was a part-time employee of Sugiyama. Sugiyama asserts that its payments to this tax accountant were similar to the payments that it made to other independent contractors.

Department's Position

The name and salary of the individual who signed Sugiyama's "authenticating statement" appear in verification exhibit SY–52, salaries payable. His status at Sugiyama as an auditor, employee, or independent contractor is immaterial except that, at verification, Sugiyama first represented him as someone "at the tax office" for the purpose of "authenticating" its financial statements, then later represented him as an auditor or independent contractor when his salary was discovered in the salaries payable ledger. The ambiguity concerning this individual's standing with the company cast doubt upon the degree to which Sugiyama's financial statements were audited.

Comment 7

Sugiyama asserts that the verification report incorrectly stated that Sugiyama kept two contradictory payroll ledgers for the month of October 1985. Sugiyama claims that it maintains only one payroll ledger. Sugiyama contends that exhibit SY–43 shows wages paid to full-time employees while exhibit SY–52 shows something which includes payments to subcontractors or independent contractors.

Sugiyama asserts that the verification report makes several contradictory characterizations of exhibit SY–43. On page 17 of the verification report there is a table showing payroll expense derived from exhibit SY–43. Sugiyama contends that in one place the verification report claims that these expenses were for the month of October 1985, and in another place, for December 1985. Sugiyama asserts that exhibit SY–43 is characterized as both a "payroll ledger" and as a general ledger for the months of September 1985 and October 1985. Sugiyama concludes that exhibit SY–43 is obviously not a general ledger, an accounts payable ledger, and a payroll ledger simultaneously.

Sugiyama also asserts that the verification report's claim that Sugiyama presented a second payroll ledger is false. According to Sugiyama, the verifier apparently confused the trial balance sheet or the general ledger (probably exhibit SY–43) with the payroll ledger (probably exhibit SY–52).

Department's Position

Sugiyama's attempt to identify exhibits SY–43 and SY–52 and to resolve the discrepancy between them is inadequate. Despite typographical errors in the summary of findings (exhibit SY–43 identified as an accounts payable ledger rather than payroll ledger (page 32), and the assertion in the list of exhibits that exhibit SY–43 covers the month of December rather than October (page 39)), the Department has no evidence that the account concerning payroll and wages drawn from the narrative on pages 16 and 17 of the verification report is erroneous.

Exhibit SY–43 is a detailed payroll ledger for the fiscal months of September and October 1985, showing the wages and compensation paid to each one of Sugiyama's employees. Sugiyama presented this document as confirmation of the value of wages and salaries reported in exhibits SY–1 through SY–4, which are total value worksheets tying monthly expenses to its financial statements. The figures presented in exhibit SY–43 did not match the amounts recorded in exhibits SY–1 through SY–4. Therefore, we requested that Sugiyama explain the discrepancy and provide documentation for its explanation.

In response, Sugiyama presented exhibit SY–52. The first page of exhibit SY–52 is the final, summary page of exhibit SY–43 and indicates the total value of wages and salaries paid in October 1985. The second page, which was translated at verification as salaries payable, shows a single line item for production workers' wages plus three additional line items for the wages of part-time workers. The third page,

whose title was not translated at verification, shows a line item for administrative salaries plus two additional line items for two separate individuals, one of whom is the tax accountant who provided the authenticating statement. The sum of the production workers' wages and administrative salaries recorded in the last two pages of exhibit SY–52 equals the total figure recorded in exhibit SY–43. The additional amounts reported for part-time workers in exhibit SY–52, when added to the amount reported for full time workers recorded in both exhibits SY–43 and SY–52, reconcile to exhibits SY–1 through SY–4.

Therefore, we do not understand Sugiyama's contention that exhibit SY–52 shows payments to subcontractors or independent contractors, when it clearly shows the sum of payments to full-time and part-time workers. Therefore, we conclude that Sugiyama presented contradictory payroll amounts for October 1985. Consequently, we cannot accept the integrity of the financial statements Sugiyama presented at verification.

Comment 8

Sugiyama contends that the Department incorrectly characterized some of its purchase price sales as "off the books" transactions. (Sugiyama included these transactions in its claims for ocean freight, brokerage, handling, and marine insurance.) Sugiyama claims that since it reported these sales to the Department, they were clearly not "off-the books." According to Sugiyama, confusion arose because the verifier failed to recognize that Sugiyama hired a third party to handle all the export-related functions, including customs brokerage and handling, on such sales. Finally, Sugiyama alleges that the verification report is contradictory because the report concludes in one section that a sale was "off the books", yet elsewhere states "the rest of the payment for that sale was credited to accounts receivable."

Department's Position

Sugiyama did not document the flow of goods or money for certain of its transactions which we characterized as "off-the-books" in our summary of findings on page 32 of the verification report. As noted on pages 20 and 21 of the verification report with reference to preselected purchase price sale number 2 (PP sale 2), Sugiyama received a payment from an unrelated third party and deposited this amount in an expense account. One week later, Sugiyama remitted a portion of this payment to the third party, and credited the rest to accounts receivable for the U.S. dollar amount of the U.S. customer's invoice.

Sugiyama did not provide records of payments to or from the expense account. In addition, it claims that the remittance to the third party was a "commission" for brokerage, handling, and ocean freight for PP sale 2, although no documents on the record identify the payment as such. Furthermore, Sugiyama failed to document the relationship between the U.S. customer and the third party who allegedly paid for the merchandise, and Sugiyama failed to demonstrate that receipts from the third party referred to PP sales made by the U.S. customer. Therefore, Sugiyama failed to provide proof of payment for certain of its sales to the United States, and also failed to document the relationship between its claims for brokerage, handling, and ocean freight adjustments and these payments.

Because we could not trace payments from the U.S. customer to Sugiyama's books and records, and could not confirm Sugiyama's claimed adjustments for commissions, brokerage, handling, and ocean freight, we determine that PP sale 2, and others like it, remain unverified.

Comment 9

Sugiyama contends that, contrary to the conclusion in the verification report, the firm did explain the basis for its revised ESP offset claim. Sugiyama asserts that quantification of its revised claim was made two months before the verification in Sugiyama's December 15, 1987 submission.

Department's Position

The above-referenced December 15, 1987 submission is, in fact, Sugiyama's original questionnaire response and was provided more than one year prior to the February 1989 verification. As noted on page 14 of the verification report, Sugiyama and Hokoku Chain, Sugiyama's related selling arm in Japan, each revised their respective ESP offset claims at verification. As noted on page 15 of the report, Sugiyama increased its claimed ESP offset by 65.39 percent. As noted on page 18 of the verification report, we were unable to establish the basis for the allocation ratios used to calculate the offset. In addition, we were unable to verify that the claimed depreciation and fuel expenses applied to sales rather than factory production. Therefore, we were unable to verify Sugiyama's claimed ESP offset adjustment.

Comment 10

Sugiyama argues that the Department erred in concluding that Sugiyama was unable to be verified for the 1985–1986 review period.

Department's Position

We conducted a verification of Sugiyama's home market and purchase price sales in February 1989. Because Sugiyama could not substantiate the total volume and value of sales of covered products to the United States, we were unable to verify Sugiyama's 1985–1986 response. Other serious deficiencies in Sugiyama's 1985–1986 response included its failure to provide its official financial statements, discrepancies in the firm's wage reports, and its inability to document proof of payment for certain sales to the United States.

Comment 11

Sugiyama contends that the Department's verification report contains numerous gaps, misstatements, and inconsistencies. Sugiyama contends that these misunderstandings were exacerbated by the poor health of the verifying officer and the verifying officer's decision to commute from Tokyo to Sugiyama's factory during the verification. Finally, Sugiyama asserts that the ten months it took the Department to complete the report further dulled the verifier's recollection of verification events.

Department's Position

The verification report was based on the information contained in the questionnaire response and provided at verification, and accurately detailed all verification events. Sugiyama has provided no evidence in support of its assertion that the verifying officer's health, the length of the commute, and the pace at which the verification report was written influenced the analysis of the information on the record. (See, DOC memorandum of January 7, 1992.)

Comment 12

Sugiyama contends that the Department should not have conducted a review of Sugiyama/Hokoku for the 1981–1983 review periods, and for Sugiyama for the 1986–1987 review period. Sugiyama notes that on September 17, 1987, the ACA withdrew its request for a review of the 1986–1987 period, and that on October 2, 1990 the ACA withdrew its request for a review of Sugiyama/Hokoku for the 1981–1983 review periods. Sugiyama argues that the Department's established practice is to terminate reviews following the

withdrawal of the review request. Sugiyama notes that, under the regulations in effect in 1987, no limits were in force regarding withdrawal requests. Sugiyama further argues that the Department's revised regulations (which normally establish a 90-day deadline for the withdrawal of review requests) are not absolute and allow considerable discretion in determining whether to accept to request to discontinue a review.

Sugiyama asserts that the Department cited no "statute, regulation, legislative history, judicial precedent or administrative precedent" for continuing the review. Sugiyama argues that the Department's decision to proceed with the 1981–1983, and 1986–1987 administrative reviews contradicts the purpose of the 1984 Act to eliminate administrative reviews for which there is no industry interest. Finally, Sugiyama asserts that, in citing to past margins as a reason for continuing its review of Sugiyama, the Department has contradicted its stated practice of regarding each review proceeding as independent from past proceedings.

Department's Position

We have broad discretion in determining whether to honor withdrawals of review requests. Our primary reason for continuing with these reviews was record evidence of a relationship between Sugiyama and one of its largest home market customers which was unreported by Sugiyama in its questionnaire responses. This relationship had potentially significant consequences on these reviews because it goes to the very heart of how we calculate foreign market value. Although other factors were considered (including the extensive difficulties that we encountered verifying the submissions that Sugiyama submitted in the 1985–1986 administrative review, and the margins that we found for the 1987–1988 and 1988–1989 reviews), it was that unreported relationship which convinced us to continue with the 1981–1983 and 1986–1987 reviews.

Comment 13

Sugiyama contends that the Department inappropriately used BIA for the 1985–1986 administrative period and for unmatched U.S. sales for the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 periods.

Department's Position

We used BIA for the 1985–1986 period because we were unable to verify Sugiyama's submissions for that period. (See the Department's responses to *Comments 4–11.*) We used BIA for Sugiyama's unmatched sales for the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 review periods because Sugiyama failed to demonstrate that its home market sales to two of its related customers were at arm's length, and because Sugiyama failed to indicate which models sold to unrelated customers in Japan qualified as most similar to Sugiyama's unmatched U.S. sales. Additionally, Sugiyama failed to provide differences in the physical characteristics of the merchandise (difmer) information for these unmatched U.S. sales. Our source of BIA for the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 review periods is discussed in our response to *Comment 20* of this notice.

Comment 14

Sugiyama argues that the Department erroneously concluded that Sugiyama is related to one of its customers. Sugiyama asserts that the Department's failure to use its sales to this customer resulted in unmatched U.S. sales, and in the unwarranted use of BIA.

Department's Position

During the 1981–1982, 1982–1983, 1983–1984, 1984–1985, 1986–1987, and 1989–1990 review periods two of Sugiyama's officials were members of that customer's board of directors. The Department considers shared directorship to be evidence of a relationship between these two organizations. (See Polyethylene Terephthalate Film, Sheet, and Strip from Korea: Final Determination of Sales at Less Than Fair Value (56 FR 16305, April 22, 1991).) Additionally, that customer indicated that Sugiyama contributed about 60 percent of the capital necessary for the start up of that customer's business. Based on these facts, we concluded that Sugiyama and that customer are related within the meaning of the antidumping law.

Comment 15

Sugiyama contends that, upon determining that two of its customers were related to Sugiyama, the Department gave those two customers an insufficient amount of time (15 days) to gather information concerning the resale of that merchandise to their customers.

Department's Position

We did not accept Sugiyama's August 21, 1991 submission it was based upon price list data. We generally do not accept price list data unless the respondent can demonstrate that it adhered to the terms specified in the price list. Sugiyama failed to meet this burden of proof. Regarding its sales to one of its customers, Sugiyama submitted price list data for the 1981–1982, 1982–1983, 1983–1984, and 1984–1985 review periods. Because the actual prices (net of discounts, rebates, and commissions) to the customer could have differed significantly from the terms shown on the price list, such data fail to constitute proof that Sugiyama's sales to that customer were comparable to Sugiyama's sales to unrelated customers. Similarly, the gross price data that Sugiyama offered to support its assertion that its prices to another one of its home market customers were at arm's length were inadequate because Sugiyama failed to demonstrate that it did indeed adhere to the terms offered in the price list. Therefore, we excluded Sugiyama's sales to these two customers from our calculation of FMV.

In response to a request from Sugiyama, we granted Sugiyama a 17-day extension in which to respond to our request for additional information. Any further extensions of time would have unduly delayed the completion of this review. Further, because Sugiyama has insisted that much of this information no longer exists, no additional time for response would have made a usable response possible.

Comment 16

Sugiyama asserts that we should not have expected one of its customers to maintain resale data that are up to 10 years old. Sugiyama contends that the 32 days given to that customer was insufficient time to prepare and computerize seven years of sales transaction-specific data.

Department's Position

Because these reviews were the first reviews in which we were aware of Sugiyama's relationship with this customer, Sugiyama's suggestion that we should have notified Sugiyama of our need for such information prior to conducting these reviews is unreasonable. We were unaware in past proceedings and in earlier stages of the present proceeding that Sugiyama was related to this home market customer. Thus, until we learned of this relationship, there was no need to consider whether sales to that customer were at arm's length, or to request information concerning the resale of roller chain to that customer's customers.

Upon receiving information that Sugiyama and that home market customer were related, however, the Department was obligated to consider

whether Sugiyama's sales to that customer were at arm's length. On determining that these sales were not at arm's length, the Department was then obligated to request information from that customer concerning the resale of roller chain to its customers. Finally, as explained in response to *Comment 15*, 32 days was an adequate period of time for Sugiyama to provide this information.

Comment 17

Sugiyama argues that, assuming Sugiyama and one of its home market customers are related parties, the Department failed to consider whether these related party prices for the 1981–1987 periods could be used in calculating FMV. Sugiyama notes that in other cases (See Portable Typewriters from Japan (53 FR 40926, October 14, 1988)) the Department has used related-party prices when it has determined that this relationship did not constitute control. Sugiyama contends that it exercised less control over that customer than Olivetti did over Tokyo Juki in the Portable Electric Typewriters case, and, therefore, concludes that the Department should have used Sugiyama's sales to that customer in the calculation of FMV. Sugiyama argues that its prices to that customer, as well as its prices to another home market customer, who we also determined to be related to Sugiyama, are comparable to those to unrelated parties. Sugiyama submitted a comparison of its 1981–1987 prices to these two customers and its unrelated purchasers. Sugiyama contends that this information demonstrates that its prices to these two customers were comparable to those offered to unrelated customers.

Department's Position

Ordinarily we do not use transactions between related parties to calculate FMV. (See the Department's response to *Comment 4* in Certain Small Business Telephones From Japan: Final Results of Antidumping Duty Administrative Review (57 FR 4949, February 11, 1992).) The Department uses related-party sales only if it is satisfied that such sales prices are comparable to prices to unrelated parties. The burden of proof rests upon the respondent to demonstrate that sales to related parties are indeed comparable to sales to unrelated parties. For the reasons noted in our response to *Comment 15*, the price list and gross price data submitted by Sugiyama failed to meet this burden of proof.

Comment 18

Sugiyama contends that the Department incorrectly concluded in its preliminary results that the firm provided only list prices rather than actual selling prices for two of its home market customers. Sugiyama acknowledges that it provided list prices for one of those customers but contends that it provided actual selling prices for the other customer. Moreover, Sugiyama notes that in other cases the Department has allowed certain respondents to submit abbreviated questionnaire responses if these respondents sold exclusively from published price lists and provided certification that they adhered to these price lists. Sugiyama further asserts that the strict time constraints which it faced in the 1981–1987 proceedings justify the use of price list information for the 1981–1987 Sugiyama reviews.

Department's Position

Sugiyama failed to provide transaction-specific sales data for either of these two customers. As noted in our response to *Comment 15*, we generally will accept price lists (in lieu of sale-specific data) only in cases where the respondent shows that it adheres to the terms specified in the price list. Because Sugiyama failed to make such a demonstration, we did not use the price list data that Sugiyama provided. Similarly, we did not accept Sugiyama's gross price data because Sugiyama failed to show that the gross price represented the actual price (net of adjustments) received by the customer.

Comment 19

Sugiyama argues that, assuming Sugiyama and one of its home market customers are related parties and that the prices between Sugiyama and its unrelated customers, the Department should have used Hokoku's prices to unrelated customers in its PP calculations to determine FMV. Sugiyama asserts that use of these sales, coupled with an adjustment for the different level of trade at which these sales were made, and for differences-in-merchandise adjustments between these sales and the merchandise sold by Sugiyama in the United States, would have constituted a proper method of matching Sugiyama's PP sales.

Depatment's Position

We used Hokoku's sales to unrelated customers as the basis of our FMV calculations. Because Sugiyama did not indicate which models sold by Hokoku were most similar to the unmatched merchandise sold by Sugiyama in the United States, we were unable to use Hokoku's sales as the basis of FMV for these unmatched U.S. sales. Moreover, Sugiyama failed to provide difmer information for these sales. (See the Department's response to *Comment 13.*)

Comment 20

Sugiyama argues that use of a 43.29 percent BIA figure is punitive, unjustified, and inconsistent with the Department's established practice. Sugiyama argues that it cooperated in the administrative review and that the 43.29 percent rate used in this review is inconsistent with the BIA rate used in other roller chain reviews. Sugiyama further suggests that the 43.29 rate was never finalized because the Department stated that liquidation of entries for eleven of the firms receiving that 43.29 percent rate would be suspended until the Department made a decision as to whether it was appropriate to liquidate entries at that rate. (See Roller Chain, Other than Bicycle, from Japan: Final Results of Antidumping Duty Administrative Review, 46 FR 44488, September 4, 1981.) Sugiyama asserts that, since subsequent Federal Register notices make no comment about this matter, use of the 43.29 rate has never been finalized.

Department's Position

In the final results of this review we followed our normal policy concerning BIA:

1. When a company refused to cooperate with the Department or otherwise significantly impeded the proceeding, we used as BIA the higher of (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-then-fair-value investigation (LTFV) or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperated with our requests for information, including, in some cases, verification, but failed to provide the information requested in a timely manner or in the form required, we used as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise; or (2) the highest calculated rate in this review for the same class or kind of merchandise for any firm from the same country of origin.

See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews (57 FR 28360, June 24, 1992).

Because Sugiyama failed verification for the 1985–1986 review period, we have used a rate of 43.29 percent rate for that period. Moreover, since the 43.29 percent rate was published in a notice of final results of review, that rate was "finalized".

(See Roller Chain, Other than Bicycle from Japan: Final Results of Antidumping Duty Administrative Review, 52 FR 18004, May 13, 1987.) However, because Sugiyama substantially cooperated for all the other reviews, we have limited our use of BIA to Sugiyama's unmatched sales for those periods. For the 1981–1985 review periods, we used a rate of 15.92 percent as BIA for the unmatched sales. This was the highest calculated rate for a reviewed firm for the 1981–1982 review period. For the 1982–1983, and 1983–1984 periods, we continued to use the 15.92 percent rate, since that rate was the highest rate ever applicable for Sugiyama for those periods. For the 1986–1987 and the 1989–1990 review periods, we used a 43.29 percent rate for Sugiyama's unmatched sales, since the 43.29 percent rate (used during the 1985–1986 review) was the highest rate ever applicable to Sugiyama.

Comment 21

Sugiyama asserts that there should not have been any unmatched ESP sales, but that, without a complete printout of our calculations, it cannot comment further as to why certain ESP sales were unmatched. Finally, Sugiyama objects to the use of the 43.29% rate in our ESP calculations for the same reasons that it objects to use of that rate in the PP calculations.

Department's Position

We provided Sugiyama with an adequate disclosure. (See our response to *Comment 1.*) In our ESP calculations, we followed Sugiyama's model-match instructions. Sugiyama's failure to provide complete model-match instructions was the reason for certain unmatched ESP sales.

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following weighted-average margins exist:

Manufacturer/exporter	Review period	Margin (percent)
Sugiyama/I&OC	4/1/81–3/31/82	5.22
Sugiyama Harima Enterprises/San Fernando	4/1/81–3/31/82	*0
Sugiyama/Hokoku	4/1/81–3/31/82	0.72
Sugiyama/I&OC	4/1/82–3/31/83	5.45
Sugiyama Harima Enterprises/San Fernando	4/1/82–3/31/83	*0
Sugiyama/Hokoku	4/1/82–3/31/83	1.55
Sugiyama/I&OC	4/1/83–3/31/84	10.63
Sugiyama Harima Enterprises/San Fernando	4/1/83–3/31/84	*0
Sugiyama/Hokoku	4/1/83–3/31/84	0
Sugiyama/I&OC	4/1/84–3/31/85	11.05
Sugiyama Harima Enterprises/San Fernando	4/1/84–3/31/85	*0
Sugiyama/Hokoku	4/1/84–3/31/85	0
Sugiyama	4/1/85–3/31/86	43.29
Sugiyama/I&OC	4/1/85–3/31/86	43.29
Sugiyama/San Fernando (Japan)	4/1/85–3/31/86	43.29
Sugiyama/Hokoku	4/1/85–3/31/86	43.29
Sugiyama/Fuji Lumber	4/1/85–3/31/86	43.29
Sugiyama	4/1/86–3/31/87	18.16
Sugiyama/I&OC	4/1/89–3/31/90	43.29
Sugiyama Harima Enterprises/San Fernando	4/1/89–3/31/90	*0
Sugiyama/Hokoku	4/1/89–3/31/90	0.53

*No shipments during the period; rate is from the last period in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions for all companies directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit for the reviewed companies will be the rate published for the most recently reviewed period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers will be 0.53 percent. This rate represents the highest rate for any firm with shipments in this the latest administrative review period, other than those firms receiving a rate based entirely on BIA.

These deposit requirements, when imposed, shall remain in effect until publication of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 15, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–22977 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–DS–M

[A-201-806]

Preliminary Determination of Sales at Less Than Fair Value; Steel Wire Rope From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Gerry Zapiain or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

PRELIMINARY DETERMINATION: We preliminarily determine that steel wire rope from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register** (57 FR 19280) the following events have occurred.

On May 26, 1992, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that the steel wire rope industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel wire rope from Mexico. On June 7, 1992, the Department presented sections A, B and C of its antidumping questionnaire to Grupo Industrial Camesa (Camesa), the sales of which account for more than 60 percent of imports of steel wire rope during the period of the investigation (POI). The deadline set to respond to section A was June 19, and the due date to respond to sections B and C was July 6.

On June 16, Camesa requested a two-week extension for filing its response to section A. On June 18, the Department of Commerce (the Department) granted the full extension, thus making the due date for sections A, B & C July 6. No other extension was requested or granted.

On July 6, Camesa submitted its response to section A. Responses to sections B and C were also due on that day, but were not submitted.

On July 10, Camesa stated that it committed an oversight by not requesting an extension for sections B and C and requested an extension of its July 6 deadline to August 24 to respond to sections B and C.

On July 13, petitioner urged the Department to deny Camesa's request for an extension, stating that the request was "untimely, unwarranted, and would place an undue burden on the Department and petitioner to analyze the responses in an unnecessarily restricted time frame."

Because the Department did not receive a request for extension for sections B and C before the time limit expired, we denied the respondent's July 10 extension request on July 15, 1992.

Scope of the Investigation

This investigation covers imports of steel wire rope from Mexico. Steel wire rope encompasses ropes, cable, and cordage of iron or carbon steel other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from these investigations is stainless steel wire rope, i.e., ropes, cables and cordage other than stranded wire of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule (HTS) subheading 7312.10.6000.

Imports of these products are currently classifiable under the following HTS subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these proceedings remains dispositive.

This investigation covers sales of the subject merchandise by Camesa during the period from November 1, 1991 through April 30, 1992.

Use of Best Information Available

As stated above, because we did not receive a request for extension for sections B and C before the time limit expired, we denied the respondent's July 10 extension request. Thus, the Department received no response to sections B and C of its questionnaire and, in accordance with section 776(c) of the Act, had to use the best information available (BIA) for Camesa. Section 353.37(b) of the Department's regulations provides that the Department may take into account whether a party fails to provide requested information, or otherwise significantly impeded the Department's investigation in determining what is the best information available. Because Camesa failed to respond adequately to the questionnaire, consistent with Department practice, we used as BIA for Camesa petitioner's highest adjusted margin of 133.83 percent. (See, e.g., Heavy-forged Hand Tools from the People's Republic of China 56 FR 244, January 1, 1991)

Verification

Since the Department did not receive a response to sections B and C of its questionnaire in this investigation, no verification will be necessary for making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act (19 U.S.C. 1673b(d)(1)), we are directing the U.S. Customs Service to suspend liquidation of all entries of steel wire rope from Mexico, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin as shown below. The suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Camesa, S.A. de C.V.	133.83
All others	133.83

ITC Notification

In accordance with section 733(f) of the Act (19 U.S.C. 1673b(f)), we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Compliance, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring or threatening material injury to the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary of Import Administration no later than November

10, 1992, and rebuttal briefs no later than November 16, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on November 18, 1992, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act 19 U.S.C. 1673b(f)) and (19 CFR 353.15(a)(4)).

September 15, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-22978 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-808]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: David Mason Jr. or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

INITIATION OF REVIEW: In accordance with section 751(b) of the Tariff Act of 1930, as amended, we are initiating a changed circumstances review of the antidumping duty order on sweaters wholly or in chief weight of man-made fiber from Taiwan.

In this changed circumstances review, the Department will determine whether Jia Farn Manufacturing Company (Jia Farn), a Taiwan company, acted as a reseller or transshipper of subject merchandise produced by other manufacturers. The Department will review information pertaining to the period beginning April 27, 1990, the date on which the department instructed the U.S. Customs Service to suspend liquidation of entries of subject merchandise from all Taiwan companies except Jia Farn, and ending on August 31, 1992.

Pursuant to 19 CFR 353.22(f), the Department believes that there are changed circumstances sufficient to warrant review of Jia Farn's status as the manufacturer of record for the merchandise entering the United States during the period of this changed circumstances review.

In the original investigation, the Department determined Jia Farn was a manufacturer that was not dumping man-made fiber sweaters from Taiwan in the United States. Accordingly, the Department excluded Jia Farn as a manufacturer from the antidumping duty order on man-made fiber sweaters from Taiwan. (See Antidumping Duty Order and Amendment to the Final Determination of Sales at Less than Fair Value: Sweaters Wholly or In Chief Weight of Man-Made Fiber from Taiwan, 55 FR 39033, September 24, 1990.) Jia Farn was the only Taiwan company excluded from the Department's antidumping duty order on man-made fiber sweaters from Taiwan.

At that time, the Department treated Jia Farn as a manufacturer of the subject merchandise in accordance with the company's certified statement of record and the Department's subsequent verification of the information submitted to the Department by Jia Farn. However, in Spring 1991, a team of U.S. government officials from the U.S. Customs Service, the U.S. Trade Representative's Office, the U.S. Department of State, and the Department of Commerce's International Trade Administration visited Jia Farn's facility in Taiwan. Based upon this visit, the U.S. Customs Service reported that "other [Taiwan] exporters are shipping their sweaters through the exempt exporter so that they will not have to pay dumping duties." (See U.S. Customs Service Activity Report, May 17, 1991, at 1.)

In addition, an official from the International Trade Administration recently reported that during the visit to Jia Farn's facility, a Jia Farn company official, reported to be the owner of the company, indicated that producers and exporters, other than Jia Farn, were manufacturing and then shipping completed sweaters through Jia Farn in order to avoid payment of antidumping duties. (See September 2, 1992 "Summary of Information" Memorandum from Deputy Inspector General Michael Zimmerman to Assistant Secretary Alan Dunn.) In a State Department cable, Customs reported that this scheme permitted other firms to avoid antidumping duties by using Jia Farn's name and export quota for sweaters. (See May 17, 1991 Cable from Department of State to Department of Commerce, at section 7, page 1.)

This information alone provides a sufficient basis for the Department to conduct a changed circumstances review of Jia Farn's status as a manufacturer. In addition, the U.S. Customs Service Activity report also indicates that Jia Farn's imports to one U.S. port of entry for the month of April, 1991 alone exceeded Jia Farn's production capacity. This additional information further supports the department's determination that changed circumstances exist sufficient to warrant a changed circumstances review of Jia Farn's status as a manufacturer.

Finally, in accordance with 19 CFR 353.22(f)(3), the Department has determined that the reported activities of Jia Farn demonstrate that good cause exists for initiating a changed circumstances review of Jia Farn before the end of the second annual anniversary month of the antidumping duty order.

This notice is published in accordance with 19 CFR 353.22(f)(1)(i).

Dated: September 14, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-22979 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-796-601]

Carbon Steel Wire Rod From Zimbabwe Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe.

EFFECTIVE DATE: September 22, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Cameron Cardozo, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–0983 or 377–1787.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1992, the Department of Commerce ("the Department") published in the Federal Register (57 FR 36634) its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292; August 15, 1986). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On August 28, 1992, Atlantic Steel Co., Armco Inc., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co, interested parties and the petitioners in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: September 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–22985 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 et seq., each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

Secretarial guidelines for the organization, practices, procedures, and operations of the Councils established by the Magnuson Act are set forth in 50 CFR parts 601 and 605. Section 605.25(g)(2)(i) addresses how unused sick leave is treated at retirement and places it under the provisions of the Social Security Act. Section 601.22(c) allows Councils to deviate from the guidelines, where lawful, with appropriate supporting rationale. Secretarial approval of each SOPP would constitute approval of any such deviation for that particular Council.

The North Pacific Fishery Management Council (North Pacific Council) voted to revise the definition of retirement in the sick leave section of their SOPP by deleting reference to the Social Security Act. Council employees are currently under the State of Alaska Public Employee Retirement System. That system allows a vested member to retire at age 55 and apply unused sick leave time to years of service. However, the Social Security Act does not allow a vested member to retire until age 62. Reference to the Social Security Act to define retirement in the sick leave section of the North Pacific Council SOPP is inconsistent with the retirement plan for Council employees and is therefore deleted.

In accordance with the above-mentioned guidelines, the North Pacific Council has revised its SOPP, which was originally published in the Federal Register on March 1, 1977 (42 FR 11858). Interested parties may obtain a copy of the North Pacific Council's revised SOPP by contacting Clarence G. Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, 605 West 4th Avenue, Anchorage, AK 99501; telephone (907) 271–2809.

Dated: September 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–22974 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P507B).

Notice is hereby given that the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504–3135, has applied in due form for a permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the application until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment will be opened to determine whether this work, as requested in the application, should continue.

The applicant requests authorization to conduct the following research on adult listed wild Snake River fall chinook salmon (*Onchorhynchus tshawytscha*) at Ice Harbor and Lower Granite Dams: (1) Radio tag up to 48 wild chinook in order to determine inter-dam losses and to identify spawning ground distribution. (2) sacrifice up to 18 wild chinook in order to conduct stock identification studies. These fish would be those that have completed spawning and are near death. Take numbers requested are per year over a two-year period.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available

for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated September 10, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92–22840 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P516).

Notice is hereby given that the Salmon National Forest, P.O. Box 729, Salmon, Idaho, 83467, has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant requests authorization to incidentally harass up to 40 adult listed wild Snake River spring/summer chinook salmon (*Onchorhynchus tshawytscha*) during the course of conducting spawning habitat surveys and to capture, examine for size, number, condition, etc. and subsequently release up to 50 listed spring/summer chinook salmon smolts near their collection site in the Salmon River and its tributaries. These numbers are requested for each year over a three-year period.

Written data or views, or requests for a public hearings on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following officers by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: September 9, 1992.

Charles Karnella,

Deputy Director, Officer of Protected Resources.

[FR Doc. 92–22841 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P514).

Notice is hereby given that the Idaho Power Company, 1221 West Idaho Street, Boise, Idaho 83702, has applied in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

This application was received prior to the regulatory deadline of May 22, 1992 (50 CFR part 227), and has thus been subject to the regulatory exemption which allows for the continuation of scientific research/enhancement activities as requested in the applications until NMFS has had adequate time in which to review the applications and to determine their sufficiency, or until issuance or denial of a permit, or until December 31, 1992, whichever comes first. This application has now been determined to contain enough information for complete review, and thus a public comment period will be opened to determine whether this work, as requested in the application, should continue.

The applicant requests authorization to incidentally harass up to 50 adult listed wild Snake River fall chinook salmon (*Onchorhynchus tshawytscha*) during the course of conducting spawning habitat surveys in the Snake river, each year over a three-year period.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: September 9, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92–22842 Filed 9–21–92; 8:45 am]

BILLING CODE 3510–22–M

National Telecommunications and Information Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior

Executive Service (SES) Performance Appraisal System:

Alden Abbott
David Farber
William D. Gamble
Harold G. Kimball
William F. Maher, Jr.
Richard D. Parlow
Jean M. Prewitt
Charles M. Rush
Neil B. Seitz
Arlen K. van Doorn

James W. Moses,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 92-22858 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-BS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

September 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted variously for swing, carryforward, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 21, 1992, you are directed to amend further the directive dated January 13, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	10,002,026 square meters.
219	39,736,047 square meters.
313	25,618,057 square meters.
314	3,401,196 square meters.
315	10,371,879 square meters.
340/640	1,498,735 dozen.
341	3,741,185 dozen.
363	26,157,027 numbers.
369-O [2]	7,810,682 kilograms.
369-S [3]	486,456 kilograms.
369-D [4]	941,600 kilograms.
641	957,658 dozen.
647/648	350,988 dozen.
Group II	121,000,000 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 369-O: all HTS numbers except 5702.10.9020, 5702.49.1010, 5702.99.1010, 6302.60.0010, 6302.91.0005, 6302.91.0045, and 6307.10.2005.

[3] Category 369-S: only HTS number 6307.10.2005.

[4] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005, and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22987 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for category 338/339 is being increased by the application of special shift. Category 638/639 is being decreased to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 16, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on September 18, 1992, you are directed to amend further the directive dated November 15, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
338/339	1,655,556 dozen.
638/639	1,634,784 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-22988 Filed 9-21-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental Assessment (EA) for Navy Lightweight Exoatmospheric Projectile (LEAP) Technology Demonstration

AGENCY: Strategic Defense Initiative Organization (SDIO).

ACTION: Notice.

SUMMARY: SDIO has prepared a Finding of No Significant Impact based on an assessment of the potential environmental consequences of testing and demonstrating Navy LEAP technologies over open ocean on a U.S. Navy Terrier ship. Navy LEAP activities involve integration and testing Navy missile and LEAP interceptor technologies, including the LEAP Launch Vehicle (STANDARD Missile), LEAP projectile, and Advanced Solid Axial Stage motor. Component/vehicle fabrication, assembly, ground tests, preflight activities, and flight tests were evaluated with respect to the environment at the relevant engineering contractor and government facilities involved with the demonstration. Overall, no significant impacts would result from the Navy LEAP Technology Demonstration.

Background

The EA was prepared according to Council on Environmental Quality Regulations (40 CFR parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq), and DoD Directives (DoD 6050.1) on environmental effects of DoD actions. SDIO has conducted an assessment of the potential environmental consequences of launching a STANDARD Missile modified with LEAP technologies from a U.S. Navy Terrier ship, and related preflight and postflight activities.

The purpose of the Navy LEAP Technology Demonstration is to identify and address key technology integration issues involved with incorporating miniature, Kinetic Energy interceptors into a tactical weapon system. This will demonstrate the feasibility of performing exoatmospheric ballistic missile defense from a Navy platform. Navy LEAP activities involve integration and testing Navy missile and LEAP interceptor technologies, including the LEAP Launch Vehicle (STANDARD Missile (SM)), LEAP projectile, and Advanced Solid Axial Stage (ASAS) motor.

The Navy LEAP Technology Demonstration will consist of component/vehicle fabrication, assembly, and ground tests followed by preflight integration, testing, and fueling activities of the STANDARD Missile and LEAP technologies. These preflight activities will be followed by a series of flight tests. There will be four flight tests using a STANDARD Missile within the jurisdiction of AFWTF, U.S. Naval Station Roosevelt Roads, Puerto Rico. A fifth flight test will involve an intercept, using a STANDARD Missile as the LEAP Launch Vehicle and an ARIES Launch Vehicle as the Target Launch Vehicle, within the jurisdiction of CCAFS, Florida.

Test activities for the proposed action will be conducted in accordance with applicable Federal, State, and local environmental regulations at the following locations:

Location and Activities

General Dynamics Pomona, California
Component Assembly/Ground Tests (STANDARD Missile)
Boeing Aerospace and Electronics Kent, Washington
Component Assembly/Ground Tests (LEAP Projectile)
Hughes Aircraft Corporation Missile Systems Group Canoga Park, California
Component Assembly/Ground Tests (LEAP Projectile)
Rockwell International Rocketdyne Division Canoga Park, California
Component Assembly/Ground Tests (LEAP Projectile)
Thiokol Corporation Tactical Operations Elkton, Maryland
Component Assembly/Ground Tests (ASAS)
General Dynamics Pomona, California
Preflight Activities (STANDARD Missile & LEAP ASAS)
WSMR New Mexico
Preflight Activities (STANDARD Missile & LEAP/ASAS)
East Coast Navy Weapons Station Charleston, South Carolina
Preflight Activities (STANDARD Missile & LEAP/ASAS)
AFWTF U.S. Naval Station Roosevelt Roads, Puerto Rico
Preflight Activities (STANDARD Missile & LEAP/ASAS)
Terrier Ship
Preflight Activities (STANDARD Missile & LEAP/ASAS)
AFWTF U.S. Naval Station Roosevelt Roads, Puerto Rico
Flight Test/Postflight Activities (Flight Tests 1–5, STANDARD Missile)
CCAFS Florida,
Flight Test/Postflight Activities (Flight Test 5, STANDARD Missile & ARIES Target Vehicle)

No construction will be required at any of these facilities to accommodate Navy LEAP activities, except for minor modifications (i.e., electrical upgrades on the interior of Building 380) at U.S. Naval Station Roosevelt Roads.

Alternatives to the proposed action include: transporting the STANDARD Missile to East Coast Navy Weapons Station, Charleston, SC or Yorktown, VA prior to LEAP fueling at U.S. Naval Station Roosevelt Roads for flights 3–5; and using a solid propellant instead of liquid hypergolic propellants for the LEAP projectile.

The No Action Alternative for the proposed action would be not proceeding with the Navy LEAP Technology Demonstration, and not developing and testing a STANDARD Missile modified with LEAP technologies. This would preclude the flight tests needed to demonstrate the feasibility of using existing Navy shipboard weapon systems with LEAP technologies for exoatmospheric intercepts. The No Action Alternative would not support SDIO's mission requirements.

The potential for significant was determined through an an the activities that would be conducted at the proposed locations, compared to current activities and existing conditions at those locations. The impacts of the proposed action were assessed relative to the following environmental resources: Physical setting and land use; water resources; geology and soils; biological resources; threatened and endangered species; cultural resources; air quality; noise; and hazardous materials and wastes. Infrastructure and human health and safety were also assessed. The methodological approach consisted of identification of potential environmental issues and a determination of potential significance. For any impacts from the proposed action that could potentially be significant, it was determined whether mitigation measures could be implemented to reduce the impacts to less than significant levels.

Findings

All potentially significant impacts from Navy LEAP ground, preflight, and flight test activities are precluded by implementing planned safety measures. These measures have been incorporated into the Navy LEAP Technology Demonstration as an integral part of operations at WSMR, U.S. Naval Station Roosevelt Roads, AFWTF, and CCAFS. The analysis concluded no significant impacts would result from Navy LEAP activities at the engineering contractor facilities. The analysis also concluded no significant impacts for the physical setting and land use; water resources; geology and soils; biological resources; threatened and endangered species; air quality; hazardous materials and wastes; or infrastructure at WSMR, U.S. Naval Station Roosevelt Roads, or CCAFS.

Personnel will remain inside noise-insulated areas on the Terrier ship or buildings at CCAFS during flight tests (outside the flight hazard areas). Hearing protection will be worn during launches to ensure short-term noise exposure does not exceed the OSHA criterion of 115 dBA for 15 minutes.

Navy LEAP procedures will follow the same System Safety Operating Procedures (SSOPs) for fueling and transportation developed by Phillips Laboratory and used successfully at WSMR under the LEAP test program. Flight safety will be ensured by proper selection of launch azimuth and use of a range-approved flight termination system. Hazard zones will be established for the LEAP liquid bipropellants. The Phillips Laboratory standard operations and equipment will be followed for fueling, fuel handling, operation, and storage at Roosevelt Roads. Liquid fueling will be performed in accordance with SSOP that must be approved by the ground safety officer prior to commencement of activities. For worker safety, OSHA Level B protection will be worn by operations personnel. These measures will preclude impacts to human health and safety during the demonstration.

Overall, no significant impact would result from conducting the Navy LEAP Technology Demonstration at WSMR, East Coast Navy Weapons Station, U.S. Naval Station Roosevelt Roads, AFWTF, CCAFS, or the engineering contractor locations. Therefore, an environmental impact statement will not be prepared for the proposed action. In addition, the analysis concluded no significant impacts would result from implementing any of the alternatives.

FOR FURTHER INFORMATION CONTACT: An environmental assessment that supports a "Finding of No Significant Impact" is available for public reading. All are invited to submit written comments for consideration, within 30 days of this notice. Address all correspondence in reference to this notice to: Mr. Crate J. Spears, SDIO Environmental Coordinator, SDIO/TNE, The Pentagon, Room 1E180, Washington, DC 20301–7100, (703) 693–1575.

Dated: September 18, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–23126 Filed 9–18–92; 3:36 pm]

BILLING CODE 3810–01–M

Department of the Army

Proposed Modification of Procedures in DOD Regulation 4500.34–R

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: This is an advance notice of proposed modification of procedures concerning appendix A, Tender of Service, part B. International, subpart 33. Overseas shipments. The Directorate of Personal Property, Military Traffic Management Command (MTMC) proposes to modify the procedures established in DOD Regulation 4500.34–R, Personal Property Traffic Management Regulation dated October, 1991, by which carriers prepare their shipment and billing documents. This modification will hold carriers responsible for ensuring that all carrier prepared documents are annotated with the term "DOD Sponsored * * * ". This action will assist MTMC to effectively monitor and track U.S. and foreign flag vessel and aircraft use.

The purpose of this change is to ensure compliance with the DOD Tender of Service requirements concerning the use of U.S. and foreign flag vessels and aircraft for the movement of DOD sponsored personal property shipments.

Upon implementation of this modification, corresponding changes will be made to the International Personal Property Rate Solicitation.

DATES: Comments must be received on or before November 6, 1992.

ADDRESSES: Headquarters, Military Traffic Management Command, Attn: MTPP–CI (Mr. Borum), 5611 Columbia Pike, Falls Church, VA 22041–5050. Mail comments to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Borum (703) 756–2383.

SUPPLEMENTARY INFORMATION:

Propose Tender of Service Change.

Appendix A, Tender of Service, Personal Property Household Goods and Unaccompanied Baggage

II. Mutual Agreement/Understanding

B. International

33. Overseas Shipments.

Add new paragraph f. Ensure all shipping and billing documentation, including agent/port agent/NVOCC freight bills, ocean bills of landing, rated bills of lading, and billing documentation, identify DOD sponsored personal property shipments with the following description, as appropriate: DOD Sponsored Household Goods; DOD Sponsored Unaccompanied Baggage; DOD Personal Effects; or DOD Sponsored Mobile Home with personal effects as indicated on the inventory. The PPGBL issued by a PPSO is for the movement of DOD Sponsored personal property shipments, therefore, the description "DOD Sponsored" is to be included on all carrier documentation. For POVs, show the property classification, NMFC/UFC number, and DOD Sponsored POV.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–22857 Filed 9–21–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0022]

OMB Clearance Request for Customs and Duties

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 (900–0022).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (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 Customs and Duties.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 1,330; *responses per respondent,* 10; *total annual responses,* 13,300; *response burden hours,* 6,650.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0022, Customs and Duties, in all correspondence.

Dated: September 10, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–22844 Filed 9–21–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0025]

OMB Clearance Request for Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate

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 (9000–0025).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (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 Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation not to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic end products. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a designated country of the Act.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 1,140; *responses per respondent,* 10; *total annual responses,* 11,400; and *total response burden hours,* 1,904.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0025, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, in all correspondence.

Dated: September 10, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–22846 Filed 9–21–92; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0024]

OMB Clearance Request for Buy American Certificate

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 (9000–0024).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (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 Buy American Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 2663; *responses per respondent*, 20; *total annual responses*, 53,260; *response burden hours*, 8,894.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Certificate, in all correspondence.

Dated: September 10, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–22865 Filed 9–21–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings Environmental Restoration Program Kansas City Plant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Flood statement of findings.

SUMMARY: This is a Statement of Findings prepared pursuant to Executive Order 11988 and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. Proposed activities associated with the Kansas City Plant Environmental Restoration Program would occur within the 100-year floodplain of the Blue River and Indian Creek. On the basis of the Floodplain Assessment, prepared for the Environmental Restoration activities pursuant to 10 CFR part 1022, DOE has determined that there will be no adverse impacts on the floodplain, that there is no practicable alternative to these activities, and that the activities have been or will be designed to avoid or minimize impacts to the floodplain.

FURTHER INFORMATION: Copies of the Floodplain Assessment and maps showing the locations of the proposed actions are available from: Mr. Patrick T. Hoopes, Chief, ES&H Branch, U.S. Department of Energy, Kansas City Area Office, Post Office Box 410202, Kansas City, Missouri 64141–0202, (816) 997–7003.

For further information on floodplain environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The proposed activities, required to meet the terms and conditions of a resource Conservation and Recovery Act (RCRA) section 3008(h) Corrective Action Administrative Order on Consent (Environmental Protection Agency (EPA) I.D. M09890010 524 issued June 23, 1989) between the EPA and DOE, include the following:

1. Department 27 (D/27) Interim Measure/Removal Action would involve excavation of shallow polychlorinated biophenyl (PCB) contaminated soil. An area of approximately 290 square feet would be excavated to a depth of 4 feet.

2. RCRA Facility Investigations would be conducted on the Trichloroethene (TCE) Still Area, Northeast Area, Miscellaneous Contaminated Sites, Plating Building, Department 26 (D/26), Outfall 001, Abandoned Indian Creek Outfall (AICO), D/27 Inside, and Truck Shop and Department 71 Area.

3. The ongoing ground-water treatment interim actions include ground-water recovery wells in the TCE Still Area, Northeast Area, and Underground Tank Farm. These wells are connected to an Ultraviolet Radiation/Ozone/Hydrogen Peroxide advanced oxidation treatment system. A total of 15 wells would pump Volotile Organic Compound contaminated ground water to the treatment system through a network of underground piping.

4. The AICO project would include excavation of PCB-contaminated soil from an abandoned outfall in front of the Bannister Federal Complex. An estimated 13,500 cubic yards of soil would be excavated and hauled to a Toxic Substance Control Act permitted, out-of-State landfill. The excavated are would then be backfilled with clean soil.

The specific activities proposed to occur within the 100-year floodplain include geophysical surveys, installing ground-water wells, drilling soil borings, sediment sampling, ground-water pumping and treatment, and soil excavation. The following briefly describes these activities:

- Geophysical Surveys—These surveys would be conducted to determine the presence or absence of potential waste burial locations. The methods to be used may include ground penetrating radar, electromagnetic induction, and acoustic refraction techniques. Soil boring may be involved in some locations due to other obstructions.
- Installing Ground-Water Wells—Ground-water monitoring and production wells would need to be installed for the purpose of defining the extent of ground-water contamination, monitoring ground-water elevations and flow, and recovering contaminated ground water for treatment. The wells would be installed as single, double, or triple completions in a single boring and would be installed over most of the complex. Wells would be completed at various depths ranging to bedrock (45 feet).
- Drilling Soil Borings—Soil borings would be taken over most of the complex for the purpose of determining the presence or absence of contamination and defining the extent of contamination. The borings may be drilled to bedrock (45 feet) or may be shallow (5 feet).
- Sediment Sampling—Sediment samples may be collected for the purpose of characterizing the potential impacts of contamination on surface drainage. Samples may be collected in any surface drainage area but would be surface samples only.
- Ground-Water Pumping and Treatment—Ground-Water recovery wells would be installed in ground-water plumes to capture and recover contaminated ground water. These wells may be installed to bedrock (45 feet) and would be used to pump ground water to a treatment system.
- Soil Excavation—Soil would be excavated in the D/27 area and AICO for the purpose of removing contamination. The excavations would range to a depth of bedrock (45 feet) and would involve an area of 16,500 square feet. Contaminated soil would be hauled off-site to a permitted landfill.

The goal of these activities would be to determine the presence (or absence) of contamination, define the vertical and

horizontal extent of known contamination, and remediate contamination which may threaten human health or the environment. All activities would be conducted pursuant to EPA and State-approved plans, and proposed major remediation efforts would be submitted for public comment prior to EPA and State approval. None of these activities would require permanent disturbances of the floodplain or destruction of characteristics unique to floodplains. Most of the beneficial characteristics of the floodplain have been eliminated by previous construction activities associated with the construction of the plant, roads, parking lots, and a partial flood levee.

Alternatives to the proposed activities are limited by the need to adequately characterize the extent of contamination and to protect the public health and environment. Following is a listing of alternatives considered:

- No action alternatives have been found to be unacceptable to DOE, EPA, and the State. These alternatives are not consistent with the RCRA section 3008(h) Corrective Action Administrative Order on Consent.
- Relocation of activities is not feasible because the contamination must be investigated and remediated where it is identified.
- In-site stabilization for AICO has been found unacceptable to EPA and the State.

These activities have been and would be designed to be consistent with all applicable Federal and State requirements. Permits required to comply with other applicable regulations would be obtained for these activities. DOE's prime objective in these activities is to protect human health and the environment.

The following steps have been taken or would be taken to minimize the impacts from these activities:

- Geophysical methods would be used to avoid unnecessary drilling activities and to minimize the waste generated from these activities.
- Temporary wells have been utilized to prevent additional monitoring wells from being permanently installed.
- Excavation projects (such as D/27 and AICO would utilize run-on and run-off controls to minimize the sediment and soils washed away by rain events. Although these controls are not sufficient to protect against flooding, they are beneficial.
- The AICO project would be scheduled for the dry season if possible to minimize the potential for flooding during remediation.

Prior to implementation of the proposed activities, DOE will allow 15 days of public review after publication of the Statement of Finding.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92-22956 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, San Francisco Support Office; Intent To Make an Award Based on Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. Cosby M. Newsom, Bondline Products, by assisting him in providing more educational-type activities to transfer a superior manufacturing technology to the composite industry. The anticipated overall objective is to increase the nation's productivity.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Cosby M. Newsom, Bondline Products, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that this new process for vacuum-bag molding of laminated composites saves half the labor and materials of conventional-composite manufacturing in a one billion dollar per year industry. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which two patents have been issued. The savings could easily amount to 200- to 250-million dollars per year in: scrapped film, tape, and other elastomeric-type materials, based on a one billion dollar size of the industrial market and on cost reductions possible of from 40- to 50-percent.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $78,230.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Dixon, Director, San Francisco Support Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22964 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and San Francisco Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Dr. John F. Clauser to develop the design specifications for a new gravity sensor to allow the use of his invention in a hostile borehole environment, thereby to map by tomography the surrounding earth density. The anticipated overall objective is to position Dr. Clauser so that the necessary additional funding he needs (around $1 million) to construct and field demonstrate the device can be sought elsewhere.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Dr. John F. Clauser, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that it is about 10-fold more sensitive, enabling it to identify the presence and locations of petroleum and/or other valuable natural resources that would not otherwise be discovered. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which two patents have issued. The extent of the energy recovery would be largely determined by the definitive design and specification that will be developed and funded by this grant.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $70,240.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Dixon, Director, San Francisco Support Office, U.S.

Department of Energy, 1333 Broadway, Oakland, California 94612.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22960 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, Dallas Support Office; Intent To Make an Award Based on an Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office (DSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR.14(f), that DOE intends to award a grant to Mr. John Robinson, Drying Technology, Inc., for designing, building, and installing his drying technology in one plant of four different industries, and training plant operating personnel in its use. The receiving companies will allow the technology to be viewed by others in their industry. The anticipated overall objective is to use these demonstration installations to prove to each industry that large energy savings and plant operating rate improvements will result if this technology is used.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. John Robinson, Drying Technology, Inc., will be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that wet products with variable moisture can be dried more uniformly since the rate at which they pass through the dryer can be varied to compensate for the variation in moisture. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been issued. The extent of the energy savings will depend upon the number of units which can replace dryers currently in use.

The project period for the grant award is 24-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $83,323.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, Texas 75247.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22958 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Intent To Award Grant to Electric Power Research Institute (EPRI)

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Field Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 it intends to award a grant to Electric Power Research Institute (EPRI). The objective of the work to be performed under this grant is to develop an improved model(s) to predict instream flow needs for maintaining fish populations downstream from hydropower projects.

FOR FURTHER INFORMATION CONTACT: Joe Lee, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, ID 83401-1562, 208-526-1912.

SUPPLEMENTARY INFORMATION: The Statutory authority for the proposed award is Public Law 93-577, the "Federal Non-nuclear Energy Research and Development Act of 1974". The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to develop individual-based models for fish populations of representative fish species that include the influences of physical, chemical and biological parameters on fish responses to flow changes. The proposed grant will have a duration of approximately three years. The total project costs are estimated to be $647,000, with DOE funding $100,000.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-22968 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and San Francisco Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the San Francisco Support Office (SFSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Miguel V. Franco for the purpose of developing an improved method for producing carpet.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Miguel V. Franco would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). The patented technology is a new design of a circular loom producing, with greater productivity a wider variety of carpeting than conventional looms.

The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $90,000.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Dixon, Director, San Francisco Support Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22957 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and Atlanta Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Atlanta Support Office (ASO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. Robert D. Rutland, In-Place Asphalt Resurfacing Company, to obtain the assistance necessary to generate the required basic engineering design and drafting services to build a production prototype machine.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Robert D. Rutland, In-Place Asphalt Resurfacing Company, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantage over the most efficient current technology, which is the in-place

hot milling process, is that this process saves two-thirds the heating energy. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been issued. The extent of the energy recovery would depend upon the grantee's ability to impact the marketplace, and the subject grant assistance should increase his ability to market the technology five-fold.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $98,646.

FOR FURTHER INFORMATION CONTACT: Buddy L. Jackson, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street, Suite 876, Atlanta, Georgia 30309 TX.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22962 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Denver Support Office; Financial Assistance Award to Industrial Screen and Maintenance Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of acceptance of an unsolicited application for award of a financial assistance instrument.

SUMMARY: The Department of Energy (DOE) announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.6(a)(2), it intends making a discretionary financial assistance award based on acceptance of an unsolicited application, meeting the criteria of 10 CFR 600.14(e)(1), to Industrial Screen and Maintenance Corporation, under Grant Number DE-FG48-92R810486. Industrial Screen and Maintenance Corporation has a patent on an improved pin shear mixer that requires less energy in mixing "mud" for drilling oil wells. The proposed grant will provide funding in the estimated amount of $88,960 to the subject proposed grantee to redesign the invention to improve its operating efficiencies, to conduct independent laboratory testing, and to field test this process, which is a highly promising new technology that requires less energy in mixing, and one especially suitable for mixing the "mud" required for drilling oil wells. As a direct result, it saves valuable rig time. Advantages over current technology are that by being able to save mud cost and rig time by as much as one-third, the search for new oil will be expedited at no additional cost in time and effort. Other potential applications will ensure wider markets since mixing is a widely employed unit operation throughout the chemical industry.

The DOE has determined in accordance with 10 CFR 600.14(f) that the application submitted by Industrial Screen and Maintenance Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d). The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations since the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: Dennis D. Maez, U.S. Department of Energy, Denver Support Office, 1075 South Yukon, Lakewood, CO, 80226 (303) 969-7000 Extension 224.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22963 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

DOE Field Office, Chicago, Noncompetitive Award of Financial Assistance; Michigan Department of Commerce, Public Service Commission, Lansing Housing Commission Conservation Partnership Grant

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Field Office, Chicago, through the DOE Chicago Support Office (CSO), announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(B)(2) DOE intends to award a grant to the Michigan Department of Commerce, Public Service Commission to demonstrate the integration of performance contracting with utility incentives and assistance in implementing cost-effective conservation in multifamily public housing, and to field test new DOE guidelines and model documents for such projects.

SUPPLEMENTARY INFORMATION: The Michigan Department of Commerce Public Service Commission (MPSC) is the designated State Energy Office (SEO), conducting activities under the Energy Extension Service and State Energy Conservation Programs. The MPSC has been extensively involved in efforts to improve the building efficiency of private and public-sector housing and commercial property. Additionally, this award will further the aim of improving the energy efficiency of public housing that is currently being conducted by DOE and the U.S. Department of Housing and Urban Development (HUD); specifically, by implementing a DOE-HUD published guide for energy performance contracting for public housing, Therefore, the grant application is being accepted because DOE knows of no other organization that is conducting or planning to conduct this type of effort in using the abovementioned document. The project period for the grant award is 18-months, expected to begin September, 1992. DOE plans to provide funding in the amount of $40,000 for this project period.

FOR FURTHER INFORMATION CONTACT: Mark Burger, U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252-2193.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22965 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, Dallas Support Office; Intent To Make an Award Based on an Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicitated application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office through the Dallas Support Office (DSO), announces pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. Jack W. McIntyre, for assistance to obtain a feasibility study on the recovery of natural gas from coal bed and/or shale formations, using a patented tool. The anticipated general objective is to define a general geologic and hydrologic feasibility study of the potential applicability of the patented tool to the recovery of natural gas from coal bed and/or shale formations.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Jack W. McIntyre, would be based on acceptance of an unsolicated application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that, the invention injects the water into an absorbing formation, without first pumping it to the surface, as is required in current practice. The project represents a unique idea that would not be eligible for financial assistance under recent, current, or planned solicitation. The invention is using a technique for which a patent is issued.

The extent of the energy recovery, in the form of enhanced gas production from water-logged, now abandoned wells, and the feasibility of the tool and the extent of the reserves would be determined from the results of this grant.

The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $84,000.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22959 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office and Dallas Support Office

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office through the Dallas Support Office (DSO), announces pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. M. Glenn Osterhoudt, III, MGO Oilfield Services, for developing and field testing under varying conditions a low-cost, new method and apparatus for reviving dead gas wells. The anticipated overall objective is to develop the technology and to generate support data sufficient to field test the method and apparatus and determine the capabilities of the subject technology under varying conditions.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. M. Glenn Osterhoudt, III, MGO Oilfield Services, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(l). Advantages over current technology are that, except for the relatively high cost air lift method, none work on a completely dead well. The proposed project represents a unique idea that would not be eligible for financial assistance under recent, current, or planned solicitation. The invention is using a technique for which a patent is issued. The extent of the energy recovery, in the form of gas retrieved from completely dead wells, would depend upon the number of gas wells which otherwise would have to be abandoned. The project period for the grant award is 18-months, expected to begin in September 1992. DOE plans to provide funding in the amount of $70,240.

FOR FURTHER INFORMATION CONTACT: Linda K. Carter, U.S. Department of Energy, 1420 West Mockingbird Lane, Suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on September 10, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22961 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, NREL Area Office; Solicitation for Cooperative Agreement Applications; Superconductivity Partnership Initiative

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Applications Number DE-PS02-92CH10514.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR part 600 announces the availability of a solicitation for financial assistance applications to develop the U.S. industrial technology base needed for commercial development of High-Temperature Superconductivity (HTS) electric power equipment. The Catalog of Federal Domestic Assistance (CFDA) Number for this action is 81.087, Renewable Energy Research and Development.

DATES: The solicitation will be issued on or about September 11, 1992 and will contain complete information on funding, eligibility, application preparation, and evaluation. Applications will be due approximately 90 days after the solicitation is issued.

ADDRESSES: To obtain a copy of the solicitation, write to the U.S. Department of Energy's Area Office for the National Renewable Energy Laboratory (NREL Area Office), 1617 Cole Blvd, Golden, CO, 80401, Attn: Mr. John Meeker, Contract Specialist.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE), Office of Energy Management intends to cost share research and development of High-Temperature Superconductivity (HTS) technology for use in electric power applications. This developmental program will be called the Superconductivity Partnership Initiative (SPI). The objective of SPI is to encourage the development of HTS components and equipment for electric power systems to be used by electric utilities and/or their customers. Potential applications and their products include, but are not limited to: 1. Generation Applications such as generators, superconducting magnetic energy storage [SMES], or flywheel storage with superconducting bearings; 2. Transmission and Distribution Applications such as underground cables, SMES, or fault current limiters and; 3. Customer Applications such as electric motors or small SMES.

Research and development of HTS technology for other than electric power applications is not considered to be a part of SPI and will not be considered for Cooperative Agreement award under the solicitation.

Subject to availability, DOE funding is anticipated to be $4.5 million. It is anticipated that at least two awards will be made. A minimum of 20% cost sharing by applicants is required.

The solicitation is intended to develop enabling HTS components (wires, coils, bearings, or similar HTS structures suitable for equipment components) in parallel with product-related development. The parallel product-related development will include: energy and economic benefit analysis of product introduction, product design and performance information, and development or specification of non-HTS components. Deliverables are expected to include: Demonstration of HTS component progress (for example, longer length, higher performance wires; higher field, larger diameter coils; higher lift, larger bearings), and demonstration of product-related development progress (for example, energy and economic benefit analysis report, design and performance information report, and non-HTS component progress).

The establishment of teams with the knowledge and capability to pursue the

development of HTS technology from the research stage through development and into commercialization is a key element for achieving the goals of the program. The proposed team must be comprised and coordinated such that continuing pursuit of the technology by the teams up to and including actual commercialization without further DOE support can be expected to take place.

The SPI teams are expected to include a product manufacturer, an HTS component manufacturer, and a user having test site capability. The product manufacturer must express a business interest in commercializing the proposed product and exhibit the capability to proceed with commercialization activities following SPI completion. The HTS component manufacturer must exhibit the capability to successfully perform the proposed work. The user must have the capability to test prototype equipment for the proposed product and participate in defining particular application requirements. The team may also include universities with specialized expertise or engineering firms accustomed to electric utility work, as necessary for the successful completion of the project. However, DOE National Laboratories cannot be team members.

All responsible sources may submit an application which will be considered.

Dated: Issued in Chicago, Illinois, on August 28, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-22966 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office; Noncompetitive Award of Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces that it intends to award a grant to Texas A&M University. The proposed award meets the criteria in 10 CFR 600.7(b)(2)(i)(B) in addition to the type of factors listed in 10 CFR 600.14(d). The financial assistance is for support of the Fifteenth National Industrial Energy Technology Conference, March 24–25, 1993, in Houston, Texas. Texas A&M University is the conference host.

SUPPLEMENTARY INFORMATION: The Industrial Energy Technology Conference is the most significant annual national conference concentrating on industrial energy efficiency applications and related environmental concerns. Agenda include: Environmental issues impacting industry, impact of air quality regulations on energy, industry/utility interface, heat and power systems, energy-related equipment, process design for energy conservation, and alternate fuels. The conference is attended by senior energy managers, plant engineers, utility representatives, suppliers, and industry consultants. DOE's mission of increasing industrial energy efficiency will be advanced through participation in the conference. Results of the conference will impact favorably on industrial energy decision-making in both the public and private sectors. Academic research will be stimulated

FOR FURTHER INFORMATION CONTACT: Robert A. Gabour, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, Suite 400, Dallas, Texas 75247, (214) 767–7232.

Issued in Chicago, Illinois, on September 4, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-22967 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

International Energy Agency; Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–2900.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meetings is provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Monday, September 28, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 3 p.m. The agenda for the meeting is as follows:

1. Preparation for the IEA's Seventh Allocation Systems Test ("AST–7"), including training sessions and operational phase.

2. Future work program, including AST–7 appraisal.

3. IAB organization and chairmanship.

II. A meeting of the IEA's Group of Reporting Companies will be held on September 29, September 30, and October 1, 1992, at the OECD, beginning at 9:15 a.m. on September 29, at the OECD. The purpose of this meeting is to permit attendance by representatives of U.S. Reporting Companies at the European session of the IEA's Training Program for National Emergency Sharing Organizations ("NESOs") and Reporting Companies in relation to AST–7, which training session is scheduled to be held at the OECD on the dates indicated above. The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following draft agenda will be followed:

September 29, 1992

9:15–10:00 Introduction Review of the Agenda Overview of training objectives
10:00–10:50 The IEA Emergency Sharing System, activation procedures and responsibilities
10:50–11:10 Coffee break
11:10–13:00 National emergency procedures; NESO and Reporting Company organization; national fair sharing and Non-Reporting Company operations
13:00–14:30 Lunch
14:30–15:45 IEA data bases
—Questionnaires A and B ("QA/QB") data
—Use of QA/QB data in AST–7
—AST–7 test assumptions and their impact on the data base
15:45–16:00 Coffee break
16:00–17:45 Key aggregates in the Emergency Sharing System
—Trigger calculations (Base Period Final Consumption, available supplies, Emergency Reserve Drawdown Obligation, and Allocation Rights and Allocation Obligations)
—The balancing job in AST–7

September 30, 1992

9:15–10:30 Market response to oil supply disruptions
10:30–10:45 Coffee break
10:45–12:15 IEA and NESO response to the AST–7 disruption assumptions
—Supply and operational considerations
—National response, including stockdraw and demand restraint
12:15–13:30 Lunch
13:30–15:00 IEA and industry response to the AST–7 disruption assumptions
—Type 1 and Type 2 activity
—Transport and refining operations
15:00–16:15 Industry Supply Advisory Group ("ISAG") and Emergency Operations Team ("EOT") activities
16:15–16:30 Coffee break
16:30–17:45 Information processing and transmission in AST–7
—The Voluntary Offer format and codes
—Preparation, transmission and processing
—The allocation screen—tracking countries' Allocation Rights and Obligations

October 1, 1992

9:15–10:15 Voluntary Offers
—Conditional offers, short fuse offers, split cargoes
—Voyage time problems, port restrictions, vessel size, product and crude oil offers

10:15–10:45 Shipping considerations in AST–7
10:45–11:15 Legal considerations in AST–7
11:15–11:30 Coffee break
11:30–12:45 AST–7 calendar
—Discussion among participants of value of training program
—Appraisal reports
—Relations with the media
—Closing remarks; end of session
12:45–14:00 Lunch
14:00–16:00 Optional revision of Training Program elements with ISAG and the IEA Secretariat

As permitted by 10 CFR 209.32, the usual 7-day period for publication of the notice of these meetings in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the IEA's scheduling of these meetings delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB and their counsel, representatives of IEA Reporting Companies and their counsel, representatives of NESOs, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, September 15, 1992.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 92–22969 Filed 9–21–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–809–000, et al.]

Illiois Power Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER92–809–000]

September 10, 1992.

Take notice that on August 31, 1992, Illinois Power Company (Illinois) tendered for a Power Coordination Agreement (PCA) between Illinois and the Illinois Municipal Electric Agency (IMEA). Illinois states that the Power Coordination Agreement is intended to supersede the currently effective Power Coordination Agreement between Illinois and IMEA.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Detroit Edison Company

[Docket Nos. ER92–180–003 and EL92–17–002]

September 10, 1992.

Take notice that on August 17, 1992, Detroit Edison Company tendered for filing its refund report in the above-referenced dockets.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. New Hampshire Public Service Company

[Docket No. ER92–797–000]

September 10, 1992.

Take notice that on August 27, 1992, New Hampshire Public Service Company (PSNH) tendered for filing a Notice of Cancellation of Rate Schedule No. 143 with Fitchburg Gas & Electric Light Company.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. New Hampshire Public Service Company

[Docket No. ER92–796–000]

September 10, 1992.

Take notice that on August 27, 1992, New Hampshire Public Service Company (PSNH) tendered for filing a Notice of Cancellation of Rate Schedule No. 144 with Unitil Power Corporation.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER92–795–000]

September 10, 1992.

Take notice that Minnesota Power & Light Company (Minnesota Power) on August 26, 1992, tendered for filing an Amendment to the Interchange Service Agreement between Minnesota Power and Superior Water, Light and Power Company (Superior). The Amendment changes the service provided by Minnesota Power to Superior from partial requirements service to full requirements service.

Minnesota Power requests an effective date of November 1, 1992.

Copies of the filing have been served on Superior, the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER92–810–000]

September 10, 1992.

Take notice that on August 31, 1992, Montaup Electric Company (Montaup) tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 95. The Notice of Cancellation provides that the effective date of cancellation of the rate schedule is October 31, 1992.

Rate Schedule FERC No. 95 is an Agreement under which Montaup agreed to sell to Bangor Hydro-Electric Company (Bangor) capacity and associated energy from Canal No. 2 Unit. The initial Agreement was accepted and designated as Montaup Rate Schedule No. 95 on January 13, 1992. An amendment to this Agreement was submitted for filing under Docket No. ER92–629–000 and June 8, 1992. The amendment provides Bangor with additional capacity and associated energy beginning June 1, 1992 through October 31, 1992. The Commission accepted the amendment by letter order issued July 21, 1992 and designated it Supplement No. 1 to Montaup Rate Schedule No. 95. Rate Schedule FERC No. 95 expires by its own terms on October 31, 1992.

Delmarva states that a copy of this filing has been sent to PE and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER92–823–000]

September 10, 1992.

Take notice that on September 3, 1992, Delmarva Power & Light Company (Delmarva) tendered for filing as an initial rate under Section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between Delmarva and Philadelphia Electric Company (PE) dated September 3, 1992.

Delmarva states that the Agreements sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PE. In order to optimize the economic advantages to both Delmarva and PE, Delmarva requests that the Commission waive its customary notice period and allow this Agreement to become effective on September 14, 1992.

Delmarva states that a copy of this filing has been sent to PE and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: September 24, 1992, in accordance with Standard Paragraph e at the end of this notice.

8. Washington Water Power Company

[Docket No. ER92-824-000]

September 10, 1992.

Take notice that on September 3, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 Service Agreements under WWP's FERC Electric Tariff Volume No. 4.

A copy of the filing was mailed to the parties of the new Service Agreements.

Comment date: September 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas Gas and Electric Company

[Docket No. ER92-828-000]

September 11, 1992.

Take notice that on September 8, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Schedule No. 182. KG&E states the purpose of the change is to extend the term of the existing Generating Municipal Electric Service Agreement between KG&E and the The City of Girard, Kansas. The change is proposed to become effective November 13, 1992.

Copies of the filing were served upon the City of Girard and the Kansas Corporation Commission.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Connecticut Light and Power Company

[Docket No. ER92-820-000]

September 11, 1992.

Take notice that on August 31, 1992, Connecticut Light and Power Company (CL&P) tendered for filing a letter agreement that extend the term of a previously filed and accepted exchange agreement dated June 1, 1985 with its amending letters dated October 23, 1986, November 26, 1991, and June 2, 1992 between CL&P and the United Illuminating Company (UI).

CL&P states that a copy of this filing has been mailed to UI.

CL&P requests that the Commission waive its regulations to the extent necessary to permit the rate schedule filed to become effective November 1, 1992.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Nevada Power Company

Docket No. ER92-825-000]

September 11, 1992.

Take notice that on September 4, 1992, Nevada Power Company (NPC),tendered for filing a request for a waiver of section 35.14 of the Federal Energy Regulatory Commission's Regulations for all tariffed service provided by NPC to the City of Needles (Needles) under Rate Schedule FERC No. 41. The Primary purpose of the filing is to allow NPC to exclude the purchase power costs and energy of the Boulder Canyon Project Schedule B (Hoover B) power from the calculation of the fuel adjustment clause for power sold to Needles. The request asks that the waiver be for all service rendered since March 1990.

NPC states that copies of the filing were served upon Needles.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER92-457-000]

September 11, 1992.

Take notice that on September 4, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a second amended filing under FERC Docket No. ER92-457-000. This docket was initiated on April 11, 1992, when PG&E tendered for filing a February 7, 1992 letter agreement between PG&E and the Western Area Power Administration (Western) which amends the parties' Sale, Interchange and Transmission Contract No. 14-06-200-2948A (Contract 2948A), Rate Schedule FERC No. 79 (Letter Agreement).

The proposed amended filing submits Amendment No. 1 to the Letter Agreement (Amendment No. 1). The proposed amendment incorporates FERC Staff's suggestions regarding the equity portion of the rate of return component used in rate formulas in the Letter Agreement.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. West Texas Utilities Company

Docket No. ER91-588-000]

September 11, 1992.

Take notice that on September 4, 1992, West Texas Utilities Company (WTU) tendered for filing an amendment to the Interconnection and Interchange Agreement (Agreement) between WTU and Lower Colorado River Authority (LCRA) and a related letter agreement.

WTU requests an effective date of July 1, 1990 for the Agreement as amended and, accordingly, seeks waiver of the Commission's notice requirements. WTU requests an effective date of November 3, 1992 for the Letter Agreement. Copies of the filing were served upon LCRA and the Public utility Commission of Texas.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER92-827-000]

September 11, 1992.

Take notice that on September 4, 1992, Central Illinois Public Service Company (CIPS) tendered for filing a revision to its Rate Schedule W-2 for Wholesale Electric Service to the municipalities of Newton and Greenup, in Illinois. Under the revision, proposed to be effective November 3, 1992, CIPS will increase slightly the energy and demand charges for service to each municipality.

Copies of the filing were served on Newton, Greenup, and the Illinois Commerce Commission.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company

[Docket No. ER92-78-000]

September 11, 1992.

Take notice that on September 4, 1992, Northern States Power Company (NSP) tendered for filing an amendment in the above captioned docket. The amendment provides additional information supporting acceptance for filing by the Commission of the Crooked Lake Substation Transformation Service Agreement dated August 28, 1989 between NSP and United Power Association (UPA).

The Crooked Lake Substation Transformation Service Agreement essentially provides that NSP owns a 115-12.5 kV substation known as the Crooked Lake Substation (Substation) from which NSP provides facilities and service for itself and, under contract, for the municipal utility of the City of Anoka, MN (City). NSP provides UPA 115-12.5 transformation service from certain existing facilities, and installed certain other facilities in its Substation, all of which would benefit Anoka Electric Cooperative (AEC), a UPA member distribution cooperative. UPA is willing to contribute to NSP's cost of installing certain additional facilities in the Substation to provide service for UPA, as an alternative to UPA having to build a new 115 to 12.5 kV substation in the same area to provide similar service to AEC.

NSP again requests the Crooked Lake Substation Transformation Service Agreement be accepted for filing effective August 28, 1989, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Hartwell Energy Limited Partnership

[Docket Nos. ER92-39-000 and ER92-22-000]

September 11, 1992.

Take notice that on September 4, 1992, Hartwell Energy Limited Partnership (Hartwell) filed a Petition seeking that the Commission grant authorization under Section 203 of the Federal Power Act, 16 U.S.C. § 824b, and waive Part 33 of the Commission's regulations, 18 CFR, Part 33, with respect to a proposed change in Hartwell's ownership structure. Hartwell has further sought a declaratory order that there is no need for the Commission to re-examine Hartwell's rates or the waivers previously granted by the Commission as a result of the proposed ownership changes. Hartwell requests that the Commission act on an expedited basis.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Appalachian Power Company

[Docket No. ER92-830-000]

September 11, 1992.

Take notice that Appalachian Power Company (APCo), on September 8, 1992, tendered for filing with the Commission a new electric service agreement that was executed by APCo and West Virginia Power, a division on UtiliCorp United, Inc. (WV Power), on December 30, 1991. The agreement is intended to replace the existing service agreement between APCo and WV Power, the initial term of which expired on March 31, 1992.

APCo proposes an effective date of November 9, 1992, and states that a copy of its filing was served on the affected customer.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER92-537-000]

September 11, 1992.

Take notice that Union Electric Company, on September 8, 1992, tendered for filing Amendments to the 60 Hertz Wholesale Power Agreement and the Interchange Agreement between Union Electric Company (UE) and Iowa Electric Light and Power Company (IELP).

UE states that the purpose of the Amendment to the 60 Hertz Agreement is to specify a cap in the rates based on the maximum demand and energy charges for UE's Callaway Plant. The purpose of the Amendment to the Interchange Agreement is to modify the rates which may be charged by UE and IELP based on current cost justification, and to specify caps on such rates.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Midwest Power Systems Inc.

[Docket No. ER92-784-000]

September 11, 1992.

Take notice that on September 8, 1992, Midwest Power Systems Inc., 666 Grand Avenue, Des Moines, Iowa 50309, a wholly owned subsidiary of Midwest Resources Inc., tendered an amended filing of its notice that it is the successor to Iowa Power Inc. (IPR) and Iowa Public Service Company (IPS). This amendment, filed in response to Staff request, contains a list of the various rate and service schedule numbers in effect.

Copies of the filing were served upon Midwest Power Systems Inc.'s jurisdictional customers and the Iowa Utilities Commission and the South Dakota Utilities Commission.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Montaup Electric Company

[Docket No. ER92-91-000]

September 11, 1992.

Take notice that on September 8, 1992, Montaup Electric Company (Montaup), in compliance with a request by Staff, filed supplemental information in the above-referenced docket. The requested information provides (1) Montaup's maximum justifiable ceiling charge for system energy sales for each year 1984 through 1990; (2) the carrying costs per kW-day per kWh for the capacity value of the exchange unit and (3) a summary for each year comparing Montaup's net maximum justifiable compensation for energy sales on a per kWh basis to its actual charges.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of Colorado

[Docket No. ER92-831-000]

September 11, 1992.

Take notice that on September 8, 1992, Public Service Company of Colorado tendered for filing, in accordance with 18 CFR 35.13(a)(2)(i) of the Commission's Rules of Practice and Regulations, a proposed amended nonfirm transmission tariff for service to the Inland Power Pool Agreement of which it is a party. Public Service Company of Colorado currently provides Inland Power Pool parties nonfirm transmission service under its FERC Electric Tariff No. 41. The proposed amended nonfirm transmission tariff would increase revenue from jurisdictional service by approximately $11,300 based on the twelve month period ended June 30, 1992.

The amended nonfirm transmission tariff proposed reflects updated costs consistent with Public Service Company of Colorado's Colorado-Ute Acquisition Section 205 filing, dated February 6, 1992, which has been accepted by the Commission and the cost of the required Commission filing fee.

Copies of the filing were served upon Public Service Company of Colorado jurisdictional customers, all parties to the Inland Power Pool Agreement, and to state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado's Office of Consumer Counsel.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Bangor Hydro-Electric Company

[Docket No. ER92-697-000]

September 11, 1992.

Take notice that Bangor Hydro-Electric Company (Bangor) on September 4, 1992, tendered for filing an Amendment to Filing. The Rate Schedule included in this Amendment provides for the sale by Bangor to other utilities which enter into Service Agreements with Bangor, capacity and associated energy at negotiated rates not to exceed Bangor's cost of service.

Bangor requests that the Commission waive its notice requirement in order to allow the Rate Schedule to become effective as soon as review can be completed, in no event later than November 1, 1992.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Company

[Docket No. ER92-817-000]

September 11, 1992.

Take notice that New England Power Company, on September 1, 1992, tendered for filing proposed service agreements, amendments to service agreements and terminations of services

under its FERC Electric Tariff, Original Volume Nos. 3 and 4.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. New England Power Company

[Docket Nos. ER91-566-002 and ER90-526-004]

September 11, 1992.

Take notice that on September 3, 1992, New England Power Company (NEP) tendered for filing its compliance filing in the above-referenced dockets.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER92-819-000]

September 11, 1992.

Take notice that New England Power Company (NEP), on September 2, 1992, tendered for filing an agreement to provide service to Braintree (Massachusetts) Electric Light Department under NEP's FERC Electric Tariff, Volume No. 5.

The proposed service agreement would permit Braintree to make short-term energy purchases from NEP when such purchases would mutually benefit both parties.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Blue Ridge Power Agency Central Virginia Electric Cooperative, Inc., and Craig-Botetourt Electric Cooperative, Inc. v. Appalachian Power Company

[Docket Nos. EL89-53-004, ER90-132-004 and ER90-133-004]

September 11, 1992.

Take notice that on September 8, 1992, Appalachian Power Company (APCo) tendered its amended compliance filing in the above-referenced dockets, in accordance with the August 6, 1992 deficiency letter issued by the Director, Division of Applications.

Copies of the amended filing were served upon APCo's jurisdictional customers, the Virginia State Corporation Commission, the Public Service Commission of West Virginia, the Tennessee Public Service Commission and all parties of record.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER92-829-000]

September 11, 1992.

Take notice that on September 8, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing, pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Federal Regulatory Commission's regulations (18 CFR 35.12), in settlement of the above complaint, an exchange of transmission services which: (1) gives the City transmission service over PG&E's entitlement of the DC Line and (2) gives PG&E transmission service over the city's entitlement in the California-Oregon Transmission Project. No revenues are paid or received by either Party as a result of this exchange.

Copies of this filing have been served upon the City, the California Public Utilities Commission and the parties to the service list in the above referenced docket.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Electric Power Company

[Docket No. ER92-812-000]

September 11, 1992.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 1, 1992, tendered for filing proposed changes in its FERC Electric Service Tariff Volume 1 and in its Power Sales Agreement with The Wisconsin Public Power Inc. SYSTEM (FERC Rate Schedule No. 65). The proposed changes would increase revenues from jurisdictional service by $8,524,468 (15.1%), based on the twelve month period ending December 31, 1992. Wisconsin Electric cites increased operation and maintenance expenses as well as increased investment in plant facilities as justification for its proposed rates.

Wisconsin Electric requests that the rates be made effective on November 1, 1992, sixty days after filing. Wisconsin Electric requests cancellation of its Replacement Coal Recovery Provision, effective January 1, 1993. Cancellation of the RCRP will decrease revenues from jurisdictional service by approximately $400,000 annually. The Company also requests acceptance of a Conditional Reclamation Cost Surcharge in the event that the Company is ordered to refund amounts passed through the wholesale fuel cost adjustment at the conclusion of FERC Docket No. FA88-62-000. The surcharge would be prospectively applied to recover the refunded amounts, plus interest.

Copies of the filing have been served in Wisconsin Electric's eleven affected wholesale customers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. EEA III. L.P.

[Docket No. QF91-24-001]

September 14, 1992.

On September 8, 1992, EEA III. L.P., of 1700 North Moore Street, Suite 1850, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Bayonne, Hudson County, New Jersey, and will consist of a combustion turbine generator, an extraction/condensing steam turbine generator (STG), a non-supplementary fired heat recovery boiler (HRB), and approximately 6.7 miles of 138 kV underground transmission line. Steam recovered from the STG and HRB will be supplied to two unaffiliated hosts for thermal applications. The average net electric power production capacity of the facility will be approximately 152.6 MW. The primary energy source will be natural gas. Construction of the facility is expected to commerce in March of 1993.

Comment date: October 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. GEO East Mesa Limited Partnership—GEM 1

[Docket No. QF88-202-005]

September 14, 1992.

On September 8, 1992, GEO East Mesa Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. GEO East Mesa Limited Partnership—GEM 2

[Docket No. QF88-203-005]

September 14, 1992.

On September 8, 1992, GEO East Mesa Limited Partnership (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: September 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Arroyo Energy, Limited Partnership

[Docket No. QF92-179-000]

September 14, 1992.

On August 28, 1992, Arroyo Energy, Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket.

The amendment provides additional ownership and technical information pertaining to its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: October 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. American Bituminous Power Partners, L.P.

[Docket No. QF87-494-005]

September 14, 1992.

On September 10, 1992, American Bituminous Power Partners, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership structure of the facility.

Comment date: October 5, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22905 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-09370T, New Mexico-35]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 16, 1992.

Take notice that on September 14, 1992, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Wolfcamp Formation (Vaca Draw/Pitchfolk Ranch Area) in Lea County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains BLM and the New Mexico Department of Energy, Minerals and Natural Resources' findings that the referenced portion of the Wolfcamp Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Township 24 South, Range 33 East
Sections 25-36: All
Township 24 South, Range 34 East
Sections 25-33: All
Section 34: W/2
Sections 35-36: All
Township 25 South, Range 33 East
Sections 1-24: All
Township 25 South, Range 34 East
Sections 1-24: All
The area of application contains 45,760 acres, more or less, of Federal (69%), State (23%) and Fee (8%) lands.

[FR Doc. 92-22924 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

Regarding Remote Public Access to Commission Systems

September 15, 1992.

Take notice that on October 15, 1992, the Federal Energy Regulatory Commission (FERC) will make available its Remote Public Access (RPA) program to anyone who would like to use it. The RPA will allow public access to the Commission Issuance System (CIS) and the Automated Docket Sheet System (ADSS). The CIS contains the official service list for each proceeding before FERC; the ADSS contains the docket sheet listing all filings made and documents issued for each proceeding before FERC.

RPA originally started as a pilot project on May 11, 1992 and to date, 50 participants are actively using the systems. Because the pilot project has been very successful, the Chairman has decided to make it available to anyone desiring access.

If you are already participating in the pilot project or have already written a letter requesting access, you will automatically receive information about use of the system. If you are not already participating or have not written a letter and you wish access to RPA, please submit a request to the Office of the Secretary (OSEC), Federal Energy Regulatory Commission, room 3110, 825 North Capitol St., NE., Washington, DC 20426. The request should include the entity's name, address, phone number, and a contact person. Upon receiving this information, the OSEC will mail you access information.

If additional information is required, please call the Office of the Secretary at 202-208-0400.

Lois D. Cashell,

Secretary

[FR Doc. 92-22926 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

September 16, 1992.

Take notice that on September 11, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1992:

Sub. 34th Rev. Sheet No. 4

Alabama-Tennessee states that the purpose of this filing is to reflect a $0.0001 per dekatherm decrease in Alabama-Tennessee's rates under its Annual Charge Adjustment ("ACA") clause that results from a corresponding decrease in the annual charge assessed Alabama-Tennessee by the Commission.

Alabama-Tennessee requests a waiver of Section 154.22 of the Commission's Regulations so that this tariff sheet might be made effective on less than 30 days notice and requests any other waiver that may be required in order to accept and approve this filing as submitted.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 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 September 23, 1992. 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 to the proceeding 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. 92-22980 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-231-000]

ANR Pipeline Company; Request for Waiver

September 16, 1992.

Take notice that on September 11, 1992, ANR Pipeline Company (ANR) tendered for filing its emergency request for waiver of the three-year filing requirement to establish a new base tariff rate.

ANR states that in view of the Commission's August 5, 1992 order approving ANR's pending settlement proposal in Docket Nos. RP89-161-021, *et al.*, which eliminates ANR's requirement to file a new rate case by November 1, 1992, ANR should not be required to prepare and file a new rate case at this time.

ANR states that on August 28, 1992, ANR resubmitted pertinent provisions of its FERC Gas Tariff incorporating the modifications required by the August 5 order, to be effective November 1, 1992, and notified the Commission that it will accept the settlement, as modified, for the interim period as ordered, subject to expeditious approval of the August 28, filing. ANR has requested that the Commission approve its filing by no later than September 30, 1992.

ANR states that if the Commission does not waive the three-year filing requirement at this time, ANR, its customers, the Commission, interested state commissions, and producers will be forced to expend valuable resources preparing, reviewing and responding to an extensive rate filing, which will distract the parties' attention from ANR's Order No. 636 compliance filing and the issues addressed therein.

ANR requests that the Commission grant waiver of the three-year filing requirement until 30 days after the Commission acts on the August 28 filing.

ANR states that copy of the filing have been served upon each of ANR's customers, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22923 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-22-001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that CNG Transmission Corporation ("CNG") on September 11, 1992, filed the following revised tariff sheet to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Substitute First Revised Sixteenth Revised Sheet No. 34

CNG requests that the Commission allow the proposed tariff revisions to become effective on August 1, 1992, in accordance with the Commission's August 28, 1992 order.

CNG states that the filing would change CNG's "Excess Deliveries From Buyer's Balance" and "Not From Buyer's Balance" rates for Rate Schedule GSS-II service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22909 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-33-000]

East Tennessee Natural Gas Company; Conference

September 16, 1992.

Take notice that on October 9, 1992, a pre-filing conference will be convened in this restructuring docket. The purpose of the conference is to address a revised summary of the proposal to comply with Order No. 636 prepared by East Tennessee Natural Gas Company. The pipeline intends to serve all parties in the proceeding with the revised summary by September 24, 1992.

The conference will be held at 9 a.m. on October 9, 1992, in the offices of the Federal Energy Regulatory Commission at 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. However, attendance at the conference will not confer party status.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22904 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-2-001 and TM93-1-2-000]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 10, 1992, East Tennessee Natural Gas Company ("East Tennessee"), submitted for filing ten copies each of Sub Twenty Seventh Revised Nos. 4 and 5 to first Volume No. 1 of its FERC Gas Tariff to be effective October 1, 1992.

East Tennessee states that the purpose of the filing is to reflect the new

Annual Charge Adjustment (ACA), pursuant to Article 19 of the General Terms and Conditions of East Tennessee's FERC Gas Tariff. The New ACA rate is $0.0022 compared to $0.0023, a decrease of $0.0001.

Because the reflected change is only to the ACA Surcharge, East Tennessee respectfully requests waiver of the Commission's regulations to the extent necessary to enable the proffered sheets to take effect on October 1, 1992.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules or Practice and Procedures. All such petitions or protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining appropriate action but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 92-22910 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-60-000]

El Paso Natural Gas Co.; Pre-Filing Conference

September 15, 1992.

Take notice that on Wednesday, September 30, 1992, a pre-filing conference will be convened in the captioned docket to discuss the proposed restructuring plan of El Paso Natural Gas Company. The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, at 810 First Street, NE., Washington, DC. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208-2105.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22918 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-24-003 and TQ92-7-24-002]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that Equitrans, Inc. (Equitrans), on September 10, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Substitute Thirty-Seventh Revised Sheet No. 10, to be effective September 1, 1992.

Equitrans states that this filing is intended to comply with the Commission's August 31, 1992 order in this proceeding requiring Equitrans to remove from its demand charge Texas Eastern Transmission Corporation Gas Supply Inventory Reservation Charge (TETCO GIC) costs. Equitrans states that this filing reflects TETCO GIC costs in the commodity component of Equitrans' Rate Schedule PLS.

Equitrans states that the commodity surcharge, which is amortized over a twelve month period, beginning September 1, 1992, is $0.0405 per dekatherm. Equitrans also states that the surcharge is designed to recover only the $1,183,345 in TETCO GIC costs expected to be incurred by Equitrans in the months of September and October of 1992, since TETCO's tariff authorization to implement its GIC has been rescinded, effective November 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22911 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-24-001]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that Equitrans, Inc. (Equitrans), on September 10, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Thirty-Eighth Revised Sheet No. 10 to replace the tariff sheets previously filed herein on August 28, 1992.

Equitrans states that the proposed tariff sheet is designed to reflect the Commission's 1992 Annual Charge Adjustment of $0.0023 per Mcf applicable to interstate natural gas pipelines pursuant to Order No. 472. Equitrans states that it has converted this Mcf rate to a dekatherm (Dth) rate of $0.0022 per Dth.

Equitrans states that the substitute sheet reflects a change in its commodity surcharge under Rate Schedule PLS for flowthrough of Texas Eastern Transmission Corporation's Gas Supply Inventory Reservation Charge (TETCO GIC) costs. Equitrans states that on September 10, 1992 it filed proposed tariff sheets in Docket Nos. TA92-1-24-003 and TQ92-7-24-002 to reflect TETCO GIC costs as a commodity surcharge rather than as a demand charge in compliance with the Commission's August 31, 1992 order in that docket.

Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheet contained in the filing to become effective October 1, 1992.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22912 Filed 9-21-92, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-164-007]

Granite State Gas Transmission, Inc.; Notice of Filing of Revised Tariff Sheets

September 16, 1992.

Take notice that on September 10, 1992, Granite State Gas Transmission, Inc., (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 2, containing changes in tariff provisions for effectiveness on July 1, 1992:

First Revised Sheet No. 61
First Revised Sheet No. 72

Revised to Granite State, the above identified revised tariff sheets are part of its Rate Schedules T-5 and T-6 pursuant to which it renders firm transportation services for its affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc. It is further stated that on July 2, 1992, Granite State filed a compliance filing to implement the terms of a settlement approved by the Commission in Docket No. RP91-164-000 and the above tariff sheets were inadvertently omitted from the compliance filing. Granite State further states that the revised tariff sheets restore to Rate Schedules T-5 and T-6 certain lines in these rate schedules as originally filed with the Commission that were displaced in making room for certain new language in the rate schedules to comply with the terms of the settlement in Docket No. RP91-164-000.

Granite State further states that copies of its filing were served upon its customers, the regulatory commissions of the States of the Maine, Massachusetts and New Hampshire and the intervenors in Docket No. RP91-164-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 of the Commission's Rules of Practice and Procedures (18 CFR 385.211). All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22921 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-65-001]

Jupiter Energy Corp.; Proposed Revision to Tariff Filing

September 16, 1992.

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on September 11, 1992 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

Substitute Sixth Revised Sheet No. 4A
Substitute Sixth Revised Sheet No. 5A
Substitute Sixth Revised Sheet No. 6A

Jupiter Energy states that on August 31, 1992 it submitted tariff sheets in the instant docket. According to Jupiter Energy, the reason for the September 10, 1992 filing is to reflect that it received on September 4, 1992 a corrected bill from the Commission that revised the annual billing charge that Jupiter energy must pay for Fiscal Year 1992. The proposed revised surcharge of the September 10, 1992 filing, which reflects the corrected Commission bill, is 0.23¢ per Mcf.

Jupiter Energy proposes an effective date of October 1, 1992.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22925 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-53-002]

Kern River Gas Transmission Co.; Compliance Filing

September 16, 1992.

Take notice that Kern River Gas Transmission Company on September 3, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 96
Substitute Original Sheet No. 100
Substitute Original Sheet No. 404
Substitute Original Sheet No. 407
Second Substitute Original Sheet No. 810
Original Sheet No. 810A

Kern River states that the proposed changes are being filed in compliance with the Commission's "Order Accepting Compliance Filing, Subject to Conditions, Granting Clarification, Granting Rehearing in Part, and Denying Rehearing in Part", issued August 4, 1992 in Docket Nos. RP92-53-001, and RP92-53-002. Kern River states that it is adding to Rate Schedule SH-1 a new § 5.2(a), which is identical to existing §§ 15.1(a) of the General Terms and Conditions of its tariff concerning assignments by interstate pipeline shippers. Kern River states that it also has modified the initial sentence of section 15 of the General Terms and Conditions to clarify that section 15 applies to service provided under all firm rate schedules except Rate Schedule SH-1. Kern River states that it also has revised its Transportation Service Request Form to include as part of the information solicited the total contract volumes of gas requested over the life of the contract, and the amount of take-or-pay relief to which the gas being transported is subject. Kern River also states that it has modified § 16.1 of the General Terms and Conditions to include capacity availability for transportation service as information which prospective shippers may obtain pursuant to § 16.1.

Kern River states that it has requested any waivers of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective January 31, 1992.

Kern River states that copies of its filing have been sent to its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should filed on

or before September 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22906 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 2, 1992, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1992:

Sub Twenty-Third Revised Sheet No. 5
Sub Alt Twenty-Third Revised Sheet No. 5

National Fuel states that on August 31, 1992, it filed its Quarterly Purchased Gas Cost Adjustment Filing (PGA) and discovered that the tariff sheets reflected an incorrect entry for "Estimated Average Cost of Gas in Last Scheduled PGA" reported on the bottom of the originally filed tariff sheets. In accordance with the Commission's order issued August 28, 1992, in Docket No. RQ92-7-16-000, the entry should be the same as that reported for "Current Estimated Average Cost of Gas in Latest PGA".

National Fuel states that the above-referenced tariff sheets are being submitted in substitution for the tariff sheets filed in its PGA filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22913 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT92-32-000]

Northwest Alaskan Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 1, 1992, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of September 1, 1992:

Original Volume No. 2
Original Sheet No. 213J
Second Revised Sheet No. 275B
Original Sheet No. 275C

Northwest Alaskan states that Pan-Alberta Gas Ltd., and Panhandle Eastern Pipe Line Company, parties to Northwest Alaskan have entered into a letter agreement to which Northwest Alaskan is also a party to suspend the operation of the purchase and sales contracts and tariff provisions related to the annual redetermination provided for in such contracts and tariff.

Northwest Alaskan states that the referenced tariff has been amended to reflect the terms and conditions of the letter agreement referenced above.

Northwest Alaskan states that a copy of the filing has been served on its customers.

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22914 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-229-000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that on September 9, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing its methodology for allocation of take-or-pay buyout and buydown costs previously allocated pursuant to a purchase deficiency direct bill methodology. In addition to its primary methodology, Northwest also tenders for the Commission's consideration five alternative methodologies for allocation of the take-or-pay buyout and buydown costs.

Northwest has also tendered for filing tariff sheets to implement the primary methodology and each alternative, as well as a series of schedules and workpapers to support the primary methodology and alternatives. A list of tariff sheets is attached to Exhibit A to the filing, to be effective November 1, 1992.

Northwest states that the purpose of the filing are to obtain Commission approval of the appropriate methodology to allocate a share of Northwest's fixed Supplier Settlement Payment costs to Northwest's customers in compliance with order Nos. 500, 528 and 528-A.

Northwest requests that the Commission review its primary proposal and alternatives,and order the implementation of an appropriate allocation mechanism to be effective on November 1, 1992.

Northwest states that copies of the filing are being served on all parties of record in Docket No. RP89-137-000 *et. al.*

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-22915 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-75-000]

Palute Pipeline Co.; Pre-Filing Conference

September 15, 1992.

Take notice that on Thursday, October 1, 1992 a pre-filing conference

will be convened in the captioned docket to discuss the proposed restructuring plan of Paiute Pipeline Company. The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, at 810 First Street, NE., Washington, DC. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208–2105.

Lois D. Cashell,

Secretary.

[FR Doc. 92–22917 Filed 9–21–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–232–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 16, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on September 8, 1992 tendered for filing the tariff sheets to its FERC Gas Tariff, Original Volume No. 2 listed on the appendix attached to the filing.

These revised tariff sheets reflect changes to Rate Schedules TS–4 and TS–5 of Panhandle's FERC Gas Tariff, Original Volume No. 2 to reflect (1) the abandonment of Michigan Consolidated Gas Company Interstate Storage Division's (ISD) ACA surcharge in Docket Nos. GP92–2–000 and 001, (2) Panhandle's, ANR Storage Company's (ANR Storage) and ANR Pipeline Company's (ANR) approved ACA Surcharges effective October 1, 1991 in Docket Nos. TM92–1–28–000, TM92–1–91 and TM92–1–48, respectively, and Panhandle's ANR Storage and ANR's proposed ACA Surcharge to be effective October 1, 1992 in Docket Nos. TM93–1–28–000, TM93–1–91 and TM93–1–48, respectively, (3) ANR's general rate change under Section 4 of the Natural Gas Act in Docket Nos. RP86–169–021, RP86–105–000 and RP87–25–000, (4) changes in ANR's take-or-pay surcharges and adjustments applicable to Rate Schedules X–92 and X–93 in Docket Nos. RP91–35–000, TM91–3–48–000, RP91–33–003 and 004, RP91–192–000, RP92–4–000, TM92–3–48–000, TM92–7–48–000 and RP92–199–000, respectively.

Panhandle proposes that the tariff sheets listed on the attached Appendix become effective December 30, 1990, February 1, 1991, May 1, 1991, August 1, 1991, August 5, 1991, October 1, 1991, November 1, 1991, February 1, 1992, May 1, 1992; August 2, 1992 and October 1, 1992, respectively.

Panhandle requests waiver of § 154.22 of the Commission's Regulations.

Panhandle states that copies of this filing have been sent to ANR Storage and ANR, to the various Panhandle storage customers under Rate Schedules TS–4 and TS–5, and to the respective state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 1992. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–22916 Filed 9–21–92; 8:45am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–203–021 and RP–132–006]

Tennessee Gas Pipeline Co.; Compliance Filing

September 16, 1992.

Take notice that on September 11, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing cost of service data in connection with rate changes proposed by Tennessee on February 28, 1992 affecting transportation Rate Schedules NET–EU and T–180. Tennessee states that filed data complies with Commission orders dated March 30, 1992 and August 12, 1992, as well as the provisions of 18 CFR 154.63(e)(2)(i).

Tennessee further states that, as provided in Section 154.63(e)(2), it has elected to support the NET–EU and T–180 rates using base period actuals, adjusted for annualization and normalization. In addition, to mitigate Commission and intervenor concerns regarding use of end-of-base-period (and potentially inflated) data for gross plant, depreciation, depletion, amortization and abandonment and deferred income taxes, Tennessee states that it has updated these cost of service components through August 31, 1992. This supporting data, states Tennessee, yields a $1.6 million decrease in the cost of service reflected in Tennessee's February 28, 1992 filing in Docket No. RP92–132–000.

Accordingly, subject to grant of necessary waivers, Tennessee states that it will retroactively implement the lower rates resulting from the use of base period actuals, in lieu of those rates reflected in the February 28, 1992 filing and which, by the terms of the Commission's March 30, 1992 order, 58 FERC ¶ 61,343 (1992), became effective (subject to refund) September 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–22922 Filed 9–21–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–115–006]

Williston Basin Interstate Pipeline Co.; Compliance Filing

September 16, 1992.

Take notice that on September 4, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing certain revised tariff sheets to First Revised Volume No. 1 and Original Volumes Nos. 1–A and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being filed in compliance with the Commission's "Order Affirming in Part and Reversing in Part Initial Decision" issued July 23, 1991 in Docket No. RP87–115–000, and "Order Granting in Part and Denying in Part Requests for Rehearing and Granting Clarification" issued August 7, 1992 in the above referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protestants should be filed on or before September 23, 1992. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-22907 Filed 9-21-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-93-LNG]

Distrigas Corp.; Application for Long Term Authorization To Import Liquefied Natural Gas From Nigeria

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on July 17, 1992, by Distrigas Corporation (Distrigas) to import liquefied natural gas (LNG) from Nigeria. Distrigas requests authorization to import up to 10 cargoes of LNG annually (125,000 cubic meters per ship) over a period of 20 years. Distrigas states that the gas will be purchased from Nigeria LNG Limited (NLNG), under a gas purchase contract dated June 15, 1992. The LNG will be sold to Distrigas' affiliate, Distrigas of Massachusetts (DOMAC), and will be received at DOMAC's existing LNG terminal facilities at Everett, Massachusetts. DOMAC plans to resell the LNG to a variety of residential and industrial customers pursuant to rate schedules approved by the Federal Energy Regulatory Commission (FERC). The proposed imports will provide additional supplies to DOMAC's customers during the winter peaking season.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 22, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Background

Distrigas is a Delaware corporation with its principal place of business in Boston, Massachusetts, and is an indirect wholly-owned subsidiary of Cabot Corporation. NLNG is a Nigerian company formed and controlled by subsidiaries of the Nigerian state energy company, the Royal Dutch/Shell Group, the French energy company Elf Aquitaine and the Italian company Agip. The LNG will be produced by NLNG at a gas liquefaction plant to be constructed, owned and operated by NLNG on Bonny Island, Rivers State, Nigeria. Distrigas will be the only United States buyer of NLNG's project production. NLNG expects to begin delivery of LNG to Distrigas via ocean transport vessels sometime in 1997.

Contract Quantity and Pricing Provisions

Quantities

The initial term of the June 15, 1992, LNG purchase agreement (the contract) between Distrigas and NLNG is 20 years, following a build-up period of deliveries of approximately 18 to 24 months, when the LNG plant is reaching full production. The contract can be extended by mutual agreement of the parties for further periods of five years. At the end of the 20-year basic term, the contract will be extended for an additional year to permit Distrigas to receive any make-up quantities. The annual contract quantity will be 28 million MMBtu's (77,000 MMBtu per day), plus or minus up to 5% at NLNG's option. These quantities will represent approximately 12% of NLNG's total project production. The contract specifies that quantities needed to round out the last cargo loaded in a contract year can be applied to Distrigas' base quantity obligations in the following year.

Additionally, quantities supplied to Distrigas in any contract year which are in excess of the annual contract quantities can be carried forward and applied to Distrigas' quantity obligations in the following year. If Distrigas does not take its required annual contract quantities, it must pay for the shortfall, at a price that varies from 65% to 95% of the then prevailing contract price. The shortfall quantity then becomes an entitlement to make up LNG. The contract specifies that NLNG cannot offer surplus LNG production to other buyers unless it also offers make-up quantities to Distrigas. The contract also provides that Distrigas will pay the difference between the amount previously paid and the applicable contract price at the time make-up LNG is taken. Distrigas asserts that these provisions, which are similar to U.S. natural gas purchase contract "take-or-pay" provisions, have been deemed necessary by NLNG to secure project financing.

Pricing

The contract's pricing structure is based on the principle of "net back" pricing, and provides that the price payable to NLNG is a percentage (between 64% and 68%) of the price arising from customer sales or of a market-oriented price (reference price). The reference price is a formula price reflecting the market in New England and the Northeast United States for certain oil products and pipeline gas services competing with LNG. From March through October, the reference price will equal the published spot gas price in the New England market; from November through February, the reference price will reflect a 50/50 mix of published prices for competing residual fuel and distillate oils and pipeline commodity gas, as reported in filings made to FERC. After the 12th contract year, the reference price will reflect only gas prices. Distrigas will pay NLNG a portion of the higher of the actual price payable by Distrigas' customers, or of the reference price. The contract does not provide for a minimum bill or fixed transfer price, which would be passed on to Distrigas' LNG customers. Distrigas asserts that DOMAC's sales will be established by contracts freely negotiated between DOMAC and its customers.

Additionally, the contract provides that Distrigas and NLNG may each request regular review and revision of the reference price, beginning during the year before initial deliveries occur, and thereafter every three years. Each party also has the right to three special price reviews, outside the normal three-year cycle, over the term of the contract. If a revision of the reference price cannot be negotiated, the matter will be arbitrated. Under this procedure, the arbitrators must determine a reference price which

reflects a market price prevailing at the time of arbitration.

In support of its application, Distrigas avers that Nigeria possesses approximately 87 Tcf of recoverable reserves, the largest in Africa after Algeria, and that the shareholders of NLNG are affiliates of large energy companies with substantial Nigerian and worldwide experience in oil and gas production, refining, and transportation. Additionally, Distrigas states that natural gas for NLNG's proposed liquefaction plant has been committed to the project under executed gas supply agreements between NLNG and its upstream suppliers.

The decision on this application for import authority will be made consistent with DOE's import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the gas and security of the long-term supply. Parties, especially those that may oppose this application, should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines and as they relate to the requested import authorization. The applicant asserts that imports made under the proposed arrangement will be competitive and otherwise consistent with DOE import policy. Parties opposing this arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a part to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Distrigas' application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–22971 Filed 9–21–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–70–NG]

Saranac Power Partners, L.P.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on June 9, 1992, by Saranac Power Partners, L.P. (Saranac), as revised on July 13, 1992, requesting authorization to import from Canada up to 54,000 Mcf of natural gas per day for a period of sixteen years from the date of initial import. Saranac would use the gas to fuel a 240 megawatt gas-fired, topping-cycle cogeneration plant that Saranac plans to build in Plattsburgh, New York. The gas would enter the United States at the point on the international border near Chaplain, New York, where the pipeline facilities of TransCanada PipeLines Limited (TransCanada) would interconnect with the new transmission system to be constructed by North Country Gas Pipeline Corporation (North Country).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, November 23, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–4587.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–0530.

SUPPLEMENTARY INFORMATION: Saranac is a Delaware limited partnership with its principal place of business in

Houston, Texas. Saranac's sole general partner is Saranac Energy Co., Inc. and the ultimate parent company of Saranac Energy Co., Inc. is Falcon Seaboard Resources, Inc., a Texas corporation. The proposed cogeneration facility is expected to be completed and in commercial operation by June 1, 1994. It will be operated as a "qualifying facility" under Section 201 of the Public Utility Regulatory Policies Act of 1978. See Federal Energy Regulatory Commission (FERC) certification granted December 16, 1991 (57 FERC ¶62,211). In addition, Saranac has filed a Certificate of Compliance (57 FR 24260, June 5, 1992) with the coal capability requirements for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978. Saranac would sell the electric power output from its cogeneration plant to New York State Electric & Gas Corporation and would sell the thermal output to Georgia-Pacific Corporation (Georgia-Pacific) for use at Georgia-Pacific's tissue paper mill in Plattsburgh.

Saranac would purchase the gas from Shell Canada Limited (Shell) pursuant to their May 20, 1992, purchase agreement. Shell's supplies are comprised of reserves in the Provinces of Alberta, British Columbia, and Saskatchewan. Shell would deliver gas on an interruptible basis as required by Saranac for testing the powerplant prior to the date of commercial operation and then continue to supply gas on a firm basis for a period of fifteen years from the date that the plant commences commercial operations. North Country would transport the gas from Champlain to the cogeneration plant.

The daily contract quantity (DCQ) that Shell is required to supply would be 51,000 Mcf. We note that on July 13, 1992, Saranac informed DOE that it exercised it right under the contract to permanently reduce the DCQ from 54,200 Mcf to 51,000 Mcf for the duration of the agreement. There is a provision in the contract whereby Shell is entitled to supply any requirements of the Saranac cogeneration facility above the DCQ provided that the terms are competitive. Thus, the volume for which import authorization is requested exceeds the DCQ.

The contract includes a two-part pricing structure consisting of a demand component, which is based on the charges for gas transportation in Canada on the pipeline systems of NOVA Corporation of Alberta (NOVA) and/or TransCanada, and a commodity component equal to the difference between the demand charge and the "Contract Price." Commencing with the start of firm deliveries through October 31, 1994, the Contract Price would be $2.97 (U.S.) per Mcf. On November 1, 1994, and on each November 1 thereafter, the Contract Price would increase at a rate of four percent over the Contract Price of the preceding year. The monthly demand charge paid by Saranac throughout the term of the agreement would be equal to the level of NOVA and TransCanada demand charges as they exist in 1994. If Saranac purchases the maximum volumes contracted for in a given month, the agreement stipulates that the total price that can be charged per Mcf would not exceed the Contract Price.

There is no minimum take provision for the first contract year. Commencing with the second contract year, Saranac would be required to make certain payments to the extent it takes less than 80 percent of the sum of the daily contract quantities in that year with the exception of certain circumstances. During contract years two through twelve, Saranac would be required to pay for gas up to the minimum annual quantity even if not taken. Saranac would be able to make up deficiency volumes in any of the three succeeding contract years. During contract years thirteen through fifteen, Saranac would be required to pay Shell for any failure to take the minimum annual quantity an amount equal to the product of (1) The amount by which the minimum annual quantity exceeds the amount actually taken and (2) eleven percent of the applicable contract price. These payments made in the thirteenth through fifteenth years would not be treated as prepayments. Saranac states that it may seek to sell some of the imported gas to others in order to minimize the impact of the demand charges and take-or-pay requirements in the gas purchase agreement.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include the need for the gas and security of long-term supply. Parties, especially those that may oppose this application, should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as they relate to the requested import authorization. Saranac asserts that the terms of the sales contract with Shell are competitive and that the reserves from which this gas will be drawn are secure for the period of the requested import authorization. Furthermore, Saranac states that the authorization requested herein is in the public interest. Parties opposing Saranac's request for import authorization bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. On April 3, 1991, North Country received a Presidential Permit from FERC and authorization under section 3 of the NGA to construct and operate its proposed pipeline facilities at the U.S./Canada border near Champlain, New York which would be used to import the volumes proposed by Saranac. See 55 FERC ¶61,011. FERC was the lead Federal agency in preparing an environmental assessment (EA) for the North Country pipeline project. DOE was a cooperating agency in this environmental review process. FERC concluded that the North Country pipeline system, if constructed in accordance with the mitigative measures set forth in its final certificate order, "does not constitute a major federal action significantly affecting the human environment within the meaning of NEPA, and therefore, does not require preparation of an environmental impact statement (EIS)." North Country is expected to begin construction of its facilities by mid-1993.

DOE will independently examine the potential environmental impacts that were addressed in the North Country EA and the mitigative measures required in FERC's certificate order in the course of making its own environmental determination with respect to Saranac's request for import authorization. Furthermore, DOE intends to prepare an EA on the cogeneration powerplant proposed by Saranac. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or

notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Saranac's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22954 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-94-NG]

City of Warroad, Minnesota, Northern Minnesota Utilities; Application To Allow Transfer of Long-Term Import Authorization From City Of Warroad, Minnesota to Northern Minnesota Utilities

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on July 20, 1992, by the City of Warroad, Minnesota (Warroad) and Northern Minnesota Utilities (NMU) requesting authorization to transfer to NMU the import authorization granted Warroad in DOE/FE Opinion and Order No. 472 issued January 31, 1991 (1 FE ¶ 70,405). Under the terms of this order, Warroad is authorized to import from Canada up to 550,000 Mcf of natural gas annually through October 31, 1995. This gas is resold to residential and commercial customers.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 22, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-4587. Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Warroad is a municipal corporation of the State of Minnesota that owns and operates gas distribution facilities. NMU, an operating division of Utilicorp United, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Cloquet, Minnesota. NMU distributes natural gas in 44 towns in the State of Minnesota and acts as agent for Warroad in all matters related to natural gas purchasing, transmission and distribution.

Warroad purchases gas from Western Gas Marketing Limited (WGML), a subsidiary of TransCanada PipeLines Limited. Such gas is transported pursuant to agreements with Centra Transmission, Inc. (Centra Transmission) and Centra Pipelines Minnesota, Inc. (Centra Pipelines). NMU has agreed to purchase Warroad's gas distribution facilities, effective July 21, 1992. Warroad will transfer, without modification, the supply agreement with WGML and the transportation agreements with Centra Transmission and Centra Pipelines. Warroad states that because the fundamental nature of the import would be unchanged by the proposed transfer, the long-term import authorization would remain consistent with the public interest.

The application to transfer Warroad's import authorization will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-27. In Order No. 472, DOE found the Warroad import arrangement would provide long-term, secure supplies of gas at market responsive terms and thus would not be inconsistent with the public interest. Inasmuch as the proposed transfer does not change the contractual terms and conditions upon which the section 3 determinations in Order No. 472 were based, intervenors should limit their comments to the effect the transfer might have on the import arrangement.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written

comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the application filed by Warroad and NMU is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on September 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-22955 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Mutual Assistance Program; Notice of Proposed Cooperative Agreement

AGENCY: Western Area Power Administration, DOE.

ACTION: The Western Area Power Administration (Western)/State Energy Office Conservation and Renewable Energy (C&RE) Mutual Assistance Program, Notice of proposed cooperative agreement.

SUMMARY: The Department of Energy announces that, pursuant to 10 Code of Federal Regulations 600.7(b), eligibility for a cooperative agreement to develop and implement cofunded C&RE activities for the State of Arizona has been restricted to the Arizona Energy Office, Department of Commerce.

ADDRESSES: Requests for further information should be submitted to the following address: Ms. Ruth Adams, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-7709, Purchase Requisition Number: GG-PR-19035.

SUPPLEMENTARY INFORMATION: Western's C&RE program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. To meet these ends, Western offers a number of C&RE program activities to its customers, including educational workshops and seminars, equipment loan programs, and cost sharing of C&RE projects. Joint program sponsorship with State Energy Offices is one of the methods that Western uses to effectively deliver its C&RE activities to customers within the 15-State marketing area. Western's Phoenix Area Office has cosponsored joint C&RE activities with the Arizona Energy Office since 1990. Programs cosponsored to date include workshops on subjects such as pump efficiency, infrared thermography, irrigation principals, and trade related scheduling operations. Such joint participation mutually benefits the State and the Federal Government through the pooling of resources to provide cost-effective C&RE activities in Arizona.

The Arizona Energy Office is committed to promoting energy efficiency and renewable energy development in its State. Its resources, technical ability, and statewide credibility put it in the best position to manage this cooperative program.

Solicitation Number: DE-RP65-92WG19551.

Scope of Project

The Western/State Energy Office C&RE Mutual Assistance Program is designed to allow joint sponsorship of C&RE activities within the State of Arizona by Western and the Arizona Energy Office. The program will provide cost-shared funding for the development and implementation of C&RE activities in three general categories: (1) Technology development and transfer; (2) public information; and (3) economic analysis of C&RE projects. Activities funded under this program may include, but are not limited to: Educational workshops and seminars on energy efficiency and renewable energy; State, regional, and national C&RE conferences; energy efficiency tests and monitoring; C&RE publication development; energy efficiency demonstration and evaluation projects; and community energy management activities.

Issued at Golden, Colorado, September 4, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-22552 Filed 9-21-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4509-4]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; A & J Enterprises, et al.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a settlement under section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622. The proposed settlement is intended to resolve the liabilities under CERCLA of 64 parties for response costs

incurred at the Fort Wayne Reduction Site in Fort Wayne, Indiana.

DATES: Comments must be provided on or before November 23, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Avenue, Chicago, Illinois, 60604, and should refer to: In Re Fort Wayne Reduction Site in Fort Wayne, Indiana, U.S. EPA Docket No. V-W-92-C-159.

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, U.S. Environmental Protection Agency, Office of Regional Counsel, 5CS-TUB-8, 77 W. Jackson Avenue, Chicago, Illinois, 60604, (312) 886-5323.

SUPPLEMENTARY INFORMATION: Notice of Administrative Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Fort Wayne Reduction Site at 5225 Old Maumee Road, Allen County, Street in Fort Wayne, Indiana. Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement: A & J Enterprises; Allen County Motors; ANR Freight Systems, Inc.; Don Ayres Pontiac, Inc.; Borg-Warner Corp.; Chalfant-Perry-Klaehn; Chrysler Corporation/Accustar, Inc.; Collins Oldsmobile; Continental Grain Co.; Cooper Tire & Rubber Co.; Custom Tube Co.; Dahm Brothers Roofing Co.; Dana Corp./Weatherhead; Dayton Hudson Corp./Target; Diana Corp./Lake End Sales; William A. Didier Printing Co.; Essex Group, Inc.; Fort Wayne Clutch; Fort Wayne Foundry Corp.; Fox & Fox Frame Service; Fruehauf Corporation; General Electric Co.; Gladieux Refinery; Glidden Paint Co.; Harris-Kayot, Inc.; Hoosier Solvents (Chemcentral Corporation); Indiana Michigan Power Co.; ITT Aerospace; Josyln Stainless Steel/Slater Steel; Jim/Tom Kelley Buick; Kelly Chevrolet; Knepper Cartage; Lydall Midwest, Inc./Corcap Midwest/Corcap, Inc.; Magnavox; Maremont Corp.; McKesson Corp. (for Inland Chemical); Means Auto Co.; Meyer Stamping; C. Miller and Sons; Mobile Aerial Towers, Inc.; Mungovan & Sons; Navajo Freight Lines (ABF Freight Systems); Navistar; NIPSCO; Norfolk & Western Railroad; North American Van Lines/Triangle Fleet; Superior Companies/Omni-Source Corp.; Phelps Dodge Corp.; Potlatch; Precision Litho, Inc.; Prentice Products; Protective Coatings Co.; Ream-Steckbeck Paint Co.; Rea Magnet Wire Co.; Ryder Truck/Saunders Truck; Scott Paper Co.; Sheller-Globe Corporation; Tokheim Corp.; Tri-State Automall, Inc./Bob Jackson/Delagrange Ford; Uniroyal Goodrich/B.F. Goodrich; Valspar Corp.; Van Wert, Ohio-Transfer Station; Whitley Products; and the United States Air Force and its component commands and units (including the National Guard Bureau and all operations and activities of the Indiana Air National Guard in the performance of its federal mission).

A Consent Decree was entered on July 18, 1989, whereby SCA Services of Indiana, Inc. ("SCA") agreed to perform the remedial action at the Fort Wayne Reduction Site and to pay 30 percent (but not to exceed $200,000) of the response costs, including costs of U.S. EPA and the State of Indiana, incurred after the entry of the Consent Decree, in overseeing implementation of the remedial action. Thereafter, EPA and the State of Indiana conducted negotiations with the remaining potentially responsible parties (more than 120 parties) at the Site to recover their unreimbursed response costs. This Administrative Order, which is also signed by the State of Indiana, is the result of those efforts.

The 64 parties named above have paid $1,599,145.96 in a settlement payment under the agreement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. This amount would reimburse EPA for 100 per cent of its past response costs, including interest accumulated thereon, which were incurred and paid with respect to the Fort Wayne Reduction Site up to and including October 31, 1989. The settling parties have also agreed to reimburse the State of Indiana $20,000 for its response costs incurred and paid prior to October 31, 1989. The Administrative Order does not settle any claims EPA or the State of Indiana may have for response costs incurred after October 31, 1989.

EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Under this authority, the agreement proposes to settle with these parties for unreimbursed costs for response action taken at the Fort Wayne Reduction Site.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V, Office of Regional counsel, 77 W. Jackson Avenue, Chicago, Illinois, 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. sections 9601-9675.

Jodi Praub,

Acting Director, Waste Management Division.

[FR Doc. 92-22943 Filed 9-21-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4508-3]

Revision of the South Carolina National Pollutant Discharge Elimination System (NPDES) Program To Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System Permits Program of the State of South Carolina.

SUMMARY: On September 3, 1992, the Regional Administrator for the Environmental Protection Agency (EPA), Region IV, approved the State of South Carolina National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of South Carolina to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Jim Patrick, Chief, Permits Section, Water Permits & Enforcement Branch, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-2913.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate the discharge of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are appropriately controlled under a general permit rather than by individual permits.

South Carolina was authorized to administer the NPDES program in June 1975. The State's program as previously approved, did not include provisions for the issuance of general permits. There are several categories of discharges in the State which could appropriately be

regulated by general permits. For those reasons, the South Carolina Department of Health and Environmental Control requested are vision of its NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: storm water discharges, non-contact cooling water discharges of one million gallons or less, backwash from potable water treatment plants, small domestic waste discharges, ground water remediation discharges, concentrated aquatic animal production facilities, mines, car washes, laundry mats, and other appropriate discharges. At the present time, the State does not have authority to issue federal sludge permits under section 405 of the Clean Water Act. At such time as the sludge program is authorized in South Carolina, that category may also be included in the general permit program.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and the opportunity to request a hearing also is provided for each general permit.

II. Discussion

The State of South Carolina submitted, in support of its request, copies of the relevant statues and regulations. The State also has submitted a statement by the Attorney General certifying, with appropriate citations to the statues and regulations, that the State has adequate legal authority to administer the general permits program consistent with 40 CFR 123.23. In addition, the State submitted a Program Description and Memorandum of Agreement detailing how the program will be administered. Based on South Carolina's Program Submission and its experience in administering an approved NPDES program, EPA has concluded that the State will have necessary procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the state). EPA has determined that assumption by South Carolina of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of point sources. As well as the fact that South Carolina provided public notice of it's regulatory revisions.

Moreover, under the approved state program, the State retains authority to issue individual permits where appropriate, and any person may request the state to issue an individual permit to a discharger eligible for general permit coverage. While not required under § 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permits program approvals.

III. Federal Register Notice of Approval of State NPDES Program or Modifications

The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's Federal Register notice is to announce the approval of South Carolina's authority to issue general permits.

STATE NPDES PROGRAM STATUS

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved State general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74			
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/91
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	08/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78		07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80		
North Carolina	10/19/75	09/28/84	06/14/82	01/22/90
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		08/02/92
Rhode Island	09/17/84	09/17/84	09/17/84	
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82	
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73		09/30/86	09/26/89

STATE NPDES PROGRAM STATUS—Continued

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved State general permits program
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81		09/24/91
Totals	39	34	27	32

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number small entities. Approval of the South Carolina NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the South Carolina NPDES State General Permits Program merely provides a simplified administrative process.

Dated: September 3, 1992.

Donald Guinyard,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 92-22942 Filed 9-21-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-955-DR]

Florida; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 6, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-955-DR), dated August 24, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 25, 1992.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-22893 Filed 9-21-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-956-DR]

Louisiana; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 5, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-956-DR), dated August 26, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 1992, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to Wallace E. Stickney, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Andrew on August 25, 1992, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration, which limited the Federal reimbursement share for certain categories of expenditures, and I hereby authorize an increase in Federal reimbursement to 100 percent of eligible public assistance costs exceeding $10 per capita, where allowed under the law for extreme disasters. This 100 percent reimbursement for costs above $10 per capita applies to all authorized public assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private nonprofit facilities. Temporary housing assistance, mortgage/rental assistance, crises counseling assistance and disaster unemployment assistance will continue to be 100 percent federally funded, where allowed under the law. Funds for public assistance up to $10 per capita will be reimbursed pursuant to the conditions set forth in my previous declaration. However, if the eligible costs of responding to Hurricane Andrew in Louisiana do not reach the level of $10 per capita, then the cost sharing formula which I set forth in my original declaration letter of August 26, 1992, still applies.

This waiver of State and local cost-sharing requirements above $10 per capita applies to all public assistance costs eligible for such a waiver under the law. The law specifically prohibits a similar waiver for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

This amended declaration is consistent with the request made to you by the Governor of the State of Louisiana.

Please notify the Governor of the State of Louisiana and the Federal Coordinating Officer of this amendment to my major disaster declaration.

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.

Wallace E. Stickney,

Director.

[FR Doc. 92-22892 Filed 9-21-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

The Port of New Orleans et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal

Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200060–023, 224–200060–024, 224–200060–025.

Title: New Orleans/Coastal Cargo Company Terminal Agreement.

Parties:

The Port of New Orleans ("Port"),
Coastal Cargo Company, Inc. ("CCC").

Synopsis: The amendments reflect CCC's exercise of options under the Agreement to extend its rental of space at the Port's Galvez Street Wharf and the adjustment of the rental rate as further specified in the Agreement.

Agreement No.: 217–010051–021.

Title: Mediterranean Space Charter Agreement.

Parties:

British Continental Shipping Line
Compagnie Generale Maritime
Compania Trasatlantica Espanola
Farrell Lines, Inc.
Italia di Navigazione, S.p.A.
Jugolinija
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment will delete Compagnie Generale Maritime as a party to the Agreement effective October 1, 1992.

Dated: September 16, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–22875 Filed 9–21–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Centura Banks, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire, pursuant to § 225.25(b)(9) of the Board's Regulation Y, Brevard Federal Savings and Loan Association, Brevard, North Carolina, which will be converted into Centura Interim Bank, a bank for purposes of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, September 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–22883 Filed 9–21–92; 8:45 am]

BILLING CODE 6210–01–F

Citizens National Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 16, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens National Corporation, Wisner, Nebraska; to acquire 100 percent of the voting shares of First National Bank of Belden, Belden, Nebraska.

Board of Governors of the Federal Reserve System, September 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–22885 Filed 9–21–92; 8:45 am]

BILLING CODE 6210–01–F

Eldorado Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR

225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Eldorado Bancorp, Laguna Hills, California; to engage *de novo* through its subsidiary, Eldorado Bancorp Home Loans, Inc., Laguna Hills, California, in making, acquiring, or servicing loans or other extensions of credit, including issuing letters of credit and accepting drafts, for Applicant's account or for the account of others, such as would be made by a mortgage company pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted in the State of California.

Board of Governors of the Federal Reserve System, September 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-22884 Filed 9-21-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Community Services, Division of Energy Assistance, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for continued use of a previously approved information collection entitled Annual Report on Households Assisted by the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services' Division of Energy Assistance of the Office of Community Service within the Administration for Children and Families (ACF). This request was previously approved under OMB Control No. 0970-0060.

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Annual Report on Households Assisted by the Low Income Home Energy Assistance (LIHEAP).

OMB No.: 0970-0060.

Description: Title XXVI, section 2610(a) of the Low Income Home Energy Assistance Act of 1981 et al. authorizes the Secretary to provide for the collection of specific data and any other information needed to carry out the provisions of this Act and requires the Secretary to submit an annual report to the Congress containing a detailed compilation of data with respect to the prior fiscal year on the number and income levels of households assisted by LIHEAP funds and the number of households assisted with elderly or handicapped members.

Annual Number of Respondents: 177.

Annual Frequency: 1.

Average Burden Hours Per Response: 45.

Total Burden Hours: 7,965.

Dated: September 4, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92-22849 Filed 9-21-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Family Assistance, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an existing information collection entitled Monthly "Flash" Report of Selected AFDC Program Data, OMB Control Number 0970-0071.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Monthly "Flash" Report of Selected AFDC Program Data.

OMB Number: 0970-0071.

Description: Section 402(a)(6), Aid to Families with Dependent Children (AFDC) and section 1602 under title XVI, Aged, Blind and Disabled (AABD) of the Social Security Act set forth the authority for this collection of information. The instrument used to collect this information on the AFDC programs is report form ACF-3645.

This form is used to collect aggregated monthly information for aid and services to needed families with children, including numbers of AFDC families,

adults plus children, children, cash assistance to AFDC recipients, emergency assistance payments, statistics on unemployment among AFDC parents, and caseload statistics. Selected program information is also collected on the number of eligible families which receive emergency assistance, payments and temporary housing.

This report is basic to the administration and monitoring of the AFDC and Adult programs. The information is widely utilized by Congressional committees, State welfare departments, staff offices within DHHS and legislative and welfare reform task forces.

Annual Number of Respondents: 54.
Annual Frequency: 12.
Average Burden Hours Per Response: 2.
Total Burden Hours: 1,296.

Dated: September 4, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92-22848 Filed 9-21-92; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Council for the Center for Substance Abuse Treatment; Request for Nominees

OFFICE: Office for Treatment Improvement, ADAMHA, DHHS.

ACTION: Request for nominees for the National Advisory Council for the Center for Substance Abuse Treatment.

SUMMARY: The Center for Substance Abuse Treatment (CSAT) is requesting nominations for nine representatives of the health disciplines and three public members to serve on its National Advisory Council.

DATES: Names of recommended nominees should be received on or before October 15, 1992.

ADDRESSES: All nominations for membership should be submitted to: Ms. Susanne Rohrer, Executive Secretary, CSAT National Advisory Council, Office of Policy Coordination, Center for Substance Abuse Treatment, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Susanne Rohrer, Executive Secretary, CSAT National Advisory Council, at (301) 443-5050.

SUPPLEMENTARY INFORMATION: The "ADAMHA Reorganization Act of 1992" (Pub. L. 102-321), which was signed by the President on July 10 and takes effect on October 1, creates the new Center for Substance Abuse Treatment as one of the three components of the Substance Abuse and Mental Health Services Administration (SAMHSA). The CSAT will include substance abuse services programs currently administered by the Office for Treatment Improvement and new programs established by Public Law 102-321. Section 505 of the Public Health Service Act (42 U.S.C. 290aa-3a), as amended by Public Law 102-321 and redesignated Section 502, authorizes the Secretary of Health and Human Services (HHS) to appoint a National Advisory Council for CSAT.

The Council will advise the Secretary, HHS; the Assistant Secretary for Health; the Administrator, SAMHSA; and the Director, CSAT, on the best means to provide national leadership that will ensure use of state of the art knowledge in the treatment of addictive disorders; and to improve access and reduce barriers to high quality, effective programs and services. Nine members appointed by the Secretary shall be selected from among the leading representatives of the health disciplines (including public health and behavioral and social sciences) relevant to the activities of the Center. Three members appointed by the Secretary shall be selected from the general public and shall include leaders in fields of public policy, public relations, law, health policy economics, or management.

HHS policy also provides that committee membership be fairly balanced in terms of points of view represented and the committee's function, and composed of as broad a representation as possible of geographic areas, sex, race, national origin, age, and handicapping conditions.

Candidates may be self-nominated or recommended by others. A curriculum vitae must be enclosed for each nominee. The nomination process is continuous, and members serve for overlapping 4-year terms. However, initial terms will be staggered to prevent all appointments from expiring at the same time. Nominations not received by October 15 may be held and considered for future vacancies based on the balance of types of expertise needed and an individual's qualifications.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-22837 Filed 9-21-92; 8:45 am]

BILLING CODE 9160-20-M

Centers for Disease Control

[Announcement Number 274]

Cooperative Agreement for Hemophilia Chapter Support and Peer Support Activities; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for a cooperative agreement program with the National Hemophilia Foundation for Chapter support, other community-based support, and HIV prevention activities within the hemophilia community. CDC is interested in enhancing the national hemophilia HIV infection prevention program by supporting community-based HIV/AIDS risk reduction, counseling, outreach activities, and self-help support groups at the local, regional and national levels.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, and PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of human immunodeficiency virus (HIV) infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under sections 301(a) and 317 of the Public Health Service Act, as amended [42 U.S.C. 241(a) and 247b].

Eligible Applicants

Assistance will be provided only to the National Hemophilia Foundation. No other applications will be solicited. The National Hemophilia Foundation (NHF) is the most appropriate organization to conduct the work under this cooperative agreement because:

1. The NHF is the only national-based organization for hemophilia with the majority of its board members, executive committee members, and directors at large being people with hemophilia or related family members. It is committed to the national goal of hemophilia and HIV/AIDS risk reduction programs, and has a unique role in supporting this national agenda through strong and effective lay-based programs.

2. The NHF has provided key leadership in all of the programs related to the national hemophilia HIV prevention agenda that are consumer-based, and has a commitment and

strong programs for HIV prevention through consumer-based, peer-led activities. Its most recent initiative is related to the development of the Men's Advocacy Network of NHF (MANN). This initiative grew from consumer interest to a strong national-based advocacy group that is a key component of CDC's national hemophilia HIV risk reduction strategies.

3. The NHF is dedicated to the treatment and the cure of hemophilia, related bleeding disorders and complications of those disorders or their treatment, including HIV infection, as well as to improving the quality of life for all those affected through the promotion and support of research, education and other services.

4. The NHF is the only national hemophilia organization that has an established network and ability to provide technical assistance to lay-level hemophilia groups such as local chapters and foundations, as well as national hemophilia consumer networking organizations. The congressional mandate for these funds is intended to support these peer-led consumer programs.

Therefore, the NHF is uniquely qualified to support hemophilia community-based activities as it is the only national hemophilia organization.

Availability of Funds

Approximately $900,000 is available in FY 1992 to fund this award. It is expected that the award will begin on or about September 30, 1992, for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this award is to assist the NHF in its efforts to provide HIV risk reduction, counseling and outreach activities. This is best accomplished by a national program that is designed to strengthen and utilize local, regional, and national consumer-organized activities.

It is the intent of this funding to support consumer-based, peer-led HIV risk reduction activities. The NHF has begun this work through the establishment in 1988 of ten Chapter Outreach Demonstration Projects (CODP) to develop innovative, culturally sensitive approaches for locating and serving minority persons with hemophilia; in 1989, NHF established the Hemophilia and AIDS/HIV Network for the Dissemination of Information (HANDI) to serve the hemophilia community with information on hemophilia and AIDS/HIV; in 1990, NHF organized and coordinated the Women's Outreach Network of NHF (WONN) to provide a national forum to develop women leaders to provide peer-based risk reduction education and support; and in 1991, NHF organized and began coordinating the Men's Advocacy Network of NHF (MANN) to provide a national forum for men with hemophilia to develop a peer-based HIV prevention and advocacy network.

The above activities have formed a basis on which to expand peer-based local and regional hemophilia HIV risk reduction activities. The CDC is looking to the NHF to develop a mechanism to build upon these national HIV risk reduction and support programs at a local level. The NHF could facilitate this expansion by providing technical and financial assistance to local chapters for the development and implementation of local peer-led services coordinated by NHF, including new programs for adolescents. For these local initiatives, it is anticipated that local chapters would be given technical assistance from the NHF and the NHF designated regional or national representatives of the MANN and WONN programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and the CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Expand current peer-based HIV risk reduction and support activities by developing and coordinating a system to support these initiatives at the local lay-level community.

2. Design a fair and sound process to evaluate proposals to award funding to local hemophilia chapters in order to provide the services described in this solicitation. This grant review process will be conducted by NHF with input from the consumer community.

3. Coordinate outreach activities by peer organizations and provide technical assistance to the community to assist the chapters in their need with grant writing.

4. Provide ongoing technical assistance to these local chapters in planning new local risk reduction activities including information programs, support groups, and local networking activities so that they are consistent with overall national goals of risk reduction in the hemophilia community.

5. Plan and conduct site visits to evaluate the effectiveness of the local staff support in developing outreach, information system support groups, and networking activities; and, use the results of these findings to make recommendations about the strengths and weaknesses of the approach to the local and chapter groups.

B. CDC Activities

1. Provide consultation and technical assistance to NHF in planning and evaluation activities.

2. Provide input to the review of local grant applications.

3. Provide current scientific and public health information regarding risk reduction in the hemophilia community.

4. Collaborate in the presentation and dissemination of information resulting from these activities.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The applicant must have a working relationship with a majority of the current local hemophilia organizations, and the ability to provide technical assistance to the local chapters. (15 points)

2. Project personnel are well qualified by training and/or experience to manage coordinate, and evaluate a national program involving multiple local peer organizations. (15 points)

3. The applicant organization has adequate facilities and manpower. (15 points)

4. The proposed activities support and expand current peer-led risk reduction activities. (15 points)

5. The proposed activities will support the goals of the National Hemophilia Prevention Program as described in the Toal report (a copy is included in the application kit). (15 points)

6. The proposed criteria for establishing and conducting a grants management program including reviewing grant applications from local hemophilia chapters. (15 points)

7. The quality of the applicant's overall evaluation plan for the program as a whole. (10 points)

8. The estimated cost to the Government of the project is reasonable and consistent with the intended use of the cooperative agreement funds. (not scored)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order

12372, entitled "Intergovernmental Review of Federal Programs," (45 CFR part 100).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activity.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV/AIDS Requirements

The recipient must comply with the document entitled "Content of AIDS-Related Written materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educations Sessions." (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved, this includes conference agendas.

Application Submission and Deadline

The National Hemophilia Foundation must submit an original and two copies of the application PHS Form 5161-1 to Edward L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 274 and contact Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, (404) 842-6508 for business management technical assistance. Programmatic technical assistance may be obtained from Judy Hannan, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639-2017.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone: 202-783-3238).

Dated: September 16, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-22891 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92F-0327]

Arakawa Chemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Arakawa Chemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an aromatic petroleum hydrocarbon resin, hydrogenated, as a component of polypropylene intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4338) has been filed by Arakawa Chemical Industries, Ltd., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of an aromatic petroleum hydrocarbon resin, hydrogenated, as a component of polypropylene intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22949 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0315]

Fina Oil and Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fina Oil and Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of rubber-modified polystyrene and to permit the use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as a stabilizer in the rubber-modified polystyrene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4337) has been filed by Fina Oil and Chemical Co., c/o 1100 G St. NW., Washington, DC 20001. The petition proposes that the food additive regulations be amended in § 177.1640 *Polystyrene and rubber-modified polystyrene* (21 CFR 177.1640) to provide for the safe use of rubber-modified polystyrene resin containing not less than 71 weight percent of polymer units derived from styrene monomer and in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to permit the use of octadecyl

3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as a stabilizer in the rubber-modified polystyrene intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22953 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0339]

Rio Linda Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rio Linda Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an aqueous solution of chlorine dioxide and related oxychloro species, generated by acidification of an aqueous solution of sodium chlorite with sodium gluconate, citric acid, phosphoric acid, and sodium alkylphenoxybenzenedisulfonate, as a sanitizing solution to be used on food-contact surfaces, food-processing equipment, and utensils.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4334) has been filed by Rio Linda Chemical Co., c/o 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposes to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of an aqueous solution of chlorine dioxide and related oxychloro species, generated by acidification of an aqueous solution of sodium chlorite with sodium gluconate, citric acid, phosphoric acid, and sodium alkylphenoxybenzenedisulfonate, as a sanitizing solution to be used on food-contact surfaces, food-processing equipment, and utensils.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 11, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-22952 Filed 9-21-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given that the meeting of the AIDS Subcommittee, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, scheduled for September 21, 1992 and published in the **Federal Register** (53 FR 41759) on September 11, 1992 is hereby canceled due to scheduling conflicts.

For further information, please contact Dr. Judith Karp, Executive Secretary, AIDS Subcommittee, National Cancer Institute, Building 31, 9000 Rockville Pike, room 11A23, Bethesda, Maryland 20892 (301) 496-3505.

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22838 Filed 9-16-92; 3:09 pm]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), National Institutes of Health.

The meeting will be open to the public as indicated below during which time there will be comments by the Director, NCRR; and an update on the GCRC Program by Dr. Judith L. Vaitukaitis, Acting Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92-463, the meeting will be closed to the public as indicated below for the review, discussion, and evaluation of individual grant applications. These applicants and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, NCRR, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the Committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: General Clinical Research Centers Committee.

Scientific Review Administrator: Dr. Bela J. Gulyas, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A16, 5333 Westbard Avenue, Bethesda, Maryland 20892, Telephone: (301) 402-0627.

Dates of Meeting: October 20-21, 1992.

Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: October 20, 8 a.m.-9:30 a.m.

Agenda: Report and review of administrative details.

Closed: October 20, 9:30 a.m.-until recess, October 21, 8 a.m.-adjournment.

Closure reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health)

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-22833 Filed 9-21-92 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the Comparative Medicine Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Comparative Medicine Review Committee, National Center for Research Resources, National Institutes of Health.

The meeting will be open to the public as listed below for brief staff

presentation on the current status of the Comparative Medicine Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications submitted to the Comparative Medicine Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Comparative Medicine Review Committee.

Scientific Review Administrator: Dr. Mary Ann Sestili, Director, Office of Review, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A16, 5333 Westbard Avenue, Bethesda, Maryland 20892, Telephone: (301) 496–4390.

Date of Meeting: October 25–27, 1992.

Open Session: October 25, 1992—7 p.m. until recess.

Place of Meeting: Embassy Suites Hotel 4300 Military Road, NW, Washington DC 20015.

Agenda: Report and review of administrative details.

Closed Session: October 26, 1992—8:30 a.m. until recess, October 27, 1992—8:30 a.m.–Adjournment.

Place of Meeting: National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, MD 20892.

Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Programs No. 93.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22832 Filed 9–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on October 8 and 9, 1992, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The meeting will be open to public on October 8, from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on October 8 from 9:30 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Theresa Lo, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496–0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C32, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon request.

Catalog of Federal Domestic Assistance Program No. 93.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health

Dated: September 16, 1992.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 92–22834 Filed 9–21–92; 8:45 am]

BILLING CODE 7170–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 4–6, 1992, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on October 4, from 7:30 p.m. to approximately 8:30 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 4, 1992, from 8:30 p.m. to 10 p.m., on October 5, from approximately 8 a.m. until 6 p.m. and October 6, from 8 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22835 Filed 9–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Subcommittees A and B of the Biological and Clinical Aging Review Committee.

These meetings will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland, 20892 (301/496–9322), will provide summaries of the meeting and a roster of the committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated below:

Name of Committee: Biological and Clinical Aging Review, Subcommittee A.
Executive Secretary: Dr. Daniel Eskinazi, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.
Date of Meetings: October 15–16, 1992.
Place of Meeting: Ramada Inn, 8400 Wisconsin Ave., Bethesda, Maryland 20814.
Open: October 15 from 9:45 to 10 a.m.
Closed: October 15 from 10 a.m. to adjournment on October 16, 1992.
Name of Committee: Biological and Clinical Aging Review, Subcommittee B.
Executive Secretary: Dr. James Harwood, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.
Dates of Meetings: October 26–27, 1992.
Place of Meeting: Marriott Residence Inn, 7335 Wisconsin Ave., Bethesda, Maryland 20814.
Open: October 26 from 7 to 10 p.m.
Closed: October 27—8:30 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–22836 Filed 9–21–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3508]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 16, 1992.

David Cristy,

Acting Director, Information Resources, Policy and Management Division.

Proposal: Housing Discrimination Complaint Form, (English/Spanish Version).
Office: Fair Housing and Equal Opportunity.
Description of the Need for the Information and its Proposed Use: Pursuant to Public Law 90–284, any person who believes he/she has been or is about to be injured by a discriminatory housing practice on the basis of race, color, religion, sex, or national origin may file a complaint with the Secretary of HUD using these forms. HUD needs the information provided for the basis of an investigation of a housing discrimination complaint.
Form Number: HUD–903 and 903A.
Respondents: Individual or Households.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–903 and 903A	9,300		1		1		9,300

Total Estimated Burden Hours: 9,300.
Status: Reinstatement.
Contact: Roy J. Rodriguez, HUD, (202) 708–0836, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Evaluation of the Public Housing Drug Elimination Program.

Office: Policy Development and Research.
Description of the Need for the Information and Its Proposed Use: The study will provide descriptive information on the universe of Public Housing Drug Elimination Program (PHDEP) grantees and indepth analysis of a selected sample of intensive study sites. The description of the entire program will be drawn primarily from a database developed from the applications submitted by grantees and a subsequent mail survey to confirm the grantees' project characteristics.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: One-time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	617		1		.75		463

Total Estimated Burden Hours: 463.
Status: New.
Contact: Harold D. William, HUD, (202) 708–3061, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Shelter Plus Care.
Office: Community Planning and Development.
Description of the Need for the Information and Its Proposed Use: This program is designed to link supportive services to rental assistance for Homeless People with disabilities such as mental illness, chronic substance abuse (Alcohol or Drugs) or both, or AIDS and related diseases.
Form Number: SF–424.
Respondents: State or Local Governments.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	400		1		40		16,000
Environmental review	105		1		14		1,470

Total Estimated Burden Hours: 17,470.
Status: Reinstatement.
Contact: James No. Forsberg, HUD, (202) 708–4300, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: LOCCS/VRS Payment Vouchers (Series).
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: Form HUD–50080 will be used by grant recipients to request funds from HUD through the LOCCS/VRS Voice Activated Payment System. The form will be used in lieu of SF–270, Request for Advance or Reimbursement. The information collected on the form will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds, as well as to provide a service to program recipients.
Form Number: HUD–50080 Series.
Respondents: State or Local Governments.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	4,581		18.767		.25		21,493

Total Estimated Burden Hours: 21,493.
Status: New.
Contact: John Comerford, HUD, (202) 708–1872, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Mortgagee's Applications for Insurance Benefits (Multifamily Mortgage).
Office: Housing.
Description of the Need for the Information and its Proposed Use: This report collects data required for cancellation of insurance contracts and payments of mortgage insurance premiums. It affects any lenders (mortgagees) filing a claim for Multifamily insurance benefits.
Form Number: HUD–2747.
Respondents: State or Local Governments, Business or Other For-Profit, and Federal Agencies or Employees.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hour per response	=	Burden hours
Application	433		1		.08		36

Total Estimated Burden Hours: 36.
Status: Extension.
Contact: Betty Belin, HUD, (202) 401–2168, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Form HUD–50060, Transmittal of Form HUD–50058.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The updated form HUD–50060 allows the Department to establish appropriate management control procedures to assure complete and accurate reporting of information contained on form HUD–50058 submittals. The form provides a means for determining whether PHAs/IHAs are submitting data to the National Computer System (NCS), HUD's data processing contractor for the Multifamily Tenant Characteristics System (MTCS). It aggregates projects and provides a vehicle for geographically clustering projects within one PHA/IHA.
Form Number: HUD–50060.
Respondents: State or Local Governments.
Frequency of Submission: Monthly
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hour per response	=	Burden hours
Form HUD–50060	4,500		8.3		.05		1,867

Total Estimated Burden Hours: 1,867.
Status: Revision.
Contact: Earl Simons, HUD, (202) 708–0744, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Tenant/Homebuyer Data Summary.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The consolidated form HUD–50058, Tenant/Homebuyer Data Summary, reflects an effort to upgrade and expand the quality of data received from PHAs, IHAs, and organizations administrating the Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. Based on experience in obtaining tenant data summary information, the form has been reformatted and data element significantly modified to more accurately assess the demographic, ethnic and economic character of assisted housing residents.
Form Number: HUD–50058.
Respondents: State or Local Governments.
Frequency of Submission: Monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Form HUD–50058	4,500		916.5		1		4,124,250

Total Estimated Burden Hours: 4,124,250
Status: Revision.
Contact: Earl Simons, HUD, (202) 708–0744, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

Proposal: Documentation of the Section 8 Operation Bootstrap Demonstration.
Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: The purpose of Operation Bootstrap is to encourage local communities to develop and implement innovative programs to assist low-income families to become economically independent through cooperative efforts of the public and private sectors. All Operation Bootstrap projects are locally designed programs offering Section 8 housing assistance along with a range of employability development and support services to help low-income families achieve economic independence. HUD contributes a special allocation of Section 8 certificates and vouchers, including the associated administrative fees for the PHA, but local Bootstrap projects are responsible for providing the other services.
Form Number: None.
Respondents: Individuals or Households.
Frequency of Submission: One-time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Telephone survey	1,200		1		.75		900

Total Estimated Burden Hours: 900
Status: New.
Contact: Garland E. Allen, HUD, (202) 708–3700, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

[FR Doc. 92–22860 Filed 9–21–92; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–92–3509]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, rein statement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 16, 1992.

David Cristy,

Acting Director, Information Resources Policy and Management Division.

Proposal: Emergency Shelter Grants Program Indian Set-Aside Application (FR–3201).

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: This program provides competitive grants to Indian tribes and Alaskan Native villages to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the cost of operating emergency shelters, provide essential social services to homeless individuals, and help prevent homelessness.

Form Number: SF–424, HUD–2880 and HUD–40114.

Respondents: State or Local Governments (Indian Tribes).

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Application	40		1		32		1,280

Total Estimated Burden Hours: 1,280.

Status: New.

Contact: James N. Forsberg, HUD (202) 708–4300, Helen Guzzo, HUD, (202) 708–4300, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 16, 1992.

[FR Doc. 92–22871 Filed 9–21–92; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–92–4212–14; N–53426]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.

Sec. 8: S½NW¼SW¼SW¼, N½SW¼ SW¼SW¼

Aggregating 10.00 acres (gross).

This parcel of land, situated in Las Vegas, Nevada is being offered as a direct sale to Las Vegas Valley Water District. Proposed development is a zone reservoir.

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County to include 50.00 feet on the west for future Fort Appache Road and 30.00 feet on the east.
2. Those rights for a road and public utilities purposes which have been granted to Clark County by Permit No. N–55256 under the Act of October 21, 1976.

Upon publication of this notice in the Federal Register the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any

adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws.

Dated: September 19, 1992.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 92–22856 Filed 9–21–92; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for the Extension With Amendments to 10(a)(1)(B) Permit PRT–739678 for the Riverside County Habitat Conservation Agency for Incidental Take of Stephens' Kangaroo Rat in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Riverside County Habitat Conservation Agency (RCHCA) has applied to the U.S. Fish and Wildlife Service (Service) for an extension with amendments to 10(a)(1)(B) Permit PRT-739678 for Incidental take of Stephens' kangaroo rat (*Dipodomys stephensi*) (SKR) in Riverside County, California. An Environmental Assessment (EA) and Implementation Agreement have been prepared for the extension with amendments. This notice is provided pursuant to section 10(c) of the Endangered Species Act, as amended (Act) and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before October 22, 1992.

ADDRESSES: Persons wishing to review the EA may obtain a copy by writing the U.S. Fish and Wildlife Service, Carlsbad Field Office, Fish and Wildlife Enhancement, 2730 Loker Avenue West, Carlsbad, California, 92656. Documents will be available for review during normal business hours (8 a.m. to 4 p.m.). Written data or comments concerning the application and EA should be submitted to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Zembal at the above Carlsbad Field Office.

SUPPLEMENTARY INFORMATION: The RCHCA seeks to extend the duration of short-term incidental take permit PRT-739678 until December 31, 1993, without increasing the current incidental take limit. They also propose to amend this permit by adding two provisions to the Implementation Agreement for the permit and clarify the language in the agreement regarding essential public utilities in reserve study areas. The two added provisions would: (1) Subject to case-by-case approval by the Service, allow as mitigation, lands that are not occupied by SKR but would benefit SKR if included in a permanent reserve; and (2) allow take authorized prior to the expiration date of the permit to occur anytime thereafter up to 15 years provided that the requisite mitigation fees have been paid, the replacement habitat has been acquired, and all other terms and conditions of the permit have been met. The clarification regarding essential public utilities changes the language but not the intent of the existing provision.

The EA considers the environmental consequences of the extension of the permit with amendments, extension of the permit without amendments, and a no action alternative. No individual or cumulative significant adverse impacts would result from the approval of the amendment.

(Notice of availability: Stephens' kangaroo rat-incidental take permit extension with amendments and Environmental Assessment)

Dated: August 31, 1992.

William E. Martin,

Acting Regional Director.

[FR Doc. 92–22975 Filed 9–21–92; 8:45 am]

BILLING CODE 4310–55–M

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 September 12, 1992. Pursuant to § 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, DC 20013–7127. Written comments should be submitted by October 7, 1992.

Patrick W. Andrus,

Acting Chief of Registration, National Register.

ARKANSAS

Benton County

Bentonville West Central Avenue Historic District (Benton County MPS), W. Central Ave. between SW. A and SW. G Sts., Bentonville, 92001349

Chicot County

American Legion Post No. 127 Building, Jct. of Cherry and Armstrong Sts., NE corner, Eudora, 92001350

Landi, A., General Merchandise Building (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), AR 8, Grand Lake, 92001347

Liberto, P. and J.—Rosa Portera Building (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), Main St., Eudora, 92001348

Franklin County

Center Cross School (Public Schools in the Ozarks MPS), Co. Rd. 95, W of Altus, Altus vicinity, 92001351

Jackson County

New Home School Building, Co. Rd. 69, NW of Swifton, Swifton vicinity, 92001357

Lawrence County

Hatcher, Dr. John Octavius, House, 210 Third St., Imboden, 92001358

Lincoln County

Crow, Oscar, House, 404 Washington St., Star City, 92001343

Mississippi County

Keiser School, Jct. of Main and School Sts., SE corner, Keiser, 92001342

Newton County

Dr. Hudson Sanitarium Agricultural Building Historic District, AR 327 S of jct. with AR 74, Jasper vicinity, 92001345

Pulaski County

Hillcrest Historic District (Boundary Increase), Roughly bounded by Evergreen, Harrison, Lee and Jackson Sts., Little Rock, 92001356

St. Francis County

Forrest City High School, Rosser St., Forrest City, 92001341

Stone, William, House, Jct. of AR 306 and Ellis Ln., SE corner, Colt, 92001346

Washington County

Smith, Tom, House, AR 74 W of jct. with AR 295, NE of Elkins, Elkins vicinity, 92001344

FLORIDA

Union County

Townsend Building, 410 W. Main St., Lake Butler, 92001359

KENTUCKY

Logan County

Brodnax—Conn House, 3288 Conn Rd., Adairville vicinity, 92001339

LOUISIANA

Lincoln Parish

Meadows House, 508 N. Bonner St., Ruston, 92001338
Ruston Central Fire Station, 200 E. Mississippi Ave., Ruston, 92001340
Ruston High School, 900 Bearcat Dr., Ruston, 92001335
Vicksburg, Shreveport and Pacific Depot, 101 E. Railroad Ave., Ruston, 92001337

Pointe Coupee Parish

North Bend
[Louisiana's French Creole Architecture MPS], LA 1 W of jct. with LA 416, E of Oscar, Oscar vicinity, 92001336

NORTH CAROLINA

New Hanover County

Masonboro Sound Historic District, E side Magnolia Dr. and 7301–7601, 7424 and 7506 Masonboro Sound Rd., Wilmington vicinity, 92001334

OHIO

Adams County

The Ridge, 503 E. 8th St., Manchester, 92001352

Cuyahoga County

Watterson School, 1422 W. 74th St., Cleveland, 92001354

Franklin County

Lincoln Theatre, 77 E. Long St., Columbus, 92001355

Jefferson County

Market Street Section, Retaining Wall and Water Trough, Old Market St. between Market St. off ramp and Lawson Ave., Steubenville, 92001353

OREGON

Curry County

Sixes Hotel, 93316 Sixes River Rd., Sixes, 92001325

Hood River County

Potter, Miles B. and Eleanor, House, 4095 Belmont Dr., Hood River vicinity, 92001326
Ries—Thompson House, 4993 Baseline Rd., Parkdale, 92001327

Jackson County

Peerless Rooms Building, 243–249 Fourth St. Ashland, 92001328
Sparta Building, 12 N. Riverside St., Medford, 92001329
Wagner Creek School, 8448 Wagner Creek Rd., Talent vicinity, 92001331

Linn County

Angell—Brewster House, 34191 Brewster Rd., Lebanon vicinity, 92001330

Marion County

Chemawa Indian School Site, 3700 Chemawa Rd., NE., Salem, 92001333

Multnomah County

Albee, H. Russell, House, 3360 SE. Ankeny St., Portland, 92001332

WASHINGTON

King County

Snoqualmie Falls Hydroelectric Power Plant Historic District [Hydroelectric Plants in Washington State MPS], WA 202, .5 mi. N of Snoqualmie, Snoqualmie vicinity, 92001324

Yakima County

Yakima Valley Transportation Company, Third Ave. and Pine St., Yakima, 84004012.

[FR Doc. 92–22874 Filed 9–21–92; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32147]

Hollis & Eastern Railroad Co.—Trackage Rights Exemption—Wichita, Tillman & Jackson Railway Co., Inc.

Wichita, Tillman & Jackson Railway Co., Inc. (WTJ), has agreed to grant approximately 4.6 miles of overhead trackage rights to Hollis & Eastern Railroad Company (H&E). The trackage rights extend from Milepost 74.0 to Milepost 78.6 in and adjacent to the city of Altus, OK.[1] The trackage rights will permit H&E to move and store locomotives and rolling stock and to interchange with the Burlington Northern Railroad Company and Texas & Oklahoma Railroad Company. The exemption became effective on September 10, 1992, and the parties intend to consummate the transaction on October 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, 1700 K Street, NW., suite 1107, Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: September 15, 1992.

[1] The line is owned by the State of Oklahoma; it is leased, operated, and maintained by WTJ. Oklahoma concurs with the trackage rights agreement.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–22931 Filed 9–21–92; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 445X)]

CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—In Stark and Wayne Counties, OH

Applicant (CSXT) has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to discontinue its overhead trackage rights on approximately 24.7 miles of rail line belonging to Wheeling & Lake Erie Railway Company (W&LE), between milepost 133.0 at Brewster, OH, and milepost 108.3 at Creston, OH.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic will be rerouted over other lines; and (3) no formal complaint filed by user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate Stage agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 22, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues[2]

[1] CSXT was granted trackage rights over W&LE's line of railroad between milepost C1.6 at Connellsville, PA, and milepost 108.3 at Creston, OH, in Finance Docket No. 31831, served February 25, 1991. On August 31, 1992, W&LE filed a petition for exemption to abandon its line of railroad in Stark, Wayne, and Medina Countries, OH, in Docket No. AB–227 (Sub–No. 2X). CSXT seeks to discontinue trackage rights over a portion of the line that W&LE seeks to abandon.

[2] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether

Continued

formal expression of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2)[3] must be filed by October 2, 1992. Petitions to reopen must be filed by October 13, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: September 15, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-22930 Filed 9-21-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Modification of Consent Decree in United States v. Louisiana-Pacific Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Modification of the Consent Decree in *United States* v. *Louisiana-Pacific Corporation*, No. C-78-0567 MHP, was lodged with the United States District Court for the Northern District of California on September 10, 1992.

The original Consent Decree in this action, lodged on September 9, 1991 and entered by the Court on March 11, 1992, required payment of a $2.9 million penalty by the defendant for violations of the defendant's National Pollutant Discharge Elimination System ("NPDES") permit, issued under sections 301(m) and 402 of the Clean Water Act, 33 U.S.C. 1311(m), 1342, and enjoined further violations of the Clean Water Act and the defendant's NPDES permit. The original Consent Decree also committed the defendants to install in-plant process changes and/or treatment technologies necessary to achieve compliance with the Clean Water Act, defendant's NPDES permit, and the Consent Decree. The Modification specifies that the steps the defendant will take to come into compliance will include the elimination of all chlorine-containing compounds from its bleaching process, the installation of steam stripping technology, and an outfall extension.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments relating to the Modification of the Louisiana-Pacific Consent Decree. Comments should be addressed to Robert R. Klotz, Environmental Enforcement Section, Environment and Natural Resources Division, 301 Howard Street, Suite 870, San Francisco, California 94105 and should refer to *United States* v. *Louisiana-Pacific Corporation*, DOJ Ref. No. 62-11-90A.

The Consent Decree Modification may be examined at the Office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, Tel. (202) 347-2072. Copies of the Consent Decrees may be obtained in person or by mail from the Consent Decree Library. In requesting copies, please tender a check in the amount of $5.00 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-22851 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 70-92]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Immigration and Naturalization Service, proposes to establish a new system of records entitled, "Employee Assistance Program (EAP) Treatment and Referral Records, JUSTICE/INS-019."

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system.

Therefore, please submit any comments by October 22, 1992. The public, OMB, and Congress are invited to send written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1103, Chester Arthur Building).

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Dated: September 4, 1992.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS-019

SYSTEM NAME:

Employee Assistance Program (EAP) Treatment Referral Records.

SYSTEM LOCATION:

EAP Coordinator records are located at Immigration and Naturalization Service (INS) headquarters and in all INS regional offices. Headquarters and regional office addresses are provided in a published appendix to INS systems identified as Justice/INS-999. EAP contract facility/provider records are located in the offices of the providers throughout the Western Region and, in part, the Eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine). Addresses of these offices may be obtained by contacting the EAP Coordinators of the Western and Eastern Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former INS employees who have sought counseling and/or have been referred to the INS EAP Coordinators or directly to INS EAP contract/facility provider for counseling and/or treatment. To the limited degree that counseling and treatment may be provided to family members of these employees, these individuals, too, may be covered by the system. With respect to records maintained by the EAP Coordinator (identified in item A. below), this system covers all INS employees (and family members); with respect to the clinical records (identified in item B below), it covers all INS employees (and family members) of the Western Region and, in part, the Eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine).

raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

CATEGORIES OF RECORDS IN THE SYSTEM:

Included are all EAP Coordinator records, i.e., those of INS headquarters employees and all INS regional offices; also included are the contract facility/provider records (i.e., clinical records) of only the Western Region and, in part, the Eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine).[1] EAP records include those maintained by the EAP Coordinators and by the EAP contract facility/providers as follows:

A. EAP Coordinator records include records which may assist in managing and monitoring the referral, attendance, and progress of the employee. Examples: Personal identification data, home addresses and/or phone numbers; insurance data; supervisors' phone numbers; notes on referrals to the contract facilities; addresses of treatment facilities or individuals providing treatment; notes regarding attendance and progress made; leave records; information on confirmed unjustified positive drug tests provided by the Drug Free Workplace Program and the Medical Review Officer under E.O. 12564; supervisory or personnel documents on workplace problems or performance; abeyance agreements (made to mitigate discipline based upon treatment); and written consent forms, together with any information which may be provided pursuant to written consent.

B. EAP contract facility records include, where appropriate, those which are maintained by the EAP Coordinator. In addition, they include any records which may assist in diagnosing, evaluating, counseling and/or treating the employee. Examples: Pertinent psychosocial, medical, and employment histories; medical tests or screenings, including EAP drug and alcohol tests and information on confirmed unjustified positive drug tests generated by the staff of the Drug Free Workplace Program and the Medical Review Officer and provided by the EAP Coordinator or the employee's supervisor; notes and documentation on counseling; treatment and rehabilitation plans as well as behavioral improvement plans; and records of referrals by the EAP contract facility to community treatment resources. For example, employees requesting legal, financial or other assistance not related to psychological or medical health may be referred to the appropriate community resources (or subcontract providers). Where such referrals have been made, records from the subcontractor also may include relevant information related to counseling, diagnosis, prognosis, treatment, and evaluation, together with follow-up data. These records also include written consent forms used to manage referrals and the flow of information. Finally, records include account information such as contractor billings and INS payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, *et seq.*, and 290ee, *et seq.*; 42 CFR part 2; Executive Order 12564; 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100–71, Sec. 503 (July 11, 1987).

PURPOSE:

The EAP is a voluntary program designed to assist the recovery of employees who are experiencing one or more of a variety of personal or behavioral problems (e.g., marital, financial, substance abuse). Records are maintained to document referral and participation in the EAP program; the nature and effects of the employee's personal or behavioral problem(s); efforts to counsel, treat, and rehabilitate the employee; and progress made in attaining his/her full recovery. Records may be used also to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself,[2] 5 U.S.C. 552a(b), permissive disclosures without individual consent, are as follows:

1. Where an employee has volunteered to participate in the EAP, and to the extent that it is appropriate, relevant, and necessary to enable the contractor to perform his counseling, treatment, rehabilitation, and evaluation responsibilities, INS will provide those records (identified in A. above as INS EAP Coordinator records, and which are primarily administrative in nature) to the contract facilities/providers who, on behalf of INS, operate that part of this system of records which covers the clinical records (identified in B. above).

2. Contract facilities/providers may disclose:

a. To appropriate State or local authorities to report, under State law, incidents of suspected child abuse or neglect.

b. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in locked file cabinets and a computerized environment.

RETRIEVABILITY:

Records are retrieved by a case number which is cross referenced to a name by the computer.

SAFEGUARDS:

In accordance with the requirements of 42 CFR 2.16, records are stored in a secure environment. Paper records of the EAP Coordinator are stored in a locked file cabinet in a locked room and in a personal computer which is password protected. Paper records of the EAP contract facility/provider are stored in locked files also and in computers which are password protected. In addition, all paper records, e.g., case files, billings and payment vouchers, are identified by case number only and cannot be identified by a name until they are cross-referenced by the computer system to a name.

Only the EAP Administrator, Coordinator or a designated staff member may access or disclose the records of the EAP Coordinator. Only a designated member of the EAP contract facility/provider may access and disclose records maintained by the facility/provider. Information maintained by the facility/provider will be disclosed to the EAP Administrator, Coordinator, the INS manager and/or supervisor only upon written consent of the individual. Further, no information in this system of records, whether maintained by the EAP Coordinator or by the EAP contract facility/provider, will be disclosed otherwise except with the written consent of the individual or as indicated under the routine use disclosures outlined in this notice.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with

[1] Clinical records of INS employees at headquarters and in the Northern and Southern Regions, and in the Eastern Region for those areas other than Hartford, Connecticut, the Boston District, and the States of Vermont, and Maine, are maintained by the Department of Health and Human Services, Public Health Service. Clinical records of INS employees in the Boston District, Eastern Region, are maintained by the Office of Personnel Management.

[2] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, INS will follow such restrictions. See 42 U.S.C. 290dd and 290ee.

the counselor unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning (General Records Schedules 26 and 36).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Personnel and Career Development, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Same as record access procedures.

RECORDS ACCESS PROCEDURES:

Address all requests for access to EAP coordinator records to the system manager identified above. Address all requests for records maintained by the facility/provider of contract counseling services to that facility/provider. Addresses of these offices may be obtained by contacting the EAP Coordinators of the Western and Eastern Regional Offices. Clearly mark the envelope and letter "Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in accordance with procedures outlined under Record Access Procedures. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Amendment Request."

RECORD SOURCE CATEGORIES:

Records are generated by the employee who is the subject of the record; EAP Coordinators and EAP contract facilities/providers; the personnel office; and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug Free Workplace Program and the Medical Review Officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-22991 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-10-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; UNIX International, Inc.

Notice is hereby given that, on August 5, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX"), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of UNIX effective on July 22, 1992: Marben Produit of Suresnes, France; City Polytechnic of Hong Kong of Kowloon Tong, Hong Kong; ADHOC Systems Co., Ltd. of Tokyo, Japan; and Lotus Development Corp. of Cambridge, MA.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608).

The last notification was filed with the Department on May 5, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 9, 1992 (57 FR 30511).

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UNIX intends to file additional written notifications disclosing all changes in membership.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-22850 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Proposed Aggregate Production Quotas for 1993

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Aggregate Production Quotas for 1993.

SUMMARY: This notice proposes initial 1993 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATES: Comments or objections should be received on or before October 22, 1992.

ADDRESSES: Send comment or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1993 aggregate production quotas, the Administrator considered the following factors: (1) Total actual 1991 and estimated 1992 and 1993 net disposals of each substance by all manufacturers; (2) estimates of 1992 year end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and (3) projected demand as indicated by procurement quota applications filed pursuant to § 1303.12 of title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of title 21 of the Code of Federal Regulations, the Administrator of the DEA will, in early 1993, adjust individual manufacturing quotas allocated for the year based upon 1992 year-end inventory and actual 1992 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the DEA hereby proposes that aggregate production quotas for 1993 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed 1993 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	12,100,000
Lysergic acid diethylamide	9
3,4-Methylenedioxyamphetamine	2
3,4-Methylenedioxymethamphetamine	2
Tetrahydrocannabinols	35,000
Psilocyn	5
Psilocybin	5
4-Methylaminorex	2
Methaqualone	2
Mescaline	2
Methcathinone	2
N-Hydroxy-3,4-methylenedioxyamphetamine	0
Dimethylamphetamine	2
levo-alpha-acetylmethadol	150,000
Schedule II:	
Alfentanil	7,400
Amobarbital	5
Amphetamine	144,000
Cocaine	586,000
Codeine (for sale)	63,613,000
Codeine (for conversion)	7,666,000
Desoxyephedrine	1,161,000
1,140,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 21,000 grams for methamphetamine.	
Dextropropoxyphene	107,296,000
Dihydrocodeine	579,000
Diphenoxylate	619,000
Ecgonine (for conversion)	650,000
Fentanyl	50,900
Glutethimide	0
Hydrocodone	5,066,000
Hydromorphone	261,000
Levorphanol	7,500
Meperidine	8,325,000
Methadone	2,604,000
Methadone Intermediate(4-Cyano-2-dimethylamino-4,4-diphenylbutane)	3,255,000
Methamphetamine (for conversion)	603,000
Methylphenidate	3,411,000
Mixed Alkaloids of Opium	800
Morphine (for sale)	6,378,000
Morphine (for conversion)	68,879,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	662,000
Oxycodone (for sale)	2,948,000
Oxycodone (for conversion)	6,300
Oxymorphone	2,500
Pentobarbital	12,912,000
Phencyclidine	15
Phenylacetone (for conversion)	320,000
Secobarbital	587,000
Sufentanil	620
Thebaine	7,155,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: August 7, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-22932 Filed 9-21-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,528]

Ansewn Shoe Co., Howland, ME; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 27, 1992 in response to a

worker petition which was filed on July 27, 1992 on behalf of workers at Ansewn Shoe Company, Howland, Maine.

All workers were separated from the subject firm in November of 1990, more than one year prior to the date of the petition (June 6, 1992). Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-22873 Filed 9-21-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 2, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 8th day of September 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Fujitsu Imaging Systems of America (Wkrs)	Waltham, MA	09/08/92	08/20/92	27,775	Facimile Equipment.
Halliburton Geophysical Services (Co)	Houston, TX	09/08/92	08/17/92	27,776	Oil, Gas Exploration.
General Electric, Aircraft Engine (Wkrs)	Rutland, VT	09/08/92	08/23/92	27,777	Parts for Jet Engines.
Three Star Fashions (Wkrs)	Shenandoah, PA	09/08/92	08/29/92	27,778	Ladies Dresses.
Hicks Construction, Inc. (Co)	Bakersfield, CA	09/08/92	08/23/92	27,779	Pipes & Oilfield Services.
DDC pertec (Co)	Tucson, AZ	09/08/92	08/07/92	27,780	Headquarters Office.
Bob Moe & Sons, Inc (Wkrs)	Port Angeles, WA	09/08/92	08/19/92	27,781	Wood Chips.
Auto-Comm Engineering Corp (Co)	Lafayette, LA	09/08/92	08/24/92	27,782	Custom Communications Equipment.
Texas Instruments (Wkrs)	Eden Prairie, MN	09/08/92	08/26/92	27,783	Sales Support Services.
Case-Pomeroy Oil Corp. (Co)	Houston, TX	09/08/92	07/31/92	27,784	Crude Oil, Natural Gas.
Design Associates, Inc (Wkrs)	New Orleans, LA	09/08/92	08/24/92	27,785	Naval Architecture.
Summit Distributing, Inc (Wkrs)	Buffalo, NY	09/08/92	08/23/92	27,786	Distribution of Electronic Components.
Praxair, Inc., Linde Div. (OCAW)	Tonawanda, NY	09/08/92	08/25/92	27,787	Air Separation Equipment.
Paper Converting Machine Co (UAW)	Green Bay, WI	09/08/92	08/23/92	27,788	Capital Equipment.
The Williams Carter Co (Wkrs)	Griffin, GA	09/08/92	08/24/92	27,789	Children's Clothing.
Charles Komar & Sons Seamprufe (Wkrs)	Holdenville, OK	09/08/92	08/24/92	27,790	Knitwear.
Sleep Robber, Inc (Wkrs)	North Bend, OR	09/08/92	08/27/92	27,791	Commercial Fish.
Exxon Co., USA/Central Prod. Div. (Wkrs)	Houston, TX	09/08/92	08/28/92	27,792	Oil and Gas.
Komatsu Dresser (Wkrs)	Libertyville, IL	09/08/92	08/05/92	27,793	Dresser Crowler Tractors.

[FR Doc. 92-22876 Filed 9-22-92; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Regarding the Attestation Process:* Chief, Division of Foreign Labor Certifications, U.S. Employment Service.

Telephone: 202–535–0163 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 11th day of September 1992.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations

[08/01/92 to 08/31/92]

CEO-name/facility name/address	State	Approval date
Mr. Robert Jay Rowen, Omni Medical Center, 615 E. 82nd Ave., Ste. 300, Anchorage, 99518, 907–344–7775	AK	08/27/92
Mr. Ross Hooper, Crittenden Memorial Hospital, 200 Tyler Avenue, West Memphis, 72301, 501–735–1500	AR	08/21/92
Mr. Mark Brenzel, Northwest Hospital, 6200 N. LaCholla Blvd., Tucson, 85741, 602–742–9000	AZ	08/21/92
Ms. Lilioara Sararu, International Med. Staffing Services, Hemet, 92543, 714–925–1489	CA	08/07/92
Mr. Bernard F. Hyatt, Bonnie Brae Convalescent Hosp., 420 South Bonnie Brae Street, Los Angeles, 90057, 213–483–8144	CA	08/07/92
Mr. Douglas Schultz, Mission Convalescent Hospital, 909 West Santa Anita Street, San Gabriel, 91776, 818–289–5365	CA	08/07/92
Mr. Gerald L. Price, Royal Care Skilled Nursing Facility, Long Beach, 90806, 310–427–7493	CA	08/12/92
Mr. Roger O. Sangalang, US Nurses Ltd., 1971 Cantamar Rd., San Diego, 92154, 619–429–9017	CA	08/14/92
Mr. Solomon Goldner, San Joaquin Care Center, Goldenstate Palms Inc. dba, Bakersfield, 93305, 805–872–2324	CA	08/21/92
Mr. Wilfredo Gabriel, Intercontinental Nursing Serv., 9580 Black Mountain Road, San Diego, 92126, 619–689–7352	CA	08/21/92
Mr. Solomon Goldner, Goldenstate Manor Conval. Ctr., 730 34th Street, Bakersfield, 93301, 805–327–7687	CA	08/21/92
Mr. Solomon Goldner, Parkview Real Conval. Hosp., Rosemead Sanitarium, Inc. dba, Bakersfield, 93309, 805–327–7107	CA	08/21/92
Mr. Sanford M. Shapero, City of Hope Nat'l Med. Ctr., 1500 East Duarte Road, Duarte, 91010 818–359–8111	CA	08/25/92
Ms. Anni Chung, Self-Help for the Elderly, 407 Sansome Street, Suite 300, San Francisco, 94111 415–982–9171	CA	08/25/92
Ms. Elsie J. Arca, Skilled Nurses Registry Corp., 3142 Wilshire Blvd., Suite 5, Los Angeles, 90010, 213–387–4941	CA	08/25/92
Mr. Herbert G. Needman, Temple Community Hospital, 235 North Hoover Street, Los Angeles, 90004, 213–382–7252	CA	08/25/92
Ms. Brenda Manke, Valley Palms Care Center, 13400 Sherman Way, North Hollywood, 91605, 818–983–0103	CA	08/25/92
Mr. Ray Webb, Los Banos Community Hospital, 520 West "I" St., Los Banos, 93635, 209–826–0591	CA	08/26/92
Constance U. Battle, M.D., the Hospital for Sick Children, 1731 Bunker Hill Road N.E., Washington, 20017, 202–832–4400	DC	08/21/92
Gregory Jablonski, Glades Health Care Center, 230 S. Barfield Highway, Pahokee, 33476, 407–924–5561	FL	08/07/92
Edward A. Dauer, M.D., Florida Med. Ctr. Hospital, 5000 W. Oakland Park Blvd., Ft. Lauderdale, 33313, 305–735–6000	FL	08/21/92
Mr. Phillip Pickrill, Shore Acres Nursing & Conval., 4500 Indianapolis Street, NE, St. Petersburg, 33703, 813–527–5801	FL	08/25/92
Ms. Joyce E. Plourde, Heartland Health Care Center, 5725 NW 186th St., Hialeah, 33015, 305–625–9857	FL	08/25/92
Mr. A. Jason Geisinger, Hillhaven Rehab. & Conval. Ct., 26 Tower Road, N.E., Marietta, 30090, 404–422–8913	GA	08/07/92
Mr. James L. McAlpin, Gold City Conval. Ctr., Inc., P.O. Box 96, Dahlonega, 30533, 706–864–3045	GA	08/07/92
Mr. A. Jason Geisinger, Savannah Convalescent Ctr., 815 East 63rd Street, Savannah, 31405, 912–352–8615	GA	08/07/92
Mr. A. Jawon Geisinger, Hillhaven Convalescent Center, First Health Care Corp., Savannah, 31499, 912–925–4402	GA	08/07/92
Mr. James L. McAlpin, Cedartown Health Care, 148 Cason Road, Cedartown, 30125, 706–748–3622	GA	08/07/92
Mr. James L. McAlpin, Floyd Health Care, 1170 Chulio Road, S.E., Rome, 30161, 706–235–1132	GA	08/07/92
Mr. James L. McAlpin, Friendship Nursing Home, Inc., Route 2, Box 2006, Cleveland, 30528, 706–865–3131	GA	08/07/92
Mr. James L. McAlpin, Mountain View Conval. Ctr., P.O. Box 865 Warwoman Road, Clayton, 30525, 706–782–4276	GA	08/14/92
Mr. Sam Gorenstein, Metrop. Nursing Ctr. of Hazel Crest, Inc., Hazel Crest, 60435, 708–635–2400	IL	08/07/92
Mr. Michael H. Fritz, The Carle Foundation Hospital, 611 West Park, Urbana, 61801, 217–383–3311	IL	08/07/92
Peter Friedell, M.D., Jackson Park Hospital, 7531 South Stony Island, Chicago, 60649, 312–947–7500	IL	08/17/92
Ms. Violeta R. Lalicon, Lalicon & Associates, 28 East Jackson, Chicago, 60604, 312–939–7525	IL	08/21/92
Ms. Joanne T. Jurkovic, Mercy Health Care & Rehab. Ct., 19000 S. Halsted Street, Homewood, 60430, 708–957–9200	IL	08/21/92
Mr. Joseph F. Warner, Heritage Manor Nursing Home, 700 E. Walnut Street, Bloomington, 61701, 309–827–8004	IL	08/21/92
Mr. Sam Gorenstein, Metrop. Nursing Ctr., 8540 S. Harlem Avenue, Bridgeview, 60455, 708–598–2605	IL	08/21/92
Ms. Dolores C. Schroder, Lake Shore Nursing Centre, 7200 N. Sheridan Rd., Chicago, 60626, 312–973–7200	IL	08/25/92
Mr. Herman Katz, Balmoral Nursing Centre, Inc., 2055 West Balmoral Avenue, Chicago, 60625 312–561–8661	IL	08/25/92
Mr. John Samatas, Lexington Health Care Center, 1300 S. Main, Lombard, 60148, 708–495–1700	IL	08/26/92
Mr. Vasanth Pal, Hyde Park Hospital, 5800 S. Stony Island Avenue, Chicago, 60637, 312–643–9200	IL	08/26/92
Mr. John Samatas, Lexington Health Care Ctr. of Schaumburg, Schaumburg, 60193, 708–495–1700	IL	08/26/92
Mr. John Samatas, Lexington Health Care of Bloomingdale, Inc., Bloomingdale, 60108, 708–495–1700	IL	08/26/92
Mr. Joseph F. Warner, Heritage Manor Nursing Home, 555 E. Clay Street, El Paso, 61738, 309–527–6240	IL	08/28/92
Ms. Marla Becker, Sheridan Healthcare Ctr., 2534 Elim Avenue, Zion, 60099, 708–746–8435	IL	08/28/92

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[08/01/92 to 08/31/92]

CEO-name/facility name/address	State	Approval date
Mr. William B. Fuchs, Saint Joseph Hospital, One Saint Joseph Drive, Lexington, 40504, 606-278-3436	KY	08/25/92
Mr. Wayne Swiniarski, West Calcasieu Cameron, 701 East Cypress Street, Sulphur, 70664, 318-527-4280	LA	08/21/92
Mr. Allen Tuten, Lincoln General Hospital, P.O. Drawer 1368, Ruston, 71273, 318-254-2100	LA	08/25/92
Morton T. Rapoport, M.D., U of Maryland Med. System, 22 S. Greene Street, Baltimore, 21201, 410-328-2756	MD	08/07/92
Mr. Reynold Banks, Capitol View Care Center, 707 Armstrong, Lansing, 48911, 517-393-5680	MI	08/25/92
Mr. Morris Esformes, Cedars Health Care, 6400 The Cedars Court, Cedar Hills, 63016, 314-285-1777	MO	08/07/92
Mr. Thomas E. Ford, Brian Ctr. Nursing Care, 3000 Holston Lane, Raleigh, 27610, 919-231-6045	NC	08/07/92
Mr. Glenn B. Terry, Brian Ctr. Health & Retir., Statesville, Inc., Statesville, 28677, 704-873-0517	NC	08/07/92
Mr. Nolan G. Brown, Pinehurst Nursing Ctr., Inc., P.O. Box 5309, Pinehurst, 28374, 919-295-6158	NC	08/07/92
Mr. Paul T. Babinski, Brian Ctr. of Charlotte, Inc., 5939 Reddman Road, Charlotte, 20212, 704-563-6062	NC	08/07/92
Mr. Jack L. Russell, Brian Ctr. Nursing Care/Asheb, 230 E. Presnell Street, Asheboro, 27203, 919-629-1447	NC	08/07/92
Ms. Vickie L. Carroll, Maple Leaf Health Care, 2640 Davie Avenue, Statesville, 28677, 704-871-0701	NC	08/07/92
Mr. David R. Wilson, Brian Ctr. Health & Retir., 6000 Fayettevile Road, Durham, 27713, 919-544-9021	NC	08/07/92
Mr. Louis Milita, Brian Center Clayton, 2300 Diary Road, Clayton, 27520, 919-553-8232	NC	08/07/92
Ms. Frances Messer, Northwood Manor, 303 E. Carver St., Durham, 27704, 919-471-4558	NC	08/14/92
Mr. U. Birzenieks, New Hanover Reg'l Med. Ctr., 2131 So. 17th Street, Wilmington, 28402, 919-343-7000	NC	08/21/92
Mr. Nolan G. Brown, Yadkin Nursing Care Ctr., Inc., P.O. Box 879, Yadkinville, 27055, 919-679-8863	NC	08/25/92
Mr. Glennis L. Bolden, Emerald Health Care, 539 3rd Street Southwest, Taylorsville, 28681, 704-632-8146	NC	08/28/92
Mr. Lloyd R. Currier, Christ Hospital, 176 Palisade Avenue, Jersey City, 07306, 201-795-8355	NJ	08/07/92
Mr. Morris Wiesel, Cedar Oaks Care Center, 1311 Durham Avenue, South Plainfield, 07080, 908-287-9555	NJ	08/07/92
Mr. Douglas E. Kurtz, Regent Care Center, 50 Polifly Road, Hackensack, 07601, 201-646-1166	NJ	08/14/92
Mr. WJ. Van Ry, St. Mary's Reg'l Med. Ctr., 235 West Sixth Street, Reno, 89520, 702-323-2041	NV	08/14/92
Mr. Renate Wack, M.D., Kirby Forensic Psychiatric Ct., Ward's Island, New York, 10035, 212-427-9003	NY	08/28/92
Ms. Carol Raphael, VNS Home Care, 107 East 70th Street, New York, 10021, 212-794-9200	NY	08/28/92
Sister Gretchen Kunz, St. Joseph Hosp. & Health Ctr., 2801 Franciscan Drive, Bryan, 77802, 409-776-2515	TX	08/07/92
Ms. Brenda Chung, Nightingale Services, 5650 Kirby, Suite 251, Houston, 77005, 713-668-8901	TX	08/21/92
Mr. Charles V. Rice, IHS—I, Inc., 5160 Parkstone Dr., Chantilly, 22021, 703-222-3900	VA	08/07/92
Ms. Norma D. Glenn, St. Croix Hosp., 4007 Est. Diamond Ruby, St. Croix, 00820, 809-778-6311	VI	08/21/92
Mr. Roger Sievers, Lutheran Home for the Aging, 7500 West North Avenue, Wauwatosa, 53213, 414-258-6170	WI	08/21/92
Total Attestations: 75		

[FR Doc. 92-22677 Filed 9-21-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION OF THE ARTS AND HUMANITIES

National Council on the Arts Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a Teleconference meeting of the National Council of the Arts will be held on September 25, 1992 from 3 p.m. to 4 p.m. in room 527 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic will be discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended.

If in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the council will go into closed session for that limited purpose pursuant to subsection (c)(4) of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of November 20, 1991.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-23091 Filed 9-18-92; 3:26 pm]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Endowment Fund Discussion Group; Meeting

September 23, 1992 from 10 a.m.-3 p.m. has been designated for the Endowment Fund Discussion Group meeting. This meeting will take place in room M-07, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

This meeting will be open to the public on a space available basis. The topics will include opening remarks and discussion of Endowment fund assets, grantee compliance with Challenge II conditions, and the current Challenge grant guide.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: September 11, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-23030 Filed 9-21-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

Power Authority of the State of New York; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its April 19, 1991, application for proposed amendment to Facility Operating License No. DPR-59 for the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

The proposed amendment would have added new specifications regarding operability requirements for ventilation and air conditioning equipment associated with four environmental enclosures at the FitzPatrick plant.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on May 29, 1991 (56 FR 24215). However, by letter dated September 9, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 19, 1991, and the licensee's letter dated September 9, 1992, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York.

Dated at Rockville, Maryland, this 16th day of September 1992.

For the Nuclear Regulatory Commission.

Brian C. McCabe,

Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-22886 Filed 9-21-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Callaway Plant, Unit 1; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company (UE, the licensee), for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The amendment would revise Figure 3.9-1 of Technical Specification Section 3/4.9.12 to reflect a maximum initial enrichment of 4.45 w/o U-235 for fuel storage in Region 2 of the Callaway spent fuel pool.

Prior to 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 October 22, 1992, 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 hearing and a petition for leave to intervene. Requests for a hearing and petitions 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 20555 and at the Local Public Document Room located at Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. 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 fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first 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 that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, 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 intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 12, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room, Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 14th day of September 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-22887 Filed 9-21-92; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Customer Satisfaction Survey

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve a new collection of information under the Paperwork Reduction Act. The purpose of this information collection, which will be conducted through a Customer Satisfaction Survey, is to help the agency assess the efficiency and effectiveness of its programs and design actions to correct identified problems. The PBGC has requested expedited review by OMB pursuant to 5 CFR 1320.18 and, therefore, is publishing with this notice the survey questions it plans to use. The effect of this notice is to advise the public of the PBGC's request for OMB approval of, and to solicit public comment on, this collection of information.

DATES: Comments must be submitted on or before October 2, 1992.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., room 3208, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The Chief Financial Officers Act of 1990 (CFOs Act), 31 U.S.C. 501 et seq., requires the CFO of each agency covered by the Act to submit annual financial statements covering all revolving funds, trust funds, and activities involving substantial commercial functions. The Act also dictates that agency CFOs develop an integrated agency accounting and financial measurement system which provides for "the systematic measurement of performance."

To this end, OMB directed covered agencies to include in their financial statements information and data on program performance and established 14 teams, chaired by and composed of agency representatives, which are to identify and select key performance measures for the various commercial functions performed by the member agencies. While the sections of the CFOs Act requiring performance measures do not apply to the PBGC, PBGC voluntarily participated in the Pensions and Social Insurance Performance Measures Task Force (the "Task Force"). The Task Force members concluded that an overall Customer Satisfaction performance measure was common to all member agencies and that customer satisfaction could be measured by a survey of a statistically valid sample of people receiving the agencies' services. This data collection's purpose, therefore, is to meet PBGC's commitment to include Overall Customer Satisfaction data in its 1992 Annual Report. Because of this commitment, the PBGC is requesting expedited OMB review of this collection of information, pursuant to 5 CFR 1320.18(g). As part of the expedited review process, the PBGC is publishing for public comment the survey questions it plans to use.

This collection of information will put a slight burden on a small percentage of the public. A pilot Customer Satisfaction Survey will contact a random 200 participants and beneficiaries out of the 325,000 in PBGC-trusteed pension plans. While not statistically valid, the 200 responses will provide some evidence that can be used to meet our commitment to include Customer Satisfaction data in the 1992 Annual Report. In subsequent years' annual

Surveys, the data will be collected from approximately 4,000 respondents (a statistically valid number) in a combination phone and follow-up mail Survey (the latter only to be used if the selected participant or beneficiary cannot be reached by phone). The information collected will assist program managers in assessing the efficiency and effectiveness of their programs and in designing actions to correct identified problems. An average of 456 burden hours per year over the next three years (2,734 respondents at 10 minutes each) is expected to be incurred by the survey respondents, whether contacted by telephone or by alternative written survey.

Issued at Washington, DC, this 16th day of September, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

Pension Benefit Guaranty Corporation Participant Satisfaction Survey

Section A: Introduction

1. Are you aware that the Pension Benefit Guaranty Corporation (PBGC), a Federal agency, is responsible for your pension under (insert plan name)?

2. Do you understand what PBGC's responsibilities are with respect to your plan?

3. Think about any contact you have had with PBGC over the past year. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would you rate the overall quality of service you have received from PBGC so far?

Section B: Contact From PBGC

4. PBGC mails various materials to people to whom it owes benefits. On a scale from 1 to 6, where 1 is poor and 6 is excellent, please rate each of the following materials which you may have received from PBGC during the past year in terms of clarity and ease of use:

a. Notification letters.
b. Informational materials.
c. Forms.
d. Postcards.

5. Have you received information from PBGC during the past year explaining the amount PBGC will pay?

6. Did this information help you to understand the amount PBGC will pay?

7. Did this information help you understand your right to appeal the dollar amount?

Section C: Contact to PBGC

8. Have you contacted PBGC for any reason during the past year?

9. Was your contact primarily with a local Field Benefit Administration representative or the Washington, DC office?

10. Did you have any difficulty in finding out who you needed to contact?

Telephone Contact

11. Did you contact PBGC by telephone during the past year?

12. Why did you contact PBGC by telephone?

13. In general, during the past year, were you able to get the information you needed easily, or did you have some difficulty when you called PBGC?

14. What kind of difficulty did you have?

15. In general, during the past year, about how many times did you have to call each time to obtain the information you were you trying to get?

16. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would you rate the people you talked to on the telephone at PBGC during the past year with respect to:

a. Helpfulness?
b. Clarity?
c. Courtesy?
d. Their ability to provide correct information?

17. The Washington, DC office has an Automated Telephone System which uses recorded messages to guide you to the representative or information you need. Have you called the Automated Telephone System during the past year?

18. Did you mind having to use the Automated Telephone System?

19. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would you rate the Automated Telephone System with respect to:

a. Ease of use?
b. Providing the information you needed?

Mail Contact

20. Did you contact PBGC by mail during the past year?

21. Why did you contact PBGC by mail?

22. Did PBGC answer your letter?

23. Did you get a written response, or did someone call you on the telephone?

24. On a scale from 1 to 6, where 1 is poor and 6 is excellent, please rate the response you received from PBGC with respect to:

a. Helpfulness.
b. Clarity.
c. Courtesy.
d. Accuracy.
e. The degree to which it provided the information you needed.
f. Timeliness.

In Person Contact

25. Did you visit a PBGC office in person during the past year?

26. Why did you contact PBGC in person?

27. On a scale from 1 to 6, where 1 is poor and 6 is excellent, how would rate the PBGC representatives you have met with in person during the past year with respect to:

a. Helpfulness?
b. Clarity?
c. Courtesy?
d. Their ability to provide correct information?

Section D. Other Information

28. In dealing with PBGC during the past year, did you experience any problems that were due to having to speak or read English?

29. Do you have any other comments about the service you have received from PBGC during the past year?

[FR Doc. 92-22970 Filed 9-21-92; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31177; File No. SR-DTC-92-10]

Self-Regulatory Organizations; The Depository Trust Co.; Filing of a Proposed Rule Change Relating to DTC's Proposal To Add Valued Pledges and Releases to Its Next-Day Funds Settlement System

September 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 18, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will enable participants to instruct DTC to effect valued pledges and releases by book-entry in DTC's Next-Day Funds Settlement (NDFS) system.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's existing rules enable participants to instruct DTC to effect unvalued or valued pledges and releases in the Same-Day Funds Settlement (SDFS) system and to effect unvalued pledges and releases in the NDFS system. The proposed rule change will enable Participants to instruct DTC to effect valued pledges and releases in the NDFS system.

For pledges in the NDFS system, DTC will not effect a valued pledge until the pledgee has seen and agreed to its value. For releases in the NDFS system, DTC will not effect the valued release unless the pledgor, by initiating the release, has seen and agreed to its value. These controls were built into the function so that the pledgee and pledgor, respectively, can exercise control over the buildup of cash debits in their accounts. It was necessary to introduce these controls in the NDFS system since the NDFS system does not have the kinds of controls on cash debits to a receiver that are pervasive in the SDFS system.

Under DTC's current rules, participants effecting pledges or releases in the NDFS system have to make arrangements outside DTC to move the related funds. For example, a broker who is effecting a pledge of collateral to secure a loan from a DTC bank participant may receive the funds by check or by Fedwire to its bank account, while the book-entry pledge is effected at DTC. Under the proposed rule change, the participant can accomplish everything with a single instruction to DTC.

The proposed rule change is consistent with the requirements of Act section 17A(b)(3)(F) and the rules and regulations thereunder because it is a more efficient procedure that allows both securities and funds to be moved with a single instruction.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

From time to time, participants have inquired whether DTC would make a valued pledge instruction available. Once valued pledges became available in the SDFS system, inquiries about introducing a similar instruction into the NDFS system increased. However, no written comments on the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file Number SR–DTC–92–10 and should be submitted by October 13, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22927 Filed 9–21–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31181; File No. SR–ICC–92–3]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Proposed Rule Change to Modify the Short Option Adjustment

September 14, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 8, 1992, The Intermarket Clearing Corporation ("ICC") 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 ICC. ICC amended the filing on July 9, 1992, to add language that was inadvertently omitted.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify the short option adjustment included within ICC's margin system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Stuart C. Harvey, Jr., staff counsel, ICC, to Richard C. Strasser, attorney, Division of Market Regulation, Commission (July 9, 1992).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to modify the "short option adjustment" contained in ICC's margin system, the Theoretical Intermarket Margin System ("TIMS"), as reflected in paragraph 3a(2)(c)[1] of the ICC Margin Resolution.

Background

ICC requires its Clearing Members to adjust their margin deposits with ICC in the morning on every business day, pursuant to calculations performed by ICC overnight. ICC imposes a margin requirement on short positions in each Clearing Member account, and gives margin credit for unsegregated long positions.[3] Under TIMS, the margin requirement or credit for positions in a "class group" (a "class group" consists of all futures and all put and call options [4] relating to the same underlying interest) in a given Clearing Member account is equal to the liquidating value of those positions, based on premium levels at the close of trading on the preceding trading day, increased (in the case of a negative liquidating value) or decreased (in the case of a positive liquidating value) by the "additional margin" amount for that class group.

TIMS calculates additional margin amounts utilizing options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable "margin interval," which is the maximum one-day price movement in the underlying asset that ICC desires to protect against.[5] Margin intervals are determined separately for each underlying interest and each margin interval is adjusted for volatility in the market for the underlying interest.

TIMS then selects the theoretical liquidating value that represents the greatest decrease (where the actual liquidating value is positive) or increase (where the actual liquidating value is negative) in liquidating value compared with the actual liquidating value based on the premium levels at the close of trading on the preceding day. The difference between that theoretical liquidating value and actual liquidating value is the additional margin amount for that class group, unless the class group is subject to the short option adjustment.

For net short positions [6] in deep out-of-the-money options, little or no change in value would be predicted given a change in value of the underlying interest equal to the applicable margin interval, and TIMS would calculate additional margin amounts of zero or close to zero. Volatile markets, however, may cause such positions to become in-the-money or nearly so, thereby creating increased risk to ICC. ICC protects against such risk by incorporating into the additional margin calculation of TIMS a margin cushion for such positions known as the short option adjustment. The short option adjustment is described in paragraph 3a(2) (c)[1] of the ICC Margin Resolution.

The short option adjustment currently calculates a minimum additional margin amount for all net short positions in deep out-of-the-money options. That additional margin amount is equal to 25% of the applicable margin interval for the class group, multiplied by the number of contracts and the applicable unit of trading. The short option adjustment component of additional margin is activated only if the calculated additional margin requirement for an option series is less than 25% of the applicable margin interval multiplied by the number of contracts and the applicable unit of trading.

Effect of the Short Option Adjustment

Following an analysis of its experience in the October 1987 market break and other internal reviews of TIMS, ICC has concluded that the current short option adjustment requires Clearing Members to deposit margin in excess of the risk presented by certain net short positions in deep out-of-the-money options. This over-collateralization occurs because the current short option adjustment does not account for spreads between net long and short positions on the same underlying interest. That is, it does not attempt to match net short positions with net long positions which substantially reduce, or eliminate, the risk of such net short positions. When paired, the positions offset one another, in that as the risk created by the net short positions increases the value of the long positions also increases. The paired positions therefore pose little or no risk to ICC. [7] Because the short option adjustment does not recognize these paired contracts, additional margin on the positions is calculated as if they were "unpaired" or "naked." Accordingly, the additional margin required of Clearing Members for these positions exceeds the amount required to secure ICC against the risk they create.

Modified Short Option Adjustment

To eliminate this over-collateralization, ICC proposes to revise the short option adjustment logic of TIMS so that it recognizes spreads between net long and short contracts on the same underlying security or interest. Accordingly, TIMS would be modified so that the short option adjustment would "pair" all net long contracts relating to an underlying interest against all net short contracts relating to the same underlying interest on a contract for contract basis. Should any net short positions remain after this process, the number of remaining net short option contracts would be subject to the short option adjustment. [8]

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[3] A long position is "unsegregated" for ICC's purposes if ICC has a lien on the position (*i.e.*, has recourse to the value of the position in the event that the Clearing Member does not perform an obligation to ICC).

[4] The term "option" is defined in the ICC Margin Resolution to include both commodity options and securities options cleared by ICC's affiliate The Options Clearing Corporation ("OCC"). ICC requires margin with respect to OCC securities options pursuant to its cross-margining program with OCC.

[5] TIMS also calculates the theoretical liquidating value for the options positions in each class group assuming an increase or decrease in the market value plus the margin interval and the market value minus the margin interval, since some combinations of positions that include options can present a greater net theoretical liquidating value at any of these intermediate values than at either of the endpoint values.

[6] A "net" position in an option series in an account is the position resulting from offsetting the gross unsegregated long position in that series against the gross short position in that series. After netting, an account will reflect a net short position or a net long position for each series of options held in the account.

[7] A short option position that is offset by a long position will pose no risk to ICC if the exercise price of the short position is higher (in the case of calls) or lower (in the case of puts) than the exercise price of the long position. Conversely, a pair consisting of a net short position and a net long position will pose a risk to ICC consisting of the difference between the exercise prices of the short position and long position if the exercise price of the short position is lower (in the case of calls) or higher (in the case of puts) than the exercise price of the long position. However, this risk is of a relatively small magnitude and not open-ended—*i.e.*, cannot be greater than the difference between the two exercise prices times the applicable unit of trading or index multiplier and the number of contracts. ICC is satisfied that its existing back-up system is capable of absorbing this relatively small risk without any short option adjustment. A similar analysis applies to a short call (put) option position that is offset by a long (short) futures contract.

[8] More specifically, the netting process for purposes of paragraph 3a(2)(c)[1] of the ICC Margin Resolution would involve netting long call options and long futures against short call options, and long

Continued

After determining the number of net short contracts in a class group, ICC would identify those short contracts in the class group for which TIMS (in the absence of the short option adjustment) would calculate the lowest amounts of additional margin, thereby assuring that the short-option adjustment is applied to those net short options which create the most risk to ICC.

As is currently the case, the modified short option adjustment would be applied only if the calculated additional margin requirement for a short option is less than 25% of the margin interval. The modified short option adjustment would continue to use the formula that is currently employed to determine the amount of the adjustment for those contracts that are subject to the adjustment.

The proposed rule change is consistent with Section 17A of the Act, as amended, because it furthers the public interest by eliminating the over-margaining of certain short positions in deep out-of-the-money options, where the risk of such positions is offset by long positions on the same underlying interest. Thereby, an impediment to market liquidity will be removed without reducing ICC's protection with respect to truly "naked" short positions in deep out-of-the-money options.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds that such longer period is appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commissions will:

A. By order approve the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ICC. All submissions should refer to the File Number SR–ICC–92–3 and should be submitted by October 13, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [9]

Margaret H. McFarland,

Deputy Secretary.

[FR DOC. 92–22920 Filed 9–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 16, 1992.

The above name national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Abitibi-Price, Inc.
Common Stock, No Par Value (File No. 7–9073)
ACM Managed Multi-Market Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–9074)
Affiliated Publications, Inc.
Ser. A Common Stock, $.01 Par Value (File No. 7–9075)
A.L. Laboratories, Inc.
Class A Common Stock, $.20 Par Value (File No. 7–9076)
Alabama Power Co.
8.28% Pfd. $100 Par Value (File No. 7–9077)
Alabama Power Co.
8.16% Pfd. $100 Par Value (File No. 7–9078)
Alabama Power Co.
9.44% Pfd. $100 Par Value (File No. 7–9079)
Alabama Power Co.
9% Pfd. $100 Par Value (File No. 7–9080)
Alabama Power Co.
Depositary Receipts 8.72% Pfd. $100 Par Value (File No. 7–9081)
Allen Group, Inc.
$1.75 Conv. Exch. Pfd. Ser. Par Value (File No. 7–9082)
Allied Irish Banks, Plc
American Depositary Receipts, No Par Value (File No. 7–9083)
Amax, Inc.
Cov. Pfd., Ser. B, $1.00 Par Value (File No. 7–9084)
Ambase Corp.
Common Stock, $1.00 Par Value (File No. 7–9085)
American Capital Bond Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–9086)
American Capital Convertible Securities, Inc.
Comon Stock, $1.00 Par Value (File No. 7–9087)
American Heritage Life Investment Corp.
Common Stock, $1.00 Par Value (File No. 7–9088)
American Home Products Corp.
$2.00 conv. Pfd. $2.50 Par Value (File No. 7–9089)
American Ship Building Co.
Common Stock, $1.00 Par Value (File No. 7–9090)
American Water Work Co., Inc.
5% Cum. Pfd. $25.00 Par Value (File No. 7–9091)
Ameriscribe Corp.
Common Stock, $.01 Par Value (File No. 7–9092)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

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put options and short futures against short put options. Those net short options which remain after such netting would be subject to the short option adjustment.

[9] 17 CFR 200.30–3(a) (12) (1991).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22935 Filed 9-21-92; 8:45 am]

BILLING CODE 801-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Fred Meyer, Inc.
Common Stock, $.01 Par Value (File No. 7-9103)
Intermagnetics General Corporation
Common Stock, $.10 Par Value (File No. 7-9104)
Medical Care America, Inc.
Common Stock, $.01 Par Value (File No. 7-9105)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22936 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Chase Manhattan Corporation
Pfd Stock, 8.32 PC Series, No Par Value (File No. 7-9093)
Fred Meyer, Inc.
Common Stock, $.01 Par Value (File No. 7-9094)
Intermagnetics General Corporation
Common Stock, $.01 Par Value (File No. 7-9095)
Sunrise Energy Services, Inc.
Common Stock, $1.00 Par Value (File No. 7-9096)
Equus Investments, Inc.
Common Stock, No Par Value (File No. 7-9097)
Equus II, Inc.
Common Stock, $.001 Par Value (File No. 7-9098)
Medical Care America, Inc.
Common Stock, $.01 Par Value (File No. 7-9099)
Long Island Lighting Company
7.66 PC Series C, $100 Par Value (File No. 7-9100)
Allied Research Corporation
Common Stock, $.10 Par Value (File No. 7-9101)
Williams Companies, Inc.
$2.21 Cumulative Preferred Stock (File No. 7-9102)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-22937 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18950; 812-7783]

Calvert Cash Reserves, et al.; Application

September 15, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Calvert Cash Reserves (doing business as Money Management Plus), Calvert Tax-Free Reserves, First Variable Rate Fund for Government Income (doing business as Calvert First Government Money Market Fund), Calvert Social Investment Fund ("Trusts"), Calvert Asset Management Company, Inc., and Calvert Securities Corporation.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order permitting the existing and future money market portfolios of certain investment companies to sell two classes of shares of each portfolio. Such classes will be identical in all respect except for differences relating to distribution plan expenses, if applicable, transfer agency fees, voting rights, and class expenses.

FILING DATE: The application was filed on September 6, 1991, and amended on February 14, 1992, July 21, 1992, September 1, 1992, and September 3, 1992. A supplemental letter was submitted by counsel on September 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may respect a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 4550 Montgomery Avenue, suite 1000N, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (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.

Applicants' Representations

1. The Trusts are organized as business trusts under the laws of the Commonwealth of Massachusetts and are open-end, diversified, management investment companies registered under the Act. Each Trust currently has one or more existing series of shares ("Funds") that hold themselves out as a money market fund. The requested relief will apply only to Funds that are money market funds. Calvert Asset Management Company, Inc. (the "Adviser") serves as the Trusts' investment adviser. Calvert Securities Corporation (the "Distributor") serves as the Trusts' principal underwriter.

2. Applicants request that any relief also supply to any future series of the Trusts and any future investment company, or series thereof, that is within the same "group of investment companies" as that term is defined in rule 11a–3 of the Act, that holds itself out as a money market fund for which two classes of shares may be issued and sold on a basis substantially similar to that described in the application.

3. The Funds' shares are sold to the general public through both retail and wholesale (third party broker-dealer) distribution channels. The Funds desire to offer their shares to institutional clients, including corporate cash managers, as well as individuals, who make a minimum investment, and maintain an average annual daily account balance, of a specified amount (currently, $1,000,000) ("Institutional Clients").[1] By creating a separate class of shares for Institutional Clients, the Funds will be able to allocate to the assets attributable to a particular class of shares the expenses directly identifiable to that class. Thus, the Funds will be able to offer Institutional Clients a lower expense ratio.

4. Certain of the Funds have a Distribution Plan pursuant to rule 12b–1 of the Act ("Distribution Plan") that permits Fund assets to be used to pay for qualifying distribution expenses, such as advertising and marketing materials, and trailing compensation to broker-dealers.[2]

5. The Trusts propose to divide each Fund into two classes of shares. The existing shares will be designated Class A. A new class will be offered to Institutional Clients and will be designated Class B. Class B will not be subject to a Distribution Plan.

6. The gross investment income of each Fund will be allocated on a *pro rata* basis based on the relative net asset value of the two classes.[3] All expenses incurred by such Fund, other than Distribution Plan expenses, if applicable, transfer agent fees, and Class Expenses (separately allocated postable and delivery, printing and stationary expenses), will be borne on a pro rata basis based on the relative net asset value of the two classes. Because of the difference in Distribution Plan expenses, if applicable, transfer agent fees, and Class Expenses, the net income of and dividends payable to the Class A shares will be somewhat lower than those paid on the Class B shares of the same Fund. Dividends and other distributions paid to each class of shares of a Fund will, however, be declared on the same days and at the same times and, except for the different expenses noted above, will be determined in the same manner and paid in the same amounts.

Applicants' Legal Analysis

1. Applicants request an exemption pursuant to section 6(c) of the Act to the extent the proposed issuance and sale of two classes of shares of each Fund, as described above, might be deemed (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus to be prohibited by section 18(f)(1) of the Act, and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Applicants argue that the dual-class system will facilitate the distribution of the Funds' shares to all types of investors without assuming unnecessary distribution expenses for Class B. Under the proposed arrangement, Class A shareholders will continue to enjoy the benefits of personal distribution service from their brokers, as well as the additional investment safety and stability resulting from their ability to invest in established, sizable investment portfolios. Holders of both Class A and Class B shares may be relieved of a portion of their Fund's fixed costs because such costs will, potentially, be spread over a greater number of shares.

3. Applicants argue that the proposed allocation of the Distribution Plan expenses, if applicable, to a Fund's Class A shares is equitable and will not discriminate against any group of shareholders. While investors purchasing a Fund's Class A shares will bear the costs associated with the distribution assistance and shareholder services provided under the Distribution Plan, if applicable, such investors will also enjoy exclusive shareholder voting rights with respect to matters affecting the Distribution Plan relating to such Fund's Class A shares. Conversely, investors who qualify to own a Fund's Class B shares will not bear such expenses or enjoy such voting rights.

4. Applicants argue that the proposed arrangement will not raise any of the concerns that lead to the enactment of section 18 of the Act. Mutuality of risk will be preserved because shares of each class of a Fund will represent an equal, *pro rata* interest in the same investment portfolio and will be subject to the same investment risks. Further, nothing about the dual-class system will increase the speculative nature of a Fund's shares or increase the complexity of a Fund's capital structure to the point where insiders may be able to exercise control without equity or where investors may find it difficult to ascertain the value of their shares.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief with respect to the issuance of two classes of shares of each Fund:

1. The Class A and Class B shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except as set forth below. The only differences between the classes of shares of the same Fund will relate solely to: (a) The

[1] Each Fund's board of directors may find it desirable in the future to raise or lower the minimum initial investment and minimum balance requirement, depending on inflation and industry practice.

[2] Those Funds that do not have a Distribution Plan have no current intention of adopting one, although they reserve the right to adopt one in the future, subject to the requisite board and shareholder approval.

[3] In a supplemental letter dated September 10, 1992, applicants' counsel corrected a typographical error related to the allocation of gross investment income. That change is reflected in this notice.

Distribution Plan expenses, if applicable, payable only by the Class A shares; (b) different transfer agency fees; (c) Class Expenses; (d) different dividend rates due solely to the effect of (a) through (c) above; (e) voting rights on matters which pertain to the Distribution Plan, and (f) any other expenses subsequently identified that should be properly allocated to one class that shall be approved by the SEC pursuant to an amended order.

2. The Trusts' Boards of Trustees, including a majority of the independent Trustees, will approve the offering of different classes of shares (the "Multi-Class System"). The minutes of the Trusts' Boards of Trustees meetings regarding their deliberations with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of both the Funds and their shareholders.

3. On an ongoing basis, the Trusts' Boards of Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of its two classes of shares. The Trusts' Boards of Trustees, including a majority of independent Trustees, shall also take such action as is reasonably necessary to eliminate any such conflict that may develop. The Adviser and Distributor will be responsible for reporting any potential or existing conflicts to the Board. If a conflict arises, the Adviser and Distributor, each at its own cost, will remedy such conflict, up to and including establishing a new registered management investment company.

4. Any Distribution Plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares that has not had its Distribution Plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. If required by the SEC, such meeting is to be held within sixteen months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

5. The Trusts' Boards of Trustees will receive quarterly and annual statements of the amounts received and expended under the Distribution Plan ("Statements") in compliance with the requirements of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of a Fund's Class A shares will be used to justify the Distribution Plan expenses applicable to such class. Expenditures not related to the sale of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Trusts' independent Trustees in the exercise of their fiduciary duties under rule 12b–1, as it may be amended from time to time.

6. Dividends paid by each Fund with respect to its Class A and Class B shares will be calculated in the same manner, at the same time, on the same day, and will be in the same amount except for the effect of the Distribution Plan expenses, if applicable, transfer agent fees, and Class Expenses borne by the appropriate class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of each Fund's Class A shares and Class B shares and the proper allocation of expenses between the two classes have been reviewed by an expert (the "Expert"), and the Expert has rendered a report to the Trusts, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert (or an appropriate substitute Expert) will monitor the manner in which the calculations and allocations are made and, based upon such review, will render a report to the Trusts' Boards of Trustees at least annually that the calculations and allocations are being made properly. The Expert's reports will be filed with the SEC with the periodic reports filed by the Trusts with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act and the Expert's work papers with respect to such reports, following the Trusts' request which the Trusts agree to provide, will be available for inspections by the SEC staff upon written request by a senior member of the Division of Investment Management or of a regional office of the SEC. Authorized staff members will be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Regional Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in the Statement of Auditing Standards No. 44 ("SAS No. 44") of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The Trusts have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of each Fund's Class A shares and Class B shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above, and will be concurred with by the Expert (or an appropriate substitute Expert) on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The Trusts will take immediate corrective action if the Expert (or appropriate substitute Expert) does not so concur in the ongoing reports.

9. The prospectus of a Fund will contain a statement to the effect that a salesperson or any other person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards as to when Class A and Class B shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order requested by the application is granted and the duties and responsibilities of the Trusts' Boards of Trustees with respect to the offering of dual classes of shares by the Trusts will be set forth in guidelines which will be furnished to each Trustee.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, and restrictions (minimum investment, etc.) applicable to its Class A and Class B shares in every prospectus, regardless of whether both classes of shares are offered through such prospectus. Each Fund will also disclose the respective expenses and performance data applicable to both classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the

expenses or performance data applicable to either class of shares, it will also disclose the respective expenses and/or performance data applicable to the other class of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trusts may make under the Distribution Plan or otherwise in reliance on the exemptive order.

14. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22854 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18949; 811-6396]

FX Currency Mutual Fund, Inc; Application for Deregistration

September 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: FX Currency Mutual Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on June 15, 1992, and amended on September 2, 1992.

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 October 9, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 701 Lee Street, suite 740, Des Plaines, Illinois 60016.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504-2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Colorado corporation registered under the Act as a closed-end non-diversified management investment company. On August 22, 1991, applicant filed a notification of registration under section 8(a) of the Act. Applicant has never filed a registration statement under the Act or under the Securities Act of 1933.

2. Applicant has never made, is not making, and does not presently propose to make a public offering of its securities. Applicant has ten shareholders, all of whom are natural persons.

3. With the unanimous approval of all of its shareholders, applicant has been reorganized to act as a management company for closed-end mutual funds rather than as an investment company. Upon deregistration, applicant plans to use a large portion of the balance of its assets to make a $100,000 standby investment in a mutual fund that will be registered with the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-22855 Filed 9-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18952; 812-7923]

Salomon Brothers Asset Management Inc., et al.

September 15, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of filing of reports pursuant to Temporary Order under section 9(c) of the Investment Company Act of 1940 (the "Act").

APPLICANTS: Salomon Brothers Asset Management Inc. ("SBAM") and Salomon Brothers Inc. ("SBI").

RELEVANT 1940 ACT SECTIONS: Permanent order requested under section 9(c) for an exemption from the provisions of section 9(a) of the Act.

SUMMARY OF APPLICATION: Applicants filed an application pursuant to section 9(c) of the Act on May 20, 1992 ("Application") for both temporary and permanent orders exempting them from the provisions of section 9(a) of the Act, operative as a result of the entry of a securities-related injunction against SBI and its ultimate parent, Salomon Inc. The filing of the Application was noticed and a conditional temporary order was issued on May 20, 1992, Investment Company Act Release No. 18717, granting the requested temporary exemption from section 9(a) ("Temporary Order"). The Temporary Order was conditioned upon, *inter alia*, applicants' undertaking to submit a report by independent consultants reviewing the policies and procedures used by applicants to prevent and detect violations of the Federal securities laws in connection with their investment company businesses and recommending, where appropriate, changes in policies and procedures to ensure that such policies and procedures, if complied with, will be reasonably adequate to prevent and detect such violations (the "Consultants' Report"). Applicants have filed the Consultants' Report, a supplement thereto, and their own report setting forth the action they have taken or propose to take concerning the implementation of the Consultants' recommendations (the "Applicants' Report"). The Commission is providing an opportunity for public review of the reports and for interested persons to comment on the Application for a permanent section 9(c) order based on the information contained in the reports.

FILING DATES: The Application was filed on May 20, 1992. The Consultants' Report was filed on July 24, 1992, the Applicants' Report was filed on August 10, 1992, and the supplement to the

Consultants' Report was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 22, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and 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, NW., Washington, DC 20549. Applicants, Seven World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The complete Application may be obtained for a fee at the SEC's Public Reference Branch at its Headquarters Office in Washington, DC. Copies of the Consultants' Report, the supplement thereto, and the Applicants' Report also are available for public inspection in the SEC's Public Reference Branch. For further information, refer to the Temporary Order (Investment Company Act Release No. 18717, May 20, 1992).

Notice of Filing of Report

1. Notice is hereby given that applicants, pursuant to the terms of the Temporary Order, filed the Consultants' Report on July 24, 1992, the Applicants' Report to the Commission setting forth the actions they have taken or propose to take in response to the recommendations contained in the Consultants' Report on August 10, 1992, and a supplement to the Consultants' Report on September 10, 1992.

2. Interested persons wishing to comment on the Application based on information contained in the reports may do so. As noted above, such comments should be filed with the Secretary of the SEC by 5:30 p.m. on October 22, 1992.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22934 Filed 9–21–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18951; 812–7946]

Smith Barney Equity Funds, Inc., et al.; Application

September 15, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., Smith Barney Variable Account Funds, The Inefficient-Market Fund, Inc. (the "Funds"), Smith, Barney Advisers, Inc., Smith Barney, Harris Upham & Co. Incorporated (the "Advisers"), and all future series of existing funds and future investment companies that are advised by the Advisers or a subsidiary or affiliate thereof.

RELEVANT ACT SECTIONS: Section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Funds to participate in a joint trading account to be used to enter into repurchase agreements.

FILING DATE: The application was filed on June 22, 1992.

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 October 13, 1992, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the 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, NW., Washington, DC 20549. Applicants, c/o Smith Barney, Harris Upham & Co. Incorporated, 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504–2406 or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., and Smith Barney Variable Account Funds are open-end diversified management investment companies registered under the Act. The Inefficient-Market Fund, Inc. is a closed-end non-diversified management investment company registered under the Act. Smith Barney Equity Funds, Inc., Smith Barney Funds, Inc., and The Inefficient-Market Fund, Inc. are Maryland corporations. Smith Barney Variable Account Funds is a Massachusetts business trust.

2. The Advisers are the investment advisers for the Funds.

3. Applicants expect that the Funds will have uninvested cash balances in their accounts at the custodian bank that would not be otherwise invested in portfolio securities by the Advisers. Generally, such assets are, or would be, invested in short-term liquid assets, including repurchase agreements. Presently, the Advisers must purchase such instruments separately on behalf of each Fund and will have to continue to do so unless the requested relief is granted. Applicants believe that the separate purchasing of these instruments by each Fund results in certain inefficiencies, a limitation on the return which some or all of the Funds could otherwise achieve, and increased costs. Therefore, applicants seek an exemptive order permitting the Funds to deposit the uninvested cash balances remaining at the end of each trading day into one joint account, the daily balance of which would be used to enter into one or more short-term repurchase agreements in a total amount equal to the aggregate daily balance in the account.

4. The sole function of the joint account would be to provide a convenient means of aggregating what otherwise would be one or more daily transactions for which Fund necessary to manage their respective daily uninvested cash balances. The amount of cash invested in the joint account by each qualifying Fund likely would fluctuate daily based upon other portfolio transactions, applicable investment strategies and, for open-end Funds, daily share purchases and

redemptions. The joint account would not be distinguishable from any other account maintained by a Fund with the custodian bank except that monies from Each Fund could be deposited in the custodian bank on a commingled basis. The account would not have any separate existence which would have indicia of a separate legal entity.

5. The Advisers would be responsible for negotiating the terms of the repurchase agreements in accordance with the guidelines and policies established by the Funds. The Advisers would have no monetary participation in the joint account but would be responsible for investing Fund assets in the account, establishing accounting and control procedures, ensuring the equal treatment of each Fund, and ensuring that the assets of the Funds would continue to be held under proper bank custodial procedures.

6. Each Fund would participate in the joint account on the same basis as every other Fund in conformity with its fundamental investment objectives and policies. All Fund assets would continue to be held under proper bank custodial procedures. A Fund's decision to participate in the joint account would be solely at the option of the Fund. A Fund would not be required to maintain a minimum balance in the joint account and will be permitted to withdraw all or any portion of its investment in the joint account at any time. Therefore, in the opinion of applicants, any Fund's investment in the joint account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, of any other participant Fund in the joint account. Moreover, each Fund's liability on any repurchase agreement purchased by the joint account will be limited to its interest in such repurchase agreement.

7. Applicants believe that if the proposed joint account were in place at the custodian bank during the 12 month period ending December 31, 1991, and the daily cash balances were invested in a repurchase agreement each business day, the estimated aggregate transaction cost savings would have been approximately $10,800. The joint account would save the Funds transaction fees, allow the Funds to negotiate higher rates of return, and reduce the possibility of errors by reducing the number of trade tickets.

8. In connection with the use of repurchase agreements, each of the Funds has established the same systems and standards. These include equality standards for issuers of the repurchase agreements and requirements that the repurchase agreements be at least 100% collateralized at all times. The systems and standards established by each Fund comply with requirements regarding repurchase agreements set forth by the Commission in its published releases, guidelines, and interpretations with respect to repurchase agreements, including, to the fullest extent of applicants' knowledge, all "no-action" letters. Any joint repurchase agreement transactions entered into through the proposed trading account will comply with the standards and guidelines set forth in Investment Company Act Release No. 13005 (February 2, 1983) and with any existing and future positions taken by the Commission or its staff by rule, release, letter or otherwise relating to repurchase agreement transactions.

9. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations, *i.e.*, obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the policies and guidelines of the Funds concerning repurchase agreements. Particular U.S. Government obligations to be held as collateral would be identified and the Funds' custodian bank would be notified. The securities would either be wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Funds at another qualified bank or redesignated and segregated on the records of the custodian bank if the custodian bank is already the recorded holder of the collateral for the repurchase agreement. This procedure would occur on almost every trading day for each of the Funds that wish to enter into joint repurchase agreements. Applicants note that presently each Fund must separately pursue, secure, and implement such investments. This has resulted in certain inefficiencies, and may limit the return which some or all Funds achieve.

Applicants' Legal Analysis

1. Each Fund participating in the proposed joint account and each Adviser, by managing the proposed account, could be deemed to be "a joint participant" in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed account could be deemed to be a "joint enterprise or other arrangement" within the meaning of rule 17d–1 under the Act.

2. The Board of Directors/Trustees of each Fund considered the proposed joint account and determined that the use of such account will be beneficial to each participating Fund for the reasons set forth herein.

3. The Board of Directors/Trustees of each Fund have determined that the proposed method of operating the joint account will not result in any conflicts of interests among the joint participants. They have further determined that there does not appear to be any basis on which to predicate greater benefit to one Fund than to another, because the daily uninvested cash balance in any one Fund on any given day is not solely a function of the Fund's asset level not of the particular securities in which it invests. Other relevant factors include portfolio management decisions, settlement of trades on days other than predicted and, for the open-end Funds, shareholder purchases and redemptions. The Boards considered the fact that although the Advisers can gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the Funds and their shareholders, because the joint account may earn higher returns for the Funds and would be a more efficient means of administering daily investment transactions.

4. On the basis of their considerations, the Boards of Directors/Trustees have determined that the operation of the joint account will be free of any inherent bias favoring one Fund over another, and the anticipated benefits flowing to each Fund will be fair. They further determined that the future participation in such joint trading account by one or more new series of the Funds and new investment companies that are advised by the Advisers or a subsidiary or affiliate thereof would not alter their conclusions with respect to participation by the present Funds, and that it would be desirable to permit such future participation without the necessity of applying for an amendment to the requested order.

Applicants' Conditions

The following procedures are hereby consented to as conditions to any order issued by the Commission if the Commission so requires:

1. A separate cash account will be established at the custodian bank into which each participating Fund would deposit its daily uninvested net cash balances. Each Fund that has a custodian a bank other than the bank at which the proposed joint account is maintained and that wishes to participate in the joint account will appoint the latter bank as sub-custodian for the limited purpose of receiving cash for deposit into the proposed joint account. All Funds that appoint as sub-custodian the bank at which the

proposed joint account will be maintained will have taken all actions necessary, including all actions required under the Act, to authorize such bank to act as their legal custodian.

2. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations, *i.e.*, obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the policies and guidelines of the Funds concerning repurchase agreements. Any such repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration, and in no event will it have a duration of more than seven days.

3. All investments held by the joint account will be valued on an amortized cost basis. Each participating Fund subject to an exemptive order permitting valuation on the basis of amortized cost, or relying upon rule 2a–7 under the Act for that purpose, will use the average maturity of the joint account for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

4. In order to assure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund shall be allowed to create a negative balance in the joint account for any reason, although it will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the joint account will be solely at its option; a Fund will not be required either to invest a minimum amount or to maintain a minimum balance. Each Fund will retain the sole ownership rights of any of its assets invested in the joint account, including any interest payable on the assets invested in the joint account. Each Fund's investment in the joint account will be documented daily on the books of the Fund as well as on the books of the custodian bank.

5. Each Fund would participate in the income earned or accrued in the joint account and all instruments held in the joint account (*i.e.*, cash and U.S. Government securities subject to repurchase agreements) on the basis of the percentage of the total amount in such account on any day represented by its share of the account. Expenses associated with the joint account arrangement will also be allocated to the participating Funds based upon the percentage of the total amount in the account on any day represented by its share of the account.

6. Under the general terms of each Fund's management or investment advisory agreement, the Advisers will administer the investment of the cash balances in and the operation of the joint account and will not collect any separate fees for the management of the joint account.

7. The Funds and the Advisers will enter into an agreement to govern the joint account arrangement in accordance with the foregoing principles.

8. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder. The Funds currently are insured under a joint fidelity bond.

9. The Board of Directors/Trustees of each of the Funds and any future Funds participating in the joint account will evaluate annually the joint account arrangement and will continue participating in the account only if they determine that there is a reasonable likelihood that the participating Fund and its shareholders would benefit from continued participation.

10. Any future series of existing Funds and new investment companies that are advised by the Advisers or a subsidiary or affiliate thereof will be permitted to participate in the joint account only on the same terms and conditions as the existing Funds have set forth herein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–22928 Filed 9–21–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1699]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice correction.

SUMMARY: A public notice was published in the **Federal Register** on Tuesday, August 18, 1992 (57 FR 37184) listing persons statutorily debarred under the International Traffic in Arms Regulations. The following are corrections to that notice.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Department of State (703) 875–6650.

Accordingly, FR doc 92–19557, published at 57 FR 37184, Tuesday, August 18, 1992 is corrected on page 37185, second column, lines 12 through 33 to read as follows:

1. Dilligas Trading Co., Inc., 22 U.S.C. 2778, December 13, 1991, Eastern District of Virginia
2. George R. Mitchell, 22 U.S.C. 2778, January 17, 1992, District of Maryland
3. Novacom, Inc., 22 U.S.C. 2778, December 13, 1991, Eastern District of Virginia
4. Pan Aviation, Inc., 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, January 23, 1992, Southern District of Florida
5. Sarkis G. Soghanalian, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778, January 29, 1992, Southern District of Florida.

Dated: September 8, 1992.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 92–22722 Filed 9–21–92; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Revision to Noise Compatibility Program and Request for Review, McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the noise compatibility program that was submitted for McGhee Tyson Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) hereinafter referred to as "the Act") and 14 CFR part 150 by Metropolitan Knoxville Airport Authority. The existing noise compatibility program was approved May 5, 1989. This program revision was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for McGhee Tyson were in compliance with applicable requirements effective November 9, 1988. The proposed revision to the noise compatibility program will be approved or disapproved on or before March 7, 1993.

EFFECTIVE DATE: The effective date of the start of FAA's review of the revision

to the noise compatibility program is September 8, 1992. The public commitment period ends November 7, 1992.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301. Telephone 901–544–3495. Comments on the proposed revision to the noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the noise compatibility program for McGhee Tyson Airport which will be approved or disapproved on or before March 7, 1993. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the proposed revision to the noise compatibility program for McGhee Tyson Airport, effective September 8, 1992. It was requested that the FAA review this material and that the noise mitigation measures to be implemented by the airport be approved as additional measures to the noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days will be completed on or before March 7, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, the noise compatibility program, and the proposed revisions to the noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301.

Administrative Offices, Metropolitan Knoxville Airport Authority, McGhee Tyson Airport, Alcoa, Tennessee 37701.

Questions may be directed to the individual named above under the heading, "For Further Information Contact".

Issued in Memphis, Tennessee, September 8, 1992.

Wayne Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 92–22880 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration. (FAA) announces its determination that the noise exposure maps submitted by Pueblo Municipal Airport (PUB) under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Pueblo Municipal Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before March 9, 1993

EFFECTIVE DATE: The effective date of the FAA's determination on the Pueblo Municipal Airport noise exposure maps and the start of its review of the associated noise compatibility program is September 10, 1992. The public comment period ends October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Pueblo Municipal Airport are in compliance with applicable requirements of part 150, effective September 10, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 9, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Airport Director for Pueblo Municipal Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by PUB. The specific maps under consideration are Exhibits 5–4 and 5–6 in the submission. The FAA has determined that these maps for Pueblo Municipal Airport are in compliance with applicable

requirements. This determination is effective on September 10, 1992. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable for the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for PUB, also effective on September 10, 1992. Preliminary review of the submitted material indicates that is conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 9, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., room 615, Washington, DC.
Federal Aviation Administration, Airports Division, ANM-600, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.
Pueblo Municipal Airport, Pueblo, Colorado.

Questions may be directed to the individual named above under the heading, For Further Information Contact.

Issued in Renton, Washington, September 10, 1992,

Edward G. Tatum,

Manager, Airports Division, ANM-600, Northwest Mountain Region.

[FR Doc. 92-22879 Filed 9-21-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-26]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 12, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 15, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Docket No.: 22706.
Petitioner: Bankair, Inc.
Sections of the FAR Affected: 14 CFR § 135.225(e)(1)
Description of Relief Sought: To extend and amend Exemption No. 5090, as amended, from § 135.225(e)(1) of the Federal Aviation Regulations (FAR). This exemption allows Bankair pilots to operate their aircraft from the following military bases using takeoff visibility minimums, subject to the approval of the appropriate military authority, which are less than 1 mile and are equal to or greater than the landing visibility minimum established for these airfields:

Seymour Johnson AFS	Sherman AAF
Norfolk NAS	Key West NAS
Pope AFB	Dobbins AFB
Pensacola NAS	Shaw AFB
Cairns AAF	Myrtle Beach AFB
Lawson AAF	Tyndal AFB
Campbell AAF	Eglin AFB
Hunter AAF	Keesler AFB
Simmons AAF	Maxwell AFB
MacDill AFB	New River MCAS
Davison AAF	Wright AAF
Langley AFB	Moore AAF
Oceana NAS	Godman AAF
Felker AAF	Polk AAF

Docket No.: 24605.
Petitioner: World Jet Corporation/ Executive Jet.
1*Sections of the FAR Affected*: 14 CFR 91.511(a) and 135.165(b).
Description of Relief Sought: To extend Exemption No. 4961, as

amended, from §§ 91.511(a) and 135.165(b) of the Federal Aviation Regulations (FAR) which allows World Jet Corporation/Executive Jet to operate certain aircraft in extended overwater operations using one long-range navigation system and one high-frequency communications system. The petitioner requests the addition of a Cessna Citation CE–650 to the existing exemption.

Docket No.: 25345.

Petitioner: National Business Aircraft Association, Inc.

Sections of the FAR Affected: 14 CFR 91511(a)(2).

Description of Relief Sought: To amend Exemption No. 5127A which allows the National Business Aircraft Association, Inc. to operate in certain specified areas of the western Atlantic, Caribbean, and Gulf of Mexico with a single Long-Range Navigation device with only a single automatic direction finder (ADF) instead of the required minimum of two ADFs.

Docket No.: 26874.

Petitioner: Mr. Gordon E. Smith.

Sections of the FAR Affected: 14 CFR 61.155(d)(2).

Description of Relief Sought: To allow Mr. Gordon E. Smith to credit part of his military flight engineer time toward an airline transport pilot certificate without participating in a Federal Aviation Administration (FAA)-approved part 121 pilot training program.

Docket No.: 26905.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.343(c).

Description of Relief Sought: To permit Federal Express Corporation to continue operation of aircraft, after May 26, 1994, that are not equipped with a digital flight data recorder which records 11, rather than 6, parameters of the aircraft operation.

Docket No.: 26943.

Petitioner: National Charter Network, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To allow pilots employed by National Charter Network, Inc., to change the configuration of its Lear 35 aircraft from Passenger to air ambulance configuration, and the converse, when no certificated mechanic is readily available.

Dispositions of Petitions

Docket No.: 076CE.

Petitioner: Raisback Engineering.

Sections of the FAR Affected: 14 CFR 3.242.

Description of Relief Sought/Disposition: To remove a condition in the grant of exemption from a portion of § 3.242(b) of the Civil Air Regulations. Raisback is seeking supplemental type certification of various Beech Aircraft Corporation Model 90 series airplanes having a landing weight less than 95 percent of the maximum takeoff weight without installing a fuel jettisoning system. Grant, August 21, 1992, Exemption No. 5146A.

Docket No.: 25974.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 91.203 and 47.49.

Description of Relief Sought/Disposition: To amend Exemption No. 5318 which permits Air Transport Association of America member airlines to operate to the extent necessary certain registered aircraft in domestic airline operations without the registration and/or airworthiness certificates on board. Grant, August 25, 1992, Exemption No. 5318A.

Docket No.: 26599.

Petitioner: Regional Airline Association.

Sections of the FAR Affected: 14 CFR 91.203 and 47.49.

Description of Relief Sought/Disposition: To permit temporary operation of U.S.-registered aircraft in domestic airline operations without the registration of airworthiness certificates on board. Grant, August 25, 1992, Exemption No. 5515.

Docket No.: 26754.

Petitioner: Skydive City, Inc.

Sections of the FAR Affected: 14 CFR 105.43(d).

Description of Relief Sought/Disposition: To exempt Skydive City, Inc. from the regulation by amending the definition of "approved parachute" to permit nonstudent, foreign skydivers to use parachute equipment that has been approved or accepted in their respective countries while participating in activities at Skydive City, Inc.'s facilities in the United States. Denial, August 25, 1992, Exemption No. 5514.

Docket No.: 26764.

Petitioner: Florida West Airlines.

Sections of the FAR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought/Disposition: To permit Florida West Airlines to transport employee dependents on its all cargo flights without those dependents being on company business traveling to or from outlying stations not served by adequate regular passenger flights. Grant, September 1, 1992, Exemption No. 5516.

[FR Doc. 92–22881 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Valdosta Regional Airport, Valdosta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: DOT/FAA/Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard R. Clark, Executive Director of the Valdosta-Lowndes County Airport Authority, at the following address: Valdosta Regional Airport, 2614 Madison Highway, Valdosta, Georgia 31601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Valdosta-Lowndes County Airport Authority under § 158.23 of part 158

FOR FURTHER INFORMATION CONTACT: Catherine M. Nelmes, Program Manager, DOT/FAA/Atlantic Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349, telephone number (404) 994–5306. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Valdosta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public law

101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 16, 1992, the FAA determined that the application to impose a PFC submitted by Valdosta-Lowndes County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 23, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3,000

Proposed charge effective data: March 1, 1993.

Proposed charge expiration date: September 30, 1997.

Total estimated PFC revenue: $260,526.

Brief description of proposed project: Passenger Terminal Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Valdosta Regional Airport, 2614 Madison Highway, Valdosta, Georgia.

Issued in Atlanta, Georgia on September 16, 1992.

Stephen A. Brill,

Manager, Airports Division Southern Region.

[FR Doc. 92–22990 Filed 9–21–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 16, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New

Form Number: None

Type of Review: New Collection

Title: Focus Groups on the Totally Integrated Examination System (TIES)

Description: These focus groups will be conducted as part of an effort to evaluate the Totally Integrated Examination System (TIES) as it applies to taxpayer burden, speed, accuracy, and clarity of reports and letters

Respondents: Small businesses or organizations

Estimated Number of Respondents: 18

Estimated Burden Hours Per Respondents: 3 hours, 37 minutes

Frequency of Response: Other (One-time Focus Groups)

Estimated Total Reporting Burden: 65 Hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Department Reports, Management Officer.

[FR Doc. 92–22901 Filed 9–21–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 16, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0154

Form Number: None

Type of Review: Reinstatement

Title: Investment in Bank Premises or Stock of a Corporation Holding Premises (12 CFR 7.3100)

Description: This regulation prescribes procedures necessary for a national bank to comply with statutory restrictions on its investment in bank premises. National banks wishing to invest an amount greater than capital stock must obtain OCC approval under 12 U.S.C. 371d

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 589

Estimated Burden Hours Per Response: 1 hour

Frequency of Response: On occasion

Estimated Total Reporting Burden: 589 hours

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 92–22903 Filed 9–21–92; 8:45 am]

BILLING CODE 4810–33–M

UNITED STATES INFORMATION AGENCY

Meeting of the Cultural Property Advisory Committee

The Cultural Property Advisory Committee will meet on October 1 and 2, 1992 at USIA Headquarters, 301 Fourth Street SW., Washington, DC 20547. In order to gain admittance to the building, those wishing to attend the open portions of the Committee's meeting should contact Maude Keys at 619–6612 no later than 4 p.m. on Wednesday, September 30. The meeting's agenda is as follows:

Thursday, October 1

3–5 p.m.—*Open to the Public:* Meeting of Subcommittee which is assessing the effectiveness of U.S. import bans on certain artifacts of El Salvador, Bolivia, Peru and Guatemala.

Friday, October 2

9 a.m.–2:30 p.m.—*Closed to the Public:* Review of request for assistance from the Government of Mali.

2:30 p.m.–4:30 p.m.—*Open to the Public:* General Committee business.

Those portions of the meeting concerned with the Committee's review, findings and recommendations with respect to a request from the Government of Mali for assistance under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property will be closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: September 14, 1992.

Eugene P. Kopp,

Acting Director, United States Information Agency.

[FR Doc. 92-22878 Filed 9-21-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 22, 1992.

Dated: September 11, 1992.

By direction of the Secretary.

Donald R. Howell,

Chief, Information Management Division.

Extension

1. Application for Accreditation as Service Organization Representative, VA Form 21, and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a.

2. The forms are used to appoint a service organizations, attorney or agent as a representative in claims for VA benefits.

3. Individuals or households; State and local government; Non-profit institutions; Small businesses or organizations.

4. 1,650 hours.

5. 10 minutes.

6. On occasion.

7. 6,600 respondents.

[FR Doc. 92-22839 Filed 9-21-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R. 41971.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, September 29, 1992.

CHANGES IN THE AGENDA:

The Commodity Futures Trading Commission has added to the agenda an open meeting to discuss Rule 1.55—Proposed Risk Disclosure Simplification Amendments. The meeting will be held in the lower level hearing room.

The Rule Enforcement Review previously scheduled for 10:00 a.m. will be held at 11:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–23063 Filed 9–18–92; 3:22 pm]

BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 24, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Company*, Docket No. LAKE 91–650–R, etc. (Issues include whether the judge erred in concluding that Southern Ohio Coal Company violated 30 CFR § 75.1704–2(a), which requires that escapeways follow the "safest direct practical route" out of the mine.

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 for Toll Free.

Dated: September 17, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92–23125 Filed 9–18–92; 3:24 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 28, 1992.

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. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 8, 1992.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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: September 18, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–23127 Filed 9–18–92; 3:31 pm]

BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, September 28, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

5464A—Highway Accident Report: Multiple Vehicle Collisions and Fire During Limited Visibility (Fog) on I–75, new Calhoun, Tennessee, December 11, 1990

5840—Railroad Accident Summary Report: Head-on Collision and Derailment of Norfolk Southern Train with Train 277 and Release of hazardous Materials, Knox, Indiana, September 17, 1991

5845—Opinion and Order: Richard Pine and William Ter Keurst v. Administrator; Docket SE–8920 and 9080; disposition of applicants' appeal. (Calendared by Member Hart.)

NEWS MEDIA CONTRACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTRACT: Bea Hardesty, (202) 382–6525.

Dated: September 17, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–23027 Filed 9–18–92; 11:08 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of September 21, 28, October 5, and 12, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 21

Thursday, September 24

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule, 10 CFR Part 20, "Disposal of Waste Oil by Incineration"—Response to Petition for Rulemaking from Edison Electric Institute and the Utility Nuclear Waste Management Group

Week of September 28—Tentative

Tuesday, September 29

2:00 p.m.
Briefing on AEOD Annual Report (NUREG–1272, Vol. 6, Nos. 1 and 2) (Public Meeting)

Wednesday, September 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 5—Tentative

Wednesday, October 7

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 12—Tentative

Wednesday, October 14

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: September 17, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92–23110 Filed 9–18–92; 3:23 pm]

BILLING CODE 7590–01–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Conference

AGENCY: National Council on Disability

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming hearings of the National Council on Disability on ADA Watch, and Minorities with Disabilities and the Implementation of the Americans with Disabilities Act. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94–409).

DATES:

ADA Watch Hearing

October 20, 1992, 8:30 a.m. to 5:00 p.m.

Minorities with Disabilities and the Implementation of the Americans with Disabilities Act Hearing

October 21, 1992, 8:30 a.m. to 5:00 p.m.

LOCATION: San Francisco Marriott Hotel, 55 Fourth Street, San Francisco, California, (415) 896–1600

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, D.C. 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98–221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

Both hearings of the National Council shall be open to the Public. The proposed agenda includes the following:

Day I

ADA Watch Hearing

Two Open microphone sessions will be held, one in the morning and one in the afternoon—any person is invited to present:

Overview panel—elected/appointed officials and consumers Public Sector panel—representatives of local government, transportation, consumers, police/fire department representatives
Private sector panel—employer/employee, small business owner, consumers
Non-Profit Sector panel—university/hospital/social service agency representatives, consumers
Closing Remarks

Day II

Minorities with Disabilities and the Implementation of the Americans with Disabilities Act Hearing

Two Open microphone sessions will be held, one in the morning and one in the afternoon—any person is invited to present:

Panel I—Title I, Employment
Panel II—Title II, Public Services
Panel III—Title III, Public Accommodations
Panel IV—Title IV, Telecommunications
Panel V—Title V, Miscellaneous Provisions
Wrap-up/Closing

Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on September 18, 1992.

Ethel D. Briggs,

Executive Director.

[FR Doc. 92–23167 Filed 9–18–92; 3:12 pm]

BILLING CODE 6820–BS–M

Corrections

Federal Register
Vol. 57, No. 184
Tuesday, September 22, 1992

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 ENERGY

Western Area Power Administration

Mutual Assistance Program, Notice of Proposed Cooperative Agreement

Correction

FR Doc. 92–22552 appearing at 57 FR 42994, Sept. 17, 1992, was a duplicate printing of FR Doc. 92–22553 appearing on the same page. The correct text of FR Doc. 92–22552 appears in the "Notices" section of today's Federal Register.

BILLING CODE 1505–01–D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

4 CFR Ch. III

48 CFR Parts 9903 and 9904

Cost Accounting Standards Board; Recodification of Cost Accounting Standards Board Rules and Regulations

Correction

In correction document 92–7992 beginning on page 34167 in the issue of Monday, August 3, 1992, make the following corrections:

9903.201–4 [Corrected]

1. On page 34167, in the second column, in 9903.201–4, in the fifth line, "Disclosed" should read "Disclosure".

9904.405–60 [Corrected]

2. On page 34167, in the second column, in 9904.405–60, in amendatory item 12., the last line should read "line, insert a closing parenthesis after 'allocations'".

9904.413–60 [Corrected]

3. On page 34167, in the third column, in 9904.413–60, in amendatory item 22., in the fourth line, "$7,650.00" should read "$7,650,000".

Appendix A to Section 9904.414 [Corrected]

1. On page 34167, in the third column, in amendatory item 24., in the last line "subject o" should read "subject to".

9904.416–50 [Corrected]

2. On page 34168, in the first column, in amendatory item 30., in the second line, "9904.415–50" should read "9904.416–50".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 23345; Amdt. Nos. 21–70, 36–19, 43–34, 91–230, 147–6]

RIN 2120–AB53

Primary Category

Correction

In rule document 92–21541 beginning on page 41360 in the issue of Wednesday, September 9, 1992, make the following corrections:

1. On page 41363, in the first column, in the first full paragraph, in the second and third lines, "in appropriate" should read "inappropriate".

2. On page 41364, in the 3rd column, in the 3rd full paragraph, in the 17th line, "FAA" should read "EAA".

3. On page 41365, in the 1st column, in the 2d full paragraph, in the 11th line, "FAA-requested" should read "EAA-requested".

§ 21.184 [Corrected]

4. On page 41368, in the third column, in § 21.184(b), in the second line from the bottom, after "§ 21.24(a)(1)" remove the ",".

5. On the same page, in the same column, in § 21.184(c), in the fourth line, between "certificate" and "primary" insert a "-".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 26142; Amendment Nos. 91–231, 121–230, 125–17, and 135–44]

RIN 2120–AB45

Miscellaneous Operational Amendments

Correction

In rule document 92–22084 beginning on page 42662 in the issue of Tuesday, September 15, 1992, make the following correction:

§ 135.117 [Corrected]

On page 42675, in the third column, in § 135.117(a)(1), in the second line, after "smoking" insert "in".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–159–84]

RIN 1545–AG63

Differential Earnings Rate and Recomputed Differential Earnings Rate of a Mutural Life Insurance Company

Correction

In proposed rule document 92–19360 beginning on page 37495 in the issue of Wednesday, August 19, 1992, make the following corrections:

1. On page 37495, in the 3d column, in the 4th full paragraph, in the 14th line, "(1984); S. Prt." should read "(1984); 1 S. Prt."

2. On page 37496, in the 1st column, in the 2d full paragraph, in the 21st line, after "the" remove "ten".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-55-90]

RIN 1545-AO79

Clarification of Period During Which Interest Is Allowed With Respect to Certain Overpayments

Correction

In proposed rule document 92-20256 beginning on page 38457 in the issue of Tuesday, August 25, 1992, make the following corrections:

1. On page 38457, in the second column, in **FOR FURTHER INFORMATION CONTACT:**, in the fifth line, "111" should read "1111" and in the sixth line "2204" should read "20224".

2. On the same page, in the third column, the heading appearing after the first full paragraph should read: *"Interest on Overpayments That Are Credited Against Certain Additions to the Tax"*.

BILLING CODE 1505-01-D

federal register

Tuesday
September 22, 1992

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 255

Computer Reservations System (CRS) Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. 46494, Amendment No. 255-9 and Docket No. 47762]

RIN 2105-AB47

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, Transportation.

ACTION: Final rule and denial of American Airlines Petition for rulemaking.

SUMMARY: The Department is issuing a final rule governing computer reservations systems (CRSs). The Department initiated this proceeding because its existing CRS rules (14 CFR part 255) were originally scheduled to expire on December 31, 1990, unless extended (the Department has since changed the expiration date to December 11, 1992). The Department is adopting these rules because stronger rules appear necessary to enhance competition in the airline and CRS industries. These rules should enhance competition by eliminating various CRS vendor practices that may restrain competition.

The Department is denying a petition for rulemaking filed by American Airlines for a rule that would severely restrict the use of elapsed time as a factor for ranking flights in CRS displays. Many travellers consider elapsed time an important factor in choosing airline services. American's proposal would deny CRSs the ability to use that factor in ordering their displays.

EFFECTIVE DATE: This final rule is effective on December 7, 1992 and terminates December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Ray or Gwyneth Radloff, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366-4731 or 366-9307, respectively.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Department's rules governing the United States operations of airline-owned computer reservations systems (CRSs), 14 CFR part 255, were originally adopted by the Civil Aeronautics Board (the Board) in 1984. By their terms the rules would have expired on December 31, 1990, unless they were renewed. Section 255.10(b). We assumed most of the Board's remaining responsibilities at the time of its sunset, December 31, 1984, including its responsibility under section 411 of the Federal Aviation Act (the Act), 49 U.S.C. 1381, to prevent deceptive practices and unfair methods of competition in the airline industry, the principal bases for the Board's adoption of the rules.

In view of the scheduled expiration of the rules, we began this proceeding to determine whether we should readopt the rules and, if so, with what changes. We first issued an Advance Notice of Proposed Rulemaking, 54 FR 38870 (September 21, 1989), to obtain comments on CRS issues. After considering the parties' proposals we issued a Notice of Proposed Rulemaking requesting comments on our tentative decision to readopt the rules with substantial changes. Notice of Proposed Rulemaking, Computer Reservations Systems, 56 FR 12586 (March 26, 1991) (the NPRM).

In our NPRM we tentatively determined that CRS rules remain necessary to prevent the carriers controlling the systems (the vendors) from using the systems to prejudice airline competition and mislead consumers. We accordingly proposed to maintain the current rules and to strengthen them in several respects. On certain issues, however, we chose not to propose new rules, since the record suggested that such rules could create harm or impose burdens that could outweigh their benefits. On other issues, we requested further comment.

We received comments and reply comments from the Justice Department (Justice), Congressman James L. Oberstar, a group of 17 states and one territory (Pennsylvania, New York, Arizona, Connecticut, Florida, Hawaii, Idaho, Illinois, Michigan, Minnesota, North Carolina, North Dakota, Ohio, Texas, Vermont, Washington, and the Virgin Islands), individual comments from Michigan and Pennsylvania, the European Civil Aviation Conference (whose comments were prepared in cooperation with the European Community Commission), the CRS vendors and the carriers controlling the CRSs (American, Covia, United, Worldspan, Delta, Northwest, TWA, and jointly by System One and Continental), six other U.S. airlines (Alaska, America West, Midway, Pan American, Southwest, and USAir), 15 foreign airlines and airline groups (Aer Lingus, Air Canada, Air France, Alitalia, British Airways, KLM, LTU International, Lufthansa, the Orient Airlines Association, Sabena, SAS, Swissair, TAP, Varig, and Virgin Atlantic), the two major travel agency trade associations (the American Society of Travel Agents and the Association of Retail Travel Agents, referred to as ASTA and ARTA), the United States Tour Operators Association, a number of travel agency parties, a manufacturer of third-party software (TravelPro Technologies), the National Business Travel Association, the Dallas-Fort Worth Parties, several individuals (including Jonathan Parker, Richard Eastman, Andrew Kleit, and Donald Pevsner), and the Competitive Enterprise Institute (CEI), and advocacy/research group. In addition to ASTA and ARTA, the travel agency parties include All-Around Travel, the American Automobile Association, American Express Travel Related Services, an anonymous travel agency president, Bliss Travel, CUC Travel

Services, Hewins Travel Consultants, the Long Island Travel Agents Association, Overland Stage Travel, Pegasus Travel, Sunbelt Motivation & Travel, a group of fifteen major travel agencies, Thomas Cook Travel, Travel Facilitators, Travel Consultants, and Woodside Travel Management Corporation.

In their comments, Justice, all of the U.S. and foreign airline parties except American and United, the two smaller U.S. systems (System One and Worldspan), ECAC, the two travel agency trade associations, and several travel agencies argue that CRS rules are essential for preserving airline competition and that the current rules must be strengthened significantly to stop various alleged anti-competitive practices of the CRS vendors. The two largest vendors, American and United, and Covia, the CRS managed by United, oppose any significant strengthening of the rules and suggest that no CRS rules are necessary (we will refer to these three commentors as the major vendors). The major vendors' position receives support from CEI and Andrew Kleit. Several of the travel agency parties oppose all or some of our proposed rules.

We have amended the rules to maintain the current rules for an additional period to give us time to analyze the issues and prepare this final rule. 55 FR 53149 (December 27, 1990); 56 FR 60915 (November 29, 1991); 57 FR 22643 (May 29, 1992).

We are incorporating into this proceeding a rulemaking petition filed by American in Docket No. 47762, since it concerns a CRS display issue discussed in the NPRM. American seeks a proceeding for adopting a rule that would restrict the use of elapsed time in ranking flights shown in CRS displays.

II. Summary of Decision

We are readopting the current rules and strengthening them in several respects because of the need to prevent the vendors from using their control of the systems to substantially reduce airline competition and to deny travel agents (and thus the travelling public) complete, accurate, and impartial information on airline services. In considering the extent to which we will regulate CRS operations, we have examined both the benefits likely to be provided by proposed rules and the burdens and costs likely to be imposed by such rules. We are adopting only those rules that will produce public benefits significantly outweighing their costs. We are also avoiding regulations that would force us to engage in an unnecessarily detailed oversight of CRS operations.

We recognize that the systems enable agencies to operate more efficiently and provide better service for their customers, as shown by the almost universal use of CRSs by travel agencies. We also recognize that the systems make it easier for carriers to provide information and booking capabilities to travel agents. And we appreciate that the systems' owners have made large investments in developing the systems and are entitled to profit from their innovations. Despite these facts, we find it necessary to regulate some aspects of CRS operations because the systems' benefits can be offset by abuses that would reduce airline competition and undermine the ability of travelers to find the airline service that meets their needs.

We conclude that CRS rules remain essential because each of the carriers operating the four CRSs may have the power and incentive to use its system to prejudice the competitive position of other carriers in ways that will raise consumer costs and reduce the level of airline service. Because market forces may not effectively prevent such injuries, some regulations are necessary. Our conclusion is consistent with the analysis presented by Justice in this proceeding and with the earlier findings of the Board.

The vendors have the power to reduce airline competition and the ability of consumers to find the best airline service due to several features of the airline, travel agency, and CRS businesses. First, carriers rely heavily on travel agencies for the marketing of airline services—and travel agencies hold themselves out to the public as neutral providers of airline information and tickets. Because of the efficiencies of the travel agency distribution system, no carrier could practicably create an alternative distribution system. Secondly, travel agencies rely heavily on CRSs to find out what airline services are available and to book seats for customers—and most agencies use only one system to carry out these functions. Each vendor thus largely controls the information seen by its subscribers on airline services. If a carrier's services are not displayed and bookable through a system, that carrier will receive few bookings from the agencies subscribing to that system. Since the profitability of a carrier's service in any market can be radically changed by the addition or loss of a few passengers on its flights in that market, no carrier can afford to lose sales from any significant group of agencies, so each carrier must participate in each system.

Each vendor can injure its competitors by omitting or hiding information on their services, thereby depriving them of passengers, and by raising their operating costs by charging supracompetitive fees for participation in its CRS. The public loses, both because such practices will reduce airline competition and because travelers are unable to learn efficiently which airline services best meet their needs.

As a result, we find it necessary to maintain the current rules and to strengthen them in several respects. Rather than dictate in detail how the systems must operate, we have chosen to rely in large part on a rule that we expect will open up competition and promote innovation and efficiency. That rule will prevent vendors from denying their subscribers the option of using hardware and software acquired from independent firms in conjunction with CRS services and the option of using agency-owned CRS terminals to access other systems and databases. Third-party hardware and software will enable agencies to operate more efficiently and obtain better information and transaction capabilities for their customers. The rule also creates the opportunity for new firms to offer travel databases to agencies and thereby break each vendor's current control over the airline information seen by its subscribers. In particular, this rule will enable carriers to set up direct links between their internal reservations systems and travel agencies and thereby create an alternative means of obtaining bookings without paying booking fees. The carriers' use of such direct links should limit the vendors' ability to charge supracompetitive booking fees.

We have also determined that some other changes to the existing rules are needed. In our consideration of rule proposals, we have followed the principle that only regulations whose benefits outweigh their costs should be adopted. We are therefore not adopting such proposals as those requiring vendors to make large expenditures for eliminating architectural bias, nor are we allowing booking fees to be set through cumbersome ratemaking cases or trying to determine the best possible method for constructing CRS displays of airline services. Our rules will provide more room for carriers to compete on the basis of price and service without denying the vendors the legitimate benefits of their investments and without requiring detailed management of CRS operations.

III. History of CRS Regulations and Studies

Before providing our analysis of the CRS and airline industries, we will summarize the current regulations and past investigations of the CRS business. The Board adopted the rules currently in force. 14 CFR part 255, adopted by Regulation ER–1385, 49 FR 32540 (August 15, 1984), and the Notice of Proposed Rulemaking, EDR–466C, 49 FR 11644 (March 27, 1984) (these documents are cited as the "Board's Final Rule" and the "Board's NPRM"). The Board made some revisions to the rules by ER–1396, 49 FR 46347 (November 26, 1984).

The current rules prohibit vendors from biasing their primary displays and from charging discriminatory fees for CRS participation by other airlines, require vendors to make domestic marketing data generated from CRS transactions available to other carriers, and prohibit certain vendor practices that could deny travel agency subscribers an adequate opportunity to use additional systems or switch systems. To ensure that a reexamination of the rules occurred, the rules stated that they would expire on December 31, 1990. The Board's rules were affirmed on review, *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985), in an opinion written by Judge Posner.

Several years ago when we adopted rules on airline delay problems, we added rules requiring each system to display specified on-time arrival statistics for each domestic flight and prohibiting vendors from displaying any other delay information and from using the on-time arrival statistics as a factor for ranking flights. 14 CFR 255.3 and 255.4(e), adopted by 52 FR 34056 (September 9, 1987). Except for this change, the substantive CRS rules have remained the same since their adoption by the Board.

To help us reevaluate the CRS rules we undertook a study of the CRS business as part of our examination of domestic airline competition. Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer Reservation Systems, prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry (February 1990). We also conducted an earlier CRS investigation, the May 1988 Study of Airline Computer Reservation Systems (these two reports are cited hereinafter as the Marketing Report and the 1988 CRS Study).

The conclusions reached by these studies on the basic structure of the CRS business and its impact on airline competition were substantially the same as the conclusions reached by the Board in its rulemaking. The CRS and airline industries have changed in several respects since the Board adopted its rules, and the vendors have greatly expanded the technical capabilities of the systems. Nonetheless, the basic structure of the CRS business and its impact on airline competition have changed little since 1984. We have therefore relied on the Board's analysis, as well as our own two studies, in this proceeding. We have also relied heavily in this proceeding on Justice's competitive analysis, an analysis derived from several Justice investigations into CRS issues. 56 FR 12588, 12589.

As discussed in the NPRM, both the European Community and Canada adopted CRS rules after the Board acted. 56 FR 12588. The International Civil Aviation Organization has also adopted guidelines for CRS operations.

IV. Airline Marketing and the Need for CRS Rules

A. The Travel Agency Industry

CRSs used by travel agencies are so important because of the dominant role of travel agencies in the marketing of airline services. The great majority of all airline tickets—at least 70 percent—are sold by travel agencies. Travel agencies have become so dominant largely because they provide the most efficient means for travellers to find out what travel options are available. As a result of airline deregulation, airline fares are continuously changing, and airline routes are not as fixed as they were before deregulation because carriers now have the ability to enter and exit routes without regulatory review or delays. In addition, the increased importance of hub-and-spoke service has expanded the number of service options in many markets. All these factors have made it difficult for travellers to obtain complete information on airline services on their own. Marketing Report at 12–14.

The travel agency system represents an efficient means for airlines to market their services. 56 FR 12587–12588; Marketing Report at 7–8. Carriers appear to have no practicable substitute for it.

A large proportion of travellers—perhaps 50 percent of leisure travellers and 25 percent of business travellers—do not have a preference for a particular carrier when they buy airline services. Marketing Report at 8; Woodside Comments at 2. Travel agencies thus have a significant ability to shift customers from one carrier to another, although they must keep in mind the need to book services that meet the customer's travel needs. Marketing Report at 28–29.

In contrast to distributors in other industries, travel agencies typically represent all carriers, and they hold themselves out as neutral providers of information and advice on airline services. 56 FR 12587; NW Reply, Levine Affidavit.[1]

Although travel agencies are generally viewed as being neutral, each airline structures its commission payments with many agencies to encourage them to shift more of its bookings to that carrier. These incentive commissions are often override commissions enabling the agency to obtain a higher commission rate on all of its bookings with the carrier if the carrier gains a larger share of the agency's business. Marketing Report at 26–30. Parties disagree over the impact of such commission programs and other preferred-supplier relationships on airline competition and the impartiality of the advice given customers by travel agencies. The propriety of override commission arrangements is largely outside the scope of this rulemaking, but the existence of such business ties between agencies and airlines is relevant to several rule proposals discussed below.

B. The CRS Business

Each CRS consists of a central computer database and processor that can be accessed by travel agents and others through computer terminals, such as PCs. An agent using a CRS can find out what airline flights and fares are offered in a market and whether seats are available, book seats for customers, and issue tickets. CRSs also enable agents to perform similar tasks for hotels, rental cars, cruises, and other travel services. CRSs are much more efficient for these tasks than any alternative means. 56 FR 12587. As a result, travel agents rely heavily on CRSs. In 1987, for example, 95 percent of all U.S. agencies used CRSs, and agents made 92 percent of their domestic airline sales through CRSs. 56 FR 12587. Our concern in this proceeding is with CRSs used by travel agents, but the vendors also provide CRS services to corporate travel departments and to home computer users.

Four CRSs operate in the United States: Sabre, owned by American's

[1] Although Woodside asserts that most agency customers know that agencies typically have preferred carriers, that assertion, while probably true for large business clients, is not accurate for leisure travellers and many business travellers. Thus it does not offset the common perception that agencies are neutral. See Marketing Report at 10, 18, 21.

parent corporation; Apollo, operated by a United subsidiary and owned by Covia Partnership, a group composed of United, USAir, and several foreign airlines; Worldspan, owned by Delta, Northwest, TWA, and a partnership of Asian airlines; and System One, owned by an affiliate of Continental. Sabre is by far the largest system, while Apollo is the second largest. 56 FR 12587. Sabre competes in foreign markets, either directly, as in Europe and Canada, or through affiliates, as in much of Asia. Worldspan also competes directly in Europe, while its Asian partners provide CRS services in Asia. Covia is affiliated with one of the two large European systems, Galileo; several of the European carrier owners of Galileo are partners in Covia; and Covia and Galileo have announced plans to merge. July 1, 1992 Covia Comments at 9.

The owners of the CRSs obtain most of their compensation for providing CRS services from the booking fees paid by airlines and other firms whose services are booked through a system. While many travel agencies also pay fees for CRS services (usually monthly lease charges), many agencies—particularly large agencies whose use of a system will generate large streams of booking fees for the vendor—receive CRS services at little or no cost. Marketing Report at 23; Ten Major Agencies Comments at 14.

In addition to the fees paid by airlines, other travel suppliers, and travel agencies, each of the airlines controlling a system—a vendor—receives additional airline bookings from its system's subscribers that it would not receive if those agencies were using another system. These additional revenues—often called incremental revenues—stem from the travel agencies' tendency to give a disproportionately large share of their bookings to the carrier controlling the system used by the agency.

When choosing which CRS to use, agencies rarely consider the systems equally attractive. To obtain the best information and transactional capabilities on an airline that owns a CRS, the agent must use that carrier's system. In addition, agencies believe that they will receive more marketing support from a carrier if they subscribe to its system. These factors usually cause an agency to prefer a system offered by a carrier with a large airline market share in the agency's city, since a large proportion of the agency's business will be with that carrier. Marketing Report at 24–26; Woodside Comments at 7. Each system therefore tends to have a large share of the CRS market in cities where its principal airline owners are the major providers of airline service.

For example, according to American's figures for 1991, 87 percent of all CRS bookings in Dallas were made on Sabre, 50 percent of the bookings in Denver were made on Apollo, 56 percent of the bookings in Minneapolis-St. Paul were made on Worldspan, and 47 percent of the bookings in Houston were made on System One. These cities are, respectively, an American hub, a United hub, a Northwest hub, and a Continental hub. In Chicago, a hub for American and United, 86 percent of all bookings were made either on Sabre or Apollo. American Supplemental Comments, app. C.

For the most part, each travel agency office (or location) uses only one system. While some agency locations use more than one system, even those locations transact most of their business on just one system. Agencies infrequently use multiple systems for several reasons. Using more than one system increases training costs and can make it more difficult to keep track of records. The vendors, however, also discourage agencies from using multiple systems. All vendors prohibit U.S. subscribers from using a CRS terminal to access more than one system; having to obtain a second terminal for accessing a second system is too inconvenient and expensive for most agencies. In addition, the vendors' subscription contracts often contain terms (for example, minimum use clauses) that as a practical matter can impose substantial costs on an agency if it makes substantial use of a second system. 56 FR 12593–12594; Marketing Report at 87–88.

C. The Sources of the Vendors' Market Power

The carriers' dependence on agencies for marketing their services and the agencies' reliance on CFRs for choosing and booking airline services are among the factors that give each of the vendors market power over other carriers. Market power is the ability to raise prices above the economic cost of providing service (or to provide less service than would be provided in a competitive market). Justice ANPRM Comments at 10. The vendors' market power and their incentives to abuse it provide the primary basis for our finding that CRS rules remain necessary.

In the NPRM we explained in detail why each system had market power. 56 FR 12591–12600. Both because the issue is relevant to our discussion of the various rule proposals and because a few parties have challenged our competitive analysis, we will restate the analysis that leads us to conclude that each vendor could have the ability to cause harm to airline competition if CRS operations were unregulated.

Airlines sell a service that cannot be stored, and the high proportion of fixed costs involved in operating a flight means that the gain or loss of a few passengers on a flight can often determine whether it will be profitable. Justice Comments at 7. Airline operating margins, moreover, are usually thin. Because marginal revenues are so important to airline operations, each airline cannot afford to loss access to a significant source of traffic, because then it cannot operate successfully. 56 FR 12592.

If a carrier's services are neither displayed nor saleable in a CRS, it will lose access to a significant source of traffic: the travel agencies using that system as their primary CRS. Since agents depend so much on CRSs when advising customers on airline options and selling tickets, and because the great majority of agencies depend on one system for all their CRS transactions, a travel agency will have no easy way to obtain information on a carrier's services or to book seats on it unless that carrier participates in the CRS used by the agency. A carrier that drops out of a system will thus lose a large proportion of the bookings it would otherwise have received from the agencies using that system as their primary system. For example, Continental lost so many bookings when it stopped participating in PARS in 1984, even though PARS continued displaying many Continental flights, that the carrier was compelled to resume its participation in that system. 56 FR 12594.

Participation in each system is also important because, despite the low national market shares of the smaller systems, each system dominates some regional CRS markets. As shown by the figures stated above, for example, a carrier seeking travelers at Chicago will be severely handicapped if it does not participate in Apollo and Sabre, since their subscribers make over 80 percent of the CRS bookings in that area.

Vendors accordingly do not need to compete for airline participants in their systems. As Justice summed up this situation, Justice ANPRM Comments at 10–11 (footnotes omitted):

> [T]he different CRSs are not substitutes for one another from the perspective of air carriers. Travel agents subscribe to only one CRS, and therefore, for a carrier to have access to most of the travel agents in a region, it must participate in every CRS that controls a significant group of travel agents in

that region. Thus, from the perspective of an air carrier, each CRS constitutes a separate market—providing access to a discrete group of agents—for which there is no acceptable substitute. Each CRS constitutes a separate market for air carriers, and each is a monopolist with market power over carriers that want to sell airline tickets in areas where the CRS has a significant number of travel agents.

See also NW Reply, Fisher affidavit, para. 10–11; Woodside Comments at 2.

Even though travel agencies will probably remain the dominant means of distributing airline services, the current vendors would be less able to hold market power if entry into the CRS business were practicable. For a variety of reasons, however, entry is unlikely. Among other things, there are large economies of scale in CRS operations, so it would be difficult for a new entrant to obtain an adequate subscriber base for efficient operations. 56 FR 12594–12595. See also Justice ANPRM Comments at 31–32; NW Reply, Fisher affidavit at para. 4–5. No one in this proceeding has refuted our findings on the unlikelihood of new entry under current industry conditions. However, one of the goals of our rules is to create alternative means for carriers to make their services saleable by travel agencies and to create the possibility of entry for new databases on travel services. This should weaken each vendor's grip over the information on airline services obtained by its subscribers.

We recognize that one U.S. carrier—Southwest—has prospered without participating in any CRS. Southwest's ability to succeed without CRS participation stems from the unusual nature of its operations. 56 FR 12593 n.3. See also NW Reply, Fisher affidavit, n.3. No party in this proceeding claims that Southwest's ability to succeed without CRS participation could be duplicated by any other carrier. Because Southwest's experience is unique, we will ignore Southwest in the rest of our discussion of the airline competition issues.

In an effort to rebut our conclusions on the vendor's market power, American and CEI have submitted economics papers contending that vendors do not have such power (in addition, one of the paper's authors, Andrew Kleit, personally filed his article as a comment and also submitted a reply comment). Those papers are Kleit's "Computer Reservations Systems: Competition Misunderstood", included in the comments filed by American and CEI as well as his own comments; Donald J. Boudreaux and Jerome Ellig, "Why DOT's Proposed CRS Rules Would Injure Consumer Welfare," submitted in CEI's comments, and Boudreaux and Ellig, "Beneficent Bias: The Case against Regulating Airline Computerized Reservations System," submitted in American's supplemental comments. As explained below, we find that these papers rely on theories about the marketing of airline services that are contrary to the airline industry's experience and not as persuasive as the analyses provided by Justice and by Dr. Michael Levine and Dr. Franklin Fisher in Northwest's reply comments. Moreover, even though American submitted two of them, it has provided no factual information supporting the claims made in the articles (for example, one the factors influencing a vendor's choice of editing and ranking criteria in CRS displays).

Ellig and Boudreaux contend that airlines can avoid CRS participation through direct advertising. "Beneficent Bias" at 19; "DOT's Proposed Rules" at 8. We cannot agree. While that strategy apparently works for Southwest due to the unique nature of its operations, no other carrier can do without access to the subscribers of each of the CRSs. Advertising, for example, cannot tell a traveler (or an agent) whether a seat is available on a particular flight and what fares are offered. Airlines also cannot practicably use advertising to inform consumers of their flight schedules, except perhaps for certain unusually dense markets capable of supporting hourly service, *e.g.*, the Washington-New York and New York-Boston shuttle markets.

D. The Vendors' Incentives to Use Their Market Power

Since each vendor has market power over other carriers, it can increase prices for carrier participation above competitive levels and reduce the quality of service below competitive levels. That ability by itself would not necessarily mandate regulation against competitive abuses. After all, for many years the Official Airline Guide was the major source of airline information for U.S. travel agencies, yet its status as the monopoly source of information did not compel the regulation of its operations. *Cf. Official Airline Guides, Inc.* v. *FTC* 630 F.2d 920 (2d Cir. 1980). Even today the rental car firms and hotel companies have not complained that regulation is needed to prevent vendor conduct contrary to the antitrust laws. The difference between the airlines and the rental car and hotel companies is that the systems' owners compete with other airlines but not with hotel chains or rental car firms. We need to regulate the systems' treatment of airline services because each system is owned and operated by one or more airlines or airline affiliates that may have an incentive to use their control of the systems to disadvantage competing airlines.

In determining that CRS rules remain necessary, we are relying in part on the vendor's conduct before the current rules took effect. Since the Board's adoption of the current rules stopped the major abuses, some of the most telling examples of the vendor's potential power occurred before the Board acted. As we noted in the NPRM, for example, several smaller carriers tried to obtain more favorable treatment in Apollo by promising United that they would not compete aggressively with it. 56 FR 12593. These examples remain relevant, however, because neither the CRS rules nor economic and industry developments have changed the CRS industry's structure. The vendors accordingly would have substantially the same ability to engage in similar abuses if the rules were not readopted.

Of course, an identification of the ways in which vendors may prejudice airline competition does not automatically mean that rules should be adopted to block such conduct. One example of the vendors' power concerns their ability to charge discriminatory bookings to other carriers that are not based on the vendors' costs, as discussed next. While the current rule barring discriminatory fees seems to have worked well, adopting a rule directly regulating the level of fees would not be wise, as we explain below when we discuss the various rule proposals on this issue (we believe, however, that our rule authorizing agencies to use CRS terminals to access other databases, including internal airline reservations systems, will provide some discipline on fees).

E. Booking Fees

Before the Board prohibited discriminatory booking fees, vendors compelled the least-favored carriers to pay as much as $3 per booking while other carriers paid as little as thirty cents—and the disfavored carriers usually received the worst service, since their flights were subject to the most display bias. 56 FR 12593. The carriers paying the highest fees and suffering the most display bias in a system tended to be the vendor's major competitors. Board Rule, 49 FR 32543.

The parties' comments on whether we need to require vendors to provide adequate billing information additionally confirm the vendors' power. As discussed below in connection with

the rule proposals on this issue, participating carriers have demonstrated that they have been unable to obtain enough billing information from the vendors in a usable form to enable carriers to audit the accuracy of the bills. If the carriers had some ability to bargain with the vendors, they surely would have been able to obtain adequate billing information, since such information ordinarily would be supplied by suppliers in competitive industries.

In the NPRM we found that the fees charged participating carriers for CRS services are not subject to competitive discipline and do not appear to be based on the vendors' costs. 56 FR 12595–12596; Justice Comments at 5. See also NW Reply at 6–7; Alaska Reply at 7–8. In our 1988 study we calculated that the major vendors' booking fees substantially exceeded their costs, although the study's cost allocations were arbitrary in some respects. 56 FR 12595–12596. We have not estimated the vendors' costs and profits for more recent years, and the major vendors' profits from airline booking fees may well be lower now than shown by our study. However, there have been no developments in recent years which would have significantly reduced the vendors' ability to charge participating carriers discriminatory booking fees not based on costs.

Although Covia, American, and CEI challenge our conclusions that the vendors are able to charge discriminatory or high booking fees, we find their arguments unpersuasive. First, while Covia contends that the findings of our 1988 study are incorrect, Covia provides no cost analysis that would refute that study's findings. Instead, Covia claims that the study made a number of unreasonable assumptions that invalidate its conclusions. Covia also claims that the fee charged per CRS booking is reasonable compared to fees charged by similar businesses such as Ticketron. Covia Comments at 14, 18–19. We analyzed similar Covia claims in our NPRM and found them unconvincing. Among other things, Covia has not shown that the firms providing the analogous services have the same costs as CRS vendors. 56 FR 12595.

Equally unconvincing is Covia's assertion that it cannot afford to raise fees too high because carriers would then withdraw from the system and reduce its attractiveness to travel agencies. Covia Comments at 13. Our finding that vendors like Covia have market power does not mean that they have unlimited ability to raise fees above competitive levels; obviously at some point fees could become so high that participating carriers would lose money on the passengers booked through the system. Nonetheless, the vendors have some ability to raise fees above competitive levels. 56 FR 12595; Justice ANPRM Comments at 11–14. See also NW Reply, Fisher affidavit, para. 11,21. *Cf. Eastman Kodak Co.* v. *Image Technical Services*, 60 U.S.L.W. 4465, 4470 (June 9, 1992).

Covia also argues that its overall profits are low, an assertion supported by some very summary financial figures. Covia Comments at 15–18 and App. C, Exhibit 1. The figures are so summary that they do not establish Covia's actual profitability. Furthermore, Covia calculated its profits by treating its capital investments as expenses, an atypical method of calculating profitability. Air France Reply at 12–13.

Covia and American state that their overall CRS profitability has declined in recent years, but that decline would not disprove our conclusion that vendors have the ability to charge high booking fees. The systems have two sets of customers, participating carriers and travel agency subscribers. While vendors need not and do not compete for carrier participants, they compete to some extent for subscribers, especially large agencies whose business will produce large sums of booking fees. It may well be that the vendors' competition for subscription contracts from the larger agencies have reduced the total profitability of their systems, but their competition for travel agency subscriptions does not affect their power over participating carriers. See, *e.g.*, NW Reply, Fisher affidavit, para. 9, 24–25.

The papers submitted by American and CEI argue that a carrier can deter booking fee increases. They claim that a carrier can offset an increase in a system's booking fees by reducing the commissions paid travel agencies using that system by an amount equal to the fee increase. Assertedly this would make the system unattractive to agencies, thereby deterring the vendor from unreasonably increasing fees. Kleit Comments at 10–13; "DOT's Proposed Rules" at 3; "Beneficent Bias" at 28. This theory ignores the economic practicalities of airline marketing and is belied by industry experience, for no carrier has ever thought such a strategy worth trying. If a carrier reduced its commissions to those agencies using a system charging increased booking fees, those agencies would be likely to book their customers away from that carrier. The revenues lost through this decline in bookings would far exceed any future savings on booking fees. See, *e.g.*, NW Reply, Levine affidavit at 2–4. In addition, a vendor would lose few subscribers in the near term if carriers did reduce their commissions to its subscribers, since almost all agencies have contracts requiring them to keep their system for a five-year term. Thus, even if a carrier could encourage agencies to switch away from a system charging higher booking fees, the carrier's strategy would have little effect for several years. Justice Comments at 11–12. See also Alaska Reply at 12–13. In response to these points, Kleit only says that carriers are always interested in cutting their costs and consequently would adopt his strategy. Kleit Reply at 2–3. But a carrier's wish to control its costs does not give it the ability to do so when a supplier has market power, as do the vendors.

These papers similarly theorize that travel agencies allegedly know that participating carriers may react to fee increase by lowering their commission rates and so will protect themselves in their subscriber contracts by obtaining limits on a vendor's ability to increase its fees. See, *e.g.*, "DOT's Proposed Rules" at 3–4. This theory too finds no support in the evidence in this proceeding or in any analysis of the actual operation of the CRS and agency industries.

Even more untenable is Kleit's suggestion that vendors obtain most of their compensation from carriers rather than agencies because the vendors want to save transaction costs. Kleit Comments at 8. Kleit provides no factual support for this theory. The vendors' decision to obtain more compensation from participating airlines than from travel agencies presumably reflects the differences between the vendors' competition for airline participants and their competition for subscribers.

Kleit further errs in his claim that the varying booking fees charged by vendors before the rules took effect were not discriminatory. Kleit Comments at 12. The Board found that to a substantial extent the fee differences could not be explained by such factors as the size of the participating carrier and the date of its contract to participate in a system. Board Rule, 49 FR 32543; Board NPRM, 49 FR 11651.

F. The Use of Display Bias to Reduce Competition

Without CRS rules vendors could also use display bias to prejudice the competitive position of other carriers. A CRS can display a limited number of flights on its screen at a time; if more

flights are available in a market than can be displayed on a single screen, an agent using the CRS must ask to see additional screens to see more flights. Travel agents often work under significant time pressure, and as a result agents are more likely to book a flight that shows up on the first screen than flights appearing on later screens, even if the latter would better meet a customer's needs. 56 FR 12592. In addition, a CRS display for any market will not list all of the services that are available in the market, largely because many flights are relatively unattractive so that few travellers would book them (for example, connecting services requiring long layovers).

Before the rules took effect, each vendor gained a larger share of its subscribers' bookings by biasing its displays in favor of its own flights, even if other carriers offered better flights. In addition, our NPRM cited several instances drawn from the Board's record where a vendor used its control of CRS displays to prejudice airline competition. When New York Air entered one of America's major markets, American substantially increased the display bias against all New York Air services, an action that led to New York Air's withdrawal from the market. 56 FR 12593. When Continental began offering a set of new discount fares, American waited several months before adding Continental's new low fares to a Sabre display that purportedly included all airline fares. 56 FR 12593.

The vendor's display bias affected a significant amount of revenue. For example, when Frontier Airlines obtained a better status—cohost status—in Apollo's displays, its systemwide bookings increased by four percent. Board Rule, 49 FR 32545. Similarly, a United expert estimated that bias increased a vendor's revenues by 13 percent at agencies switching to its system, although other evidence indicated that his estimate was too low. Board Rule, 49 FR 32546. In view of the importance of marginal passengers in the airline business, that diversion of revenues could make a route unprofitable for a rival and eliminate competition for the vendor.

In light of this experience with bias, we cannot accept the argument presented in the papers submitted by Ellig, Boudreaux, and Kleit that display bias neither threatens airline competition nor deceives consumers. We consider in the next section the effect of bias on consumers requesting information on airline services. Here we will explain why bias undermines airline competition.

In their analysis of CRS bias, Ellig and Boudreaux begin by making the erroneous assumption that a vendor's strategy for marketing its CRS is the sole determinant of any decision to use bias. "Beneficent Bias" at 14,16. That assumption ignores each vendor's incentive and ability to gain additional airline bookings by biasing its system's displays to give its own flights a better display position than they deserve on the basis of neutral service criteria. The vendors' conduct before the prohibition of display bias demonstrated that they would operate the systems so as to increase their airline revenues. Board NPRM, 49 FR 11651. We agree with Ellig and Boudreaux that the vendors' competition for subscribers limits their ability to bias their displays, since travel agencies generally prefer neutral displays, but that competition for subscribers did not prevent vendors from biasing their displays before the rules took effect, in part because vendors could hide the extent of the bias. Board Rule, 49 FR 32547.

Boudreaux and Ellig err as well as in suggesting that agents would not book a flight merely because it is listed first in a CRS display. "Beneficent Bias" at 12–13. Here, again, experience demonstrates that their theoretical arguments do not accurately describe the CRS industry. While agents often will take the trouble to look for flights not listed first in a display, agents are often pressed for time and do book a flight more often if it receives a high display position. Internal American studies submitted by Justice, for example, show that a flight's display position significantly affects the number of bookings made on it by subscribers. Justice ANPRM Comments, App. 70,82.

Ellig and Boudreaux further argue that display bias in any event presumably reflects the preferences of travel agency subscribers, who would rather book customers on their vendor's airline services if possible. They have not shown that the display bias in fact was created or adjusted to meet travel agency demands. In fact, the record before the Board indicated that vendors were refining their bias so that it was both more effective and less easily detectable by agents. Board NPRM, 49 FR 11651. ASTA and ARTA have always opposed display bias, a position that indicates that many agencies, if not all, dislike display bias. Board Rule, 49 FR 32543. While Kleit notes that a number of agencies were willing to use the biased secondary displays offered by Apollo after the Board's rules took effect, Kleit Comments at 17, that does not prove that agency demands led to the systems' use of bias. Neither here nor in the Board's rulemaking have vendors shown that agency preferences led to the creation of display bias. The history of display bias thus indicates that bias was created to shift traffic to the vendor carrier, not to meet agency desires for displays favoring the vendor carrier.

On the ground that display preferences are commonly sold in other industries (*e.g.*, as shown by shelf positions in grocery stores and location of advertisements within newspapers), Kleit suggests that allowing vendors to sell display positions in CRSs could be procompetitive and result in the best display position being used for the carrier most interested in buying that position. Kliet Comments at 15–16.[2] The fundamental flaw in this argument is again its inconsistency with the CRS industry's experience before the Board adopted the CRS rules. At that time some vendors sold display preference (that is, cohost status), but usually only to carriers competing little with that vendor. Vendors did not, however, enable any participating carrier to obtain bias on a systemwide or market-by-market basis that was more favorable than the bias given the vendor's own services. Furthermore, Kleit wrongly assumes that the carriers receiving the worst display position did so because they chose not to pay for a better display position. Kleit Comments at 18–19. However, the carriers who paid the most for CRS access typically were the carriers subjected to the most display bias. Board Final Rule, 49 FR 32543.

Boudreaux, Ellig, and Kleit ignore the vendors' past use of display bias in constructing their theory about its possible beneficial effects. Ellig and Boudreaux recognize that a vendor might be unwilling to sell display bias to a competitor in some markets because no carrier would pay a price as great as the vendor's anticipated increase in airline profits if it keeps the advantage of bias. "Beneficent Bias" at 16–17. They fail to take into account the vendors' past practice, which suggests that the vendors believe they would obtain more airline profits from the additional traffic created by display bias than any participating carrier would be willing to

[2] The CRS industry's display of airline services is comparable to other cases where the same firm provides the display capability and competes with firms using that display space, the firm can use its control of the display space to prevent competition. See, *e.g.*, Home Placement Service v. *Providence Journal Co.*, 682 F.2d 274, 279–281 (1st Cir. 1982), holding that a newspaper could violate the antitrust laws by denying advertising space to a firm providing information on housing vacancies.

pay to obtain a preferential display position.

That the theories proposed by Boudreaux, Ellig and Kleit are inapplicable to the systems' use of display bias is additionally confirmed by other vendor uses of display bias. As shown by American's retaliation against New York Air and the offers United received by carriers to end their aggressive competition with United, vendors used display bias to deter airline competition. And Kleit, Boudreaux, and Eilig have never explained how American's delay in displaying Continental's discount fares benefited any travel agent or traveller.

G. Display Bias and Consumer Deception

Given the evidence that improving a flight's position in the display means that agents will book it more often, display bias contrary to customer preferences can keep a significant number of agency customers from using the flight best suited for their needs. Before display bias became unlawful, moreover, bias could take the form of hiding information from the public, as indicated by American's delay in displaying Continental's new discount fares. Another example concerned the vendors' omission of some hubs of their competitors from the display of connecting services, so that an agent would not know of all service options without undertaking the effort of constructing his or her own connections. Board ANPRM, 48 FR 41177; Civil Aeronautics Board, Report to Congress on Airline Computer Reservations Systems at 46–47.

As a result, our rules are necessary to prevent consumer deception. As we pointed out in the NPRM, in the absence of rules against bias, the vendors would be free to resume biasing their displays against other carriers with the result that travellers and their travel agents would have more difficulty in finding the best service for their needs. 56 FR 12601–12602. We note in that regard complaints by carriers in this proceeding that some vendors still arbitrarily limit the number of competitors' hubs used for constructing displays. For example, American claims that Apollo at times refuses to add new hubs in its display of connecting services on the ground that the display is full, whether or not the new hubs would provide better service for customers than some of the hubs already included. American Reply, App. F. Similarly, Sabre was using all of American's hubs in constructing displays of connecting services while using fewer of its competitors' hubs. 56 FR 12612.

Justice, several agency parties, such as ARTA, and almost all carriers agree that we should maintain the prohibition of display bias, because it threatens airline competition or denies the public accurate and complete information on airline services. See, *e.g.*, Justice ANPRM Comments at 5, 14.

While in theory travel agencies should be able to prevent display bias by refusing to purchase CRS services from vendors providing biased displays, in practice the vendors' competition for subscribers did not eliminate display bias when no rules prohibited it. In part the vendors could continue biasing their displays by hiding the bias. Board Rule, 49 FR 32547. To some extent, agencies may not insist on neutral displays because their customers have an imperfect ability to check the accuracy and completeness of an agent's advice. 56 FR 12601. Several of the travel agency parties assert that travel agencies cannot afford to give customers poor or biased advice because they will lose too much business as a result. Even so, travel agents seemingly have some ability to give customers flight recommendations that are not the best for a customer's needs because travellers cannot easily check the accuracy of agent advice on airline services. A traveller wanting to check the accuracy of an agent's recommendations would have to call all the airlines or some other agencies, a time-consuming task. In addition, because the availability of seats and fares often changes, a traveller cannot readily determine whether an agent's failure to choose the best flight and fare resulted from poor advice or from changes in the availability of seats and fares. Travellers also cannot easily determine whether one agency's advice is more accurate and impartial than another's, particularly since carriers now authorize some agencies but not others to sell discount fares free of some restrictions. If consumers had to check with several agencies to ensure the accuracy of the information they received, they would lose some of the efficiency advantage of using a travel agent in the first place. Moreover, given the travel agencies' reputation as neutral providers of travel advice, relatively few travellers would call several agencies before booking airline service. See, *e.g.*, NW Reply, Levine affidavit at 5–7.

In addition, if all systems contain some bias, as was true before the rules took effect, travellers will be unable to find an agency using a neutral system. In any event it is clear that vendors have some ability to bias their displays in the absence of regulation and that the bias will shift a significant number of travellers to a vendor's flights, even when another carrier's service would better meet a traveller's needs, because the vendor's service has received a better display position.

Only the papers submitted by American and CEI argue that display bias (which they prefer to call "display preference") is not a problem requiring government intervention. They assert that a CRS would lose subscribers (and its subscribers would lose customers) if its ranking of flights gave a preference to unattractive flights, that display bias does not cause unsuitable flights to be listed before flights meeting customer needs, and that allowing vendors to sell display preference would be pro-competitive. While we generally agree with theoretical principles underlying the arguments made by these parties, we find their arguments unpersuasive as to the airline industry because their theories about the benign and even beneficial effects of display bias are contrary to the industry's actual experience. Moreover, these parties have presented no evidence of changed conditions which would make that experience irrelevant to determining now whether display bias should remain prohibited.

H. International Aviation Obligations

We also found in the NPRM that CRS rules appeared to be necessary to carry out the United States' obligation under its bilateral aviation agreements to ensure that carriers from other countries had a fair and equal opportunity to compete. We noted, for example, that we have taken the position that foreign governments must ensure that CRSs operating in their countries fairly display the services of United States carriers. See *e.g.*, *American Airlines* v. *British Airways*, Order 88–7–42 (July 25, 1988). We accordingly determined that the prohibitions against display bias and discriminatory treatment seemed necessary for protecting the bilateral rights of foreign carriers. Moreover, readopting our rules will be consistent with the actions taken by Canada, the European Community, ECAC, and others to prevent vendor abuses that would deny carriers a fair opportunity to compete. 56 FR 12602.

No party has challenged that tentative determination that our bilateral obligations require the adoption of rules preventing vendors from discriminating against competitors.

I. Arguments Against Regulation

Despite our tentative finding that CRS operations should be regulated to

prevent abuses that would reduce competition or cause consumer deception, the major vendors argue for various reasons that CRS regulations would be unwise. We agree with them, of course, that regulating business conduct is not desirable unless clearly necessary. Regulation obviously imposes costs of its own, *e.g.*, by interfering with management decisions to respond to market forces (and, in this case, potentially frustrating technological change). However, while we recognize the disadvantages of regulation, we cannot accept the arguments made by the major vendors against having any CRS regulations (or stronger regulations).

American contends on the basis of a selective citation of authorities that the most recent economic and judicial analyses of the CRS business agree that there is no need for regulation, contention primarily based on the papers by Kleit, Ellig, and Boudreaux (American also relies on the recent Ninth Circuit decision in the private antitrust suit against American and United, a decision discussed by us in our examination of our statutory authority for adopting rules). As shown above, we find the analyses in those papers unpersuasive. Moreover, the recent report of the Transportation Research Board on airline deregulation, Winds of Change, examined the competitive effects of airline-owned CRSs and agrees with our analysis of the competitive effects of the systems. Another recent analysis of the CRS industry, "Computer Reservations Systems and Their Network Linkages to the Airline Industry" by Margaret E. Guerin-Calvert and Roger G. Noll, an article cited by Justice, generally reaches the same conclusions we do. Its authors base their conclusions on a thorough analysis of the history and current practices of CRS operations.

The major vendors also argue that their past willingness to invest large sums in the development of the systems has produced great benefits for consumers, travel agencies, and the airline industry. We recognize that the systems have enabled travel agents to obtain more information on airline services more efficiently and thereby provide their customers with a higher quality of service. We also recognize that the vendors have continued to invest large sums in the systems *e.g.*, by developing "look and book" direct access features, that have provided further benefits for the travel agencies and thus for the travelling public and other airlines. We have taken into consideration the vendors' improvements in their systems. As discussed in detail below, these improvements are a major reason for our decision not to adopt rules requiring the separation of the CRS computer from the host's internal reservations system or mandating equal functionality.

Obviously the efficiencies provided by CRSs benefit the non-vendor carriers as well. Nonetheless, as we explained in the NPRM, the efficiencies created by CRSs make participation in each of the systems essential for airlines, a factor that gives the vendors substantial market power. The vendors, moreover, can use that power to prejudice airline competition. 56 FR at 12601.

Covia claims that further regulation of the CRSs is unjustified because -Covia, at least, operates as a stand-alone system, not as an arm of the marketing department of any of its owners. Covia Comments at 21. Covia concedes that a United subsidiary is the managing general partner for the CRS, Covia Comments at 21, and United holds a majority of the partnership interests. Covia, moreover, appears in several respects to implement strategies benefiting United's airline sales rather than the common interests of all its owners. For example, Covia was providing United fare information from bookings on Covia without providing that information to its other U.S. carrier owner or to participating carriers, as discussed below. And, as noted in the NPRM, Covia has consistently argued that CRS regulations are unnecessary, a position shared by United but competely contrary to the position of the other six partners in Covia. 56 FR 12600.

American, on the other hand, seems to suggest that we should not worry about CRS problems because it offered Alaska and America West, the largest U.S. carriers without a CRS ownership interest, the opportunity to buy a share of Sabre, and neither carrier was interested. American Supp. Comments at 13. Since American did not describe the terms of its offer, we do not know whether those two carriers could afford to buy a large enough interest in Sabre to obtain any control over its operations or whether American offered to give up control, yet such an investment would be attractive only if the new investors obtained possession of some control. If the new carrier investors did not obtain control, moreover, Sabre's operations could continue to favor American's airline services. In any event, Alaska and American West would not be the only victims of the CRS abuses that could arise without regulations.

American and Covia complain that stronger rules would unduly hamper their ability to compete with foreign-owned systems not subject to the same restrictions. See, *e.g.*, Covia Reply at 23–24. This complaint has no merit. If any foreign-owned system wished to compete in the United States, it would be obligated to follow our rules. Furthermore, the two major foreign systems—Amadeus and Galileo—mainly operate in areas subject to the European Community rules, which are substantially more restrictive than our own. Sabre itself must comply with those rules in its operations within the European Community, and Covia's Canadian affiliate must comply with similar rules in Canada. Neither of the major vendors has submitted evidence in this proceeding showing that the European Community rules (or the Canadian rules) significantly interfere with a vendor's ability to operate profitably. Finally, Covia has agreed with its European affiliate, Galileo, that Galileo rather than Covia will market CRS services in all of Europe and Asia except Japan. American June 16, 1992 Comments, Att. B. We accordingly cannot agree that our rule changes will injure any U.S. vendor's ability to compete with foreign systems.

CEI has submitted a paper by Jerome Ellig arguing that any regulation reducing the vendors' profits could discourage technological innovation. His paper, "Computer Reservation Systems, Creative Destruction, and Consumer Welfare: Some Unsettled Issues", suggests that the vendors' opportunity to earn supracompetitive profits (*i.e.*, rents) has fostered innovation in the CRS industry. We agree with Ellig that our rules should encourage innovation and not penalize the vendors for the profits gained from their willingness to accept the risks of investing in the systems. However, our rules certainly will not keep the vendors from being profitable. We are not, for example, limiting the vendors' ability to charge fees. Our rules are designed to eliminate only anticompetitive practices, not legitimate uses of a carrier's control of a system. We also doubt that the vendors would have failed to create the systems if they had known that display bias and similar profit-reducing practices would be prohibited.

In large part, moreover, we intend to spur innovation through our rules. We believe that our rule allowing agencies the freedom to use hardware and software from third-party firms and to access different databases from a single terminal will promote innovation (but without stifling the vendors' technological developments). After all, in recent years much of the innovation

in the CRS industry has come from the efforts of the smaller vendors and firms like Megadata and TravelPro. See, *e.g.*, Hewins Reply at 6.

As stated above, we appreciate the need to limit our intervention in the CRS business so that we do not deny the vendors the legitimate benefits of their development of the systems. If a vendor has devised means of using its system to enable it to operate more efficiently, it is entitled to the rewards of its investment. For example, we are rejecting Air France's charge that American is unfairly using Sabre to obtain more detailed and current information on travel agency bookings than is available to other carriers. May 6, 1992 Air France Comments. Despite Air France's complaint, American is only gaining the benefits of its investment in creating a program for analyzing the marketing data provided by Sabre and the other systems. We see no reason for denying American the use of a program that it had the foresight to develop. Any other U.S. carrier can already acquire the same data, and our new rules will allow Air France and other foreign carriers the opportunity to acquire and use the same information.

V. Statutory Authority for the Rules

Given our findings on the potential for consumer deception and anticompetitive practices resulting from airline-owned CRSs, we have the authority under sections 204(a), 411, and 1102(a) of the Act, 49 U.S.C. 1324(a), 1381, and 1502(a), to adopt these rules. Section 411 authorizes us to define and prohibit unfair methods of competition and deceptive practices, while section 1102(a) requires us to act consistently with the United States' obligations under treaties and bilateral agreements. Section 204(a) gives us a broad rulemaking authority. We tentatively concluded in the NPRM that these sections authorized our adoption of the rules that were proposed there. 56 FR 12602–12603. We also pointed out that the Seventh Circuit had affirmed the Board's adoption of CRS rules based on the same section 411 analysis that we tentatively adopted. *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985).

In response, American argues that we cannot rely on antitrust principles as a basis for regulating CRS practices under section 411. American bases this argument in large part on the decision in favor of the major vendors in the antitrust suit filed by several non-vendor carriers against them, *Alaska Airlines* v. *United Air Lines*, 948 F.2d 536 (9th Cir. 1991), *cert. denied*, 60 U.S.L.W. 3688 (April 7, 1992), a decision that allegedly undermines our factual and legal findings.

The only other objection to our legal authority to adopt the proposed rules comes from CEI, which argues that the rules display bias would violate the First Amendment of the Constitution. These issues are discussed below.

A. Unfair Methods of Competition

1. Unfair Methods of Competition under Section 411

Under section 411 we may investigate and determine whether any air carrier or ticket agent has been or is engaged in unfair methods of competition in the sale of air transportation. That section, modelled on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, does not confine unfair methods of competition to those practices constituting a violation of the antitrust laws. Instead, we have the authority to ban practices well before they become serious enough to violate the antitrust laws, as the Seventh Circuit held when it affirmed the Board's adoption of the CRS rules, *United Air Lines*, 766 F.2d at 1114:

> Although none of the airline owners of computerized reservation systems has a conventional monopoly position in the market for that service, and they are not accused of colluding, the Board found that some of them, anyway, had substantial power. This finding * * * would bring their competitive practices within the broad reach of section 411. We know from many decisions under both that section and its progenitor, section 5 of the Federal Trade Commission Act, that the Board can forbid anticompetitive practices before they become serious enough to violate the Sherman Act.

As a result, we may define a practice as an unfair method of competition and prohibit it without finding that it is in fact a violation of the antitrust laws. Nonetheless, we doubt that we could adopt rules on competitive grounds unless the practices being prohibited are comparable to practices that would violate the spirit or the letter of the antitrust laws. *See, e.g., E.I. Du Pont de Nemours & Co.* v. *FTC*, 729 F.2d 128 (2d Cir. 1984). Since the principal basis for our adoption of the new CRS rules is our decision to prevent vendor practices constituting unfair methods of competition, we must explain why antitrust principles justify that decision. However, as was true of the Board's proceeding, Board NPRM, 49 FR 11659, we are making no finding in this proceeding that any party has violated the antitrust laws.

In the NPRM we tentatively concluded that our proposed rules appeared necessary to prevent unfair methods of competition. We reasoned that the practices we proposed to prohibit were analogous to those proscribed by the antitrust laws. 56 FR 12602–12603.

Due to American's challenge to our antitrust reasoning and the Ninth Circuit's decision in the private antitrust suit, we have reexamined our tentative conclusions. We conclude again that the vendors have market power and that the rules are therefore needed to prevent practices similar to conduct prohibited by the antitrust laws. We also find that the Ninth Circuit's decision in its CRS case does not undermine our basis for adopting CRS rules.

2. Basic Findings on Market Power

As we said earlier, market power is the ability to raise prices above the economic cost of providing service (or to provide less service than would be provided in a competitive market). Justice ANPRM Comments at 10. The Supreme Court has defined it as the power "to force a purchaser to do something that he would not do in a competitive market," *Jefferson Parish Hospital* v. *Hyde*, 466 U.S. 2, 14 (1984).

For the reasons described earlier and in the NPRM, we find that each vendor has market power over other carriers. The best evidence of this is, as indicated, a vendor's ability to set prices for its CRS services without regard to costs, because vendors need not and do not compete for participating carriers. Their control over pricing was further demonstrated before the rules were adopted by their ability to set discriminatory prices. *Cf. United Airlines* v. *CAB, supra*, 766 F.2d at 1114.

As explained above, each vendor's market power arises because carriers have no adequate alternative to the travel agency system for efficiently distributing their services, because travel agents have no alternative to CRSs for quickly and efficiently obtaining information and bookings on airline services, because the great majority of agencies use only one system (or predominantly only one system) at each location, because entry into the CRS business under current conditions would be extremely difficult, and because the economics of the airline business make it impossible for a carrier to operate successfully if its services cannot be readily marketed by a significant group of distributors. As Justice points out, each system as a practical matter holds a monopoly over the carriers' access to its subscribers.

We recognize that our finding that each vendor has market power over other carriers at first sight appears to be inconsistent with most antitrust holdings, since there are four systems,

none of which has a monopoly share of the national market. However, like the courts, we must base our competitive analysis on the economic realities of the relevant market. *Eastman Kodak Co.* v. *Image Technical Services*, 60 U.S.L.W. 4465, 4469 (June 9, 1992). Our analysis of the economic realities of the CRS and airline industries, like the analyses of the Board and Justice, compels us to conclude that each vendor has market power.

3. CRSs as Essential Facilities

Under the essential facility doctrine, a firm that controls a facility essential for competition must give its competitors access to the facility on reasonable terms. The firm's denial of access will violate section 2 of the Sherman Act. A facility is essential if it cannot be feasibly duplicated by a competitor and if the competitor's inability to use it will severely handicap its ability to compete. *See, e.g., Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 956; *Twin Laboratories* v. *Weider Health & Fitness*, 900 F.2d 566 (2d Cir. 1990); *Delaware & Hudson Ry.* v. *Consolidated Rail Corp.*, 902 F.2d 174 (2d Cir. 1990), *cert. denied*, 111 S.Ct. 2041.

The rationale of the essential facilities doctrine authorizes our adoption of rules that would prevent a vendor from unreasonably denying other carriers access to its CRS or from imposing unreasonable terms as a condition to access. Each system is comparable to an essential facility, for, as shown above, no one can feasibly duplicate a CRS and denial of access to a CRS will impose a substantial handicap on a carrier's ability to compete.

In this case the conduct proscribed by the rules—display bias, discriminatory booking fees, and denial to other carriers of access to the marketing data generated from a system's bookings—would severely prejudice the competitive position of carriers attempting to compete with a vendor in city-pair markets where the vendor dominates the CRS business at one or both endpoints. As a result, the vendor would obtain the power to raise prices above competitive levels and reduce service below competitive levels in such airline markets. American's successful retaliation against New York Air's entry into the New York-Detroit market shows that a vendor can use its system to eliminate competition in a city-pair market. Under section 411, that kind of threat to competition is sufficient to authorize our adoption of these rules.

American nonetheless argues that the essential facilities doctrine is inapplicable because each vendor's operation of its system cannot violate sections 1 or 2 of the Sherman Act. According to American, the essential facility cases were section 1 cases involving either the ownership of an essential facility by several competitors, *e.g., U.S.* v. *Terminal Railroad Ass'n*, 224 U.S. 383 (1912), or a contract denying use of an essential facility to one party's competitors, *e.g., Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982 (D.C. Cir. 1977), *cert. denied*, 436 U.S. 956, or were section 2 cases where the denial of use of the facility resulted in monopolization or attempted monopolization of a relevant market, *e.g., Otter Tail Power Co.* v. *United States*, 410 U.S. 366 (1973). Since the vendor conduct at issue here involves single-firm conduct, the section 1 cases are inapplicable, and the asserted lack of any monopolization or attempted monopolization of an airline market by a vendor makes section 2 essential facility cases irrelevant as well, according to American.

We cannot agree. First, two of the systems—Apollo and Worldspan—are owned by several airline competitors, so they would be covered by the essential facilities doctrine even under American's narrow reading of it. But for our purposes American's reading is not controlling. Under section 411 we need not find that any vendor's conduct would be a violation of the antitrust laws under the essential facilities doctrine. We may adopt CRS rules if we find that the vendors' past or potential conduct would resemble the kind of conduct proscribed by the doctrine. A vendor's denial of the use of its system on reasonable terms to a competitor would present enough of a threat to competition in one or more city-pair airline markets to justify the adoption of the rules under section 411. Under that section we may act before a vendor's conduct threatens to create a monopoly in an airline market.

4. Monopoly Leveraging

The second basis for our determination that we may prohibit anticompetitive vendor conduct as an unfair method of competition is the monopoly leveraging theory, the principle that a firm may not illegitimately use its monopoly power in one industry to acquire an unfair competitive advantage in a second industry. Although this principle is controversial (and was rejected by the Ninth Circuit in *Alaska Airlines*), two courts have accepted it as a valid antitrust principle. *Berkey Photo, Inc.* v. *Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093; *Kerasotes Michigan Theatres, Inc.* v. *National Amusements, Inc.*, 854 F.2d 135 (6th Cir. 1988), *cert. dismissed*, 490 U.S. 1087. The monopoly leveraging theory is also consistent with the Supreme Court's reasoning in *United States* v. *Griffith*, 334 U.S. 100 (1948). In our view, this principle can support a finding that certain conduct is an unfair method of competition under section 411, because it violates the spirit of the antitrust laws, even if the courts ultimately conclude that monopoly leveraging is not a violation of the Sherman Act.

The leveraging conduct barred by the rules—primarily display bias and discriminatory booking fees—is clearly exclusionary conduct that provides no benefits for consumers and that keeps airlines from competing on the merits of their fares and services. *Cf. Aspen Skiing Co., supra*, 472 U.S. at 605–611. That conduct constitutes an illegitimate use of the vendors' market power in the CRS industry to obtain a competitive advantage in the airline industry. If the vendors' conduct represented a legitimate use of their position in the CRS industry, we would not prohibit it, for firms with legitimately-acquired monopoly power may use the efficiency benefits of their size in a second industry without violating the antitrust laws. For example, American is entitled to take advantage of Sabre's ability to improve American's yield management program and its use of marketing data acquired from the CRSs. However, despite the theoretical arguments presented by the Kleit, Ellig, and Boudreaux articles, no one has shown that conduct as display bias and unreasonable terms for carrier participation actually benefits consumers or travel agencies, strengthens airline competition, or involves the use of the advantages of the vendors' size in the CRS business. We therefore find that the monopoly leveraging principle supports our conclusion that the vendor conduct we are proscribing constitutes unfair methods of competition.

Although American claims that the monopoly leveraging principle is invalid under the antitrust laws, as the Ninth Circuit held in *Alaska Airlines*, we disagree with American's conclusion that the principle cannot support a finding of unfair competitive practices under section 411. First, two other circuits have endorsed it. Secondly, as the Second Circuit pointed out in *Berkey*, the Supreme Court used similar reasoning in *United States* v. *Griffith*, 334 U.S. 100 (1948). There the Court held it a violation of the antitrust laws for

movie theater owners to use their monopoly power in some towns to gain an edge in obtaining films in towns where they did not have a monopoly. The Court, moreover, stated that "the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful." 334 U.S. at 107.

We recognize that the Ninth Circuit has rejected the Second Circuit's reasoning and that other circuits have questioned (but not rejected) the validity of the monopoly leveraging theory when the monopolist's leveraging will not result in monopolization or attempted monopolization in the second industry. *Association for Intercollegiate Athletics for Women* v. *NCAA*, 735 F.2d 577, 586, n. 14 (D.C. Cir. 1984); *Consul. Ltd.* v. *Transco Energy Co.*, 805 F.2d 490, 494, n. 11 (4th Cir. 1986), *cert. denied*, 481 U.S. 1050. However, a holding that monopoly leveraging is not barred by the antitrust laws would seem to be inconsistent with *Griffith*. In addition, the *Alaska Airlines* decision—based on the dichotomy between sections 1 and 2 of the Sherman Act—may have exaggerated the difference between the two sections. The Ninth Circuit reasoned that monopoly leveraging was outside the scope of the antitrust laws on the basis of a distinction between the two sections, a distinction based on statements in *Copperwald Corp.* v. *Independence Tube Corp.*, 467 U.S. 752 (1984). The Ninth Circuit held that section 1, which prohibits contracts in restraint of trade, applies only to concerted conduct, while one firm's unilateral conduct can be unlawful only if it violates section 2's prohibition against monopolization or attempted monopolization. 948 F.2d at 542. We believe, at least for section 411 purposes, that the court's distinction is too rigid, since a single firm's conduct, albeit enforced through a contract, can be unlawful under section 1. As the Supreme Court recently held in *Eastman Kodak Co.* v. *Image Technical Services, supra*, 60 U.S.L.W. 4465, a single firm's use of its market power in one business to force customers to buy products or services from it in a second line of business can be an unlawful tying arrangement proscribed by section 1. Similarly, a firm's use of an exclusive contract to capture of all of another firm's purchases of a good or service can be unlawful under section 1. See, *e.g.*, *Jefferson Parish Hospital* v. *Hyde, supra*, 466 U.S. at 44–45 (O'Connor, J., concurring).

5. The Alaska Airlines Case

In challenging our antitrust analysis, American relies heavily on the Ninth Circuit's decision in *Alaska Airlines*, the private antitrust suit, holding that American and United had not violated the antitrust laws. As noted above, the court held that the essential facility principle was inapplicable to the operations of Sabre and Apollo and that the monopoly leveraging principle was contrary to the antitrust laws.

Although American argues that the Ninth Circuit decision should resolve the section 411 issues here, we cannot agree. First, our authority to proscribe unfair methods of competition under section 411 is broader than the courts' power to find antitrust law violations. Congress did not confine our authority to define and proscribe unfair methods of competition to conduct that violated the antitrust laws. By giving us broader authority, Congress intended that we should bar airline conduct that will lead to a substantial reduction in competition if the conduct is not the result of an exercise of efficiency advantages or innovation or other procompetitive practices.

Secondly, the Ninth Circuit based its decision on the record before it and on the parties' agreements in the case. For example, the court relied on the plaintiffs' apparent admission that the vendors did not have the power to eliminate competition in the air transportation industry. 948 F.2d at 545. Our decision, on the other hand, must necessarily be based on the record in this proceeding and our expertise in CRS matters. Our record indicates that a vendor, particularly one with Sabre's market share, could use its control of the system to eliminate competition in individual city-pair markets, although not in the national market. Furthermore, the court did not conclude that the major vendors did not have market power over other carriers due to their control of the CRSs, since that issue was not addressed by the trial court. 948 F.2d at 545, n. 12.

In addition, the Ninth Circuit's interpretation of the scope of the essential facilities doctrine is inconsistent with the holdings of other courts. The Ninth Circuit held that the essential facilities doctrine applies only if the denial of use of a facility to others would eliminate competition. Other courts have held the doctrine applicable if the denial of a facility would impose a severe handicap on would-be competitors. *See, e.g., Twin Laboratories* v. *Weider Health & Fitness*, 900 F.2d 566, 569–570 (2d Cir. 1990).

6. Tying Arrangements and Exclusive Dealing

Each vendor requires its subscribers to obtain the vendor's consent before using in conjunction with its CRS any equipment or software acquired from a third-party firm, and each vendor prohibits its U.S. subscribers from using their CRS terminals to access another system or database. These restrictions resemble tying arrangements and exclusive contracts barred by the Sherman Act. Since these issues relate to our decision to adopt rules banning those restrictions, we will discuss them as part of our explanation for adopting those rules.

B. Unfair and Deceptive Practices

Without a prohibition of display bias, vendors could resume their earlier practices of biasing their display against competitors, thereby preventing agents and travellers from obtaining complete information on airline services. Since section 411 authorizes us to prevent deceptive practices in the sale of air transportation, we may adopt rules prohibiting display bias on the ground that they are necessary to prevent consumer deception. The Board used the same rationale for prohibiting display bias, and the Seventh Circuit upheld it. *United Air Lines, supra*, 766 F.2d at 1112–1113.

No one has challenged our authority under section 411 to prohibit display bias.

C. Fair and Equal Opportunity to Compete

Section 1102(b) of the Act, 49 U.S.C. 1502(b), requires us to act consistently with the United States' obligations under treaties and bilateral agreements. Since many of the United States' bilateral aviation agreements with other countries assure the carriers of each party a fair and equal opportunity to compete, we must adopt rules to the extent necessary to ensure that foreign carriers have such an opportunity. As we stated in the NPRM, we have held in ruling on complaints filed under section 2(b) of the International Air Transportation Fair Competitive Practices Act ("IATFCPA"), 49 U.S.C. 1159b(b), and in negotiations with foreign countries that the right of U.S. carriers to a fair and equal opportunity to compete means that they are entitled to have their services displayed fairly in CRSs operated abroad by foreign carriers and to market their CRSs effectively in such countries. Foreign carriers accordingly are entitled to the same rights in the United States. To ensure that foreign carriers have that

opportunity, we determined to maintain the rules' prohibition of display bias and discriminatory treatment. 56 FR 12602. No one has objected to our determination that section 1102 supports in part our adoption of these CRS rules.

D. First Amendment Issues

Our new rules will maintain with some changes the current rules' standards for CRS displays. We will continue to prohibit vendors from offering biased primary displays and extend that prohibition to secondary displays, thereby incorporating in the rules the vendors' existing agreement that secondary displays will not be biased. We will also maintain the requirement that vendors must include the airline flight delay statistics in their primary displays and the bar against the use of on-time performance statistics in ranking flight displays (§ 255.4(e), adopted in our 1987 rulemaking on airline delays). On the other hand, we will end the prohibition against a vendor's display of any other delay information. With the exception of the rules on the use of the on-time performance statistics, the rules neither prohibit vendors from offering whatever information they wish in their CRS displays, as long as flights are ranked and edited without bias, nor prescribe the use of any specific factors in constructing such displays.

CEI nonetheless claims that our proposed regulation of CRSs would violate the First Amendment right of free speech. According to CEI, CRS displays are commercial speech entitled to First Amendment protection, and we have allegedly failed to show that a need exists for regulating the vendors' speech that would override their First Amendment rights. However, CEI does not explain how the rules would keep agents and travellers from receiving useful information. In addition, no vendor, airline, or travel agency party argues that the rules will violate its free speech rights. In our view, our rules on display bias do not violate anyone's First Amendment rights.

In light of our finding that the rules against display bias are necessary to prevent potentially misleading speech, our rules are consistent with the First Amendment. The prohibition of display bias prevents vendors from editing and organizing their displays in a manner that gives vendor flights an unwarranted display position, thereby causing travel agents to book flights that are not necessarily the best suited for their customers. Despite the arguments by CEI and others, we find that display bias does not provide travel agents or their customers with useful information.

The First Amendment allows governments to regulate deceptive or misleading speech. The Court thus stated in *Central Hudson Gas & Electric Co.* v. *Public Service Comm'n*, 477 U.S. 557, 563 (1980):

> [T]here can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity. The government may ban forms of communication more likely to deceive the public than to inform it.

Accord, Zauderer v. *Office of Disciplinary Counsel*, 471 U.S. 626,638 (1985). Since our regulations of display bias are intended to prevent deceptive or misleading messages, they do not violate the First Amendment.

Even if our rules prohibit some communications which are not misleading or deceptive, they would still be permissible under the First Amendment. The federal government may constitutionally regulate speech in the course of regulating a field of economic activity; restrictions or prohibitions on certain types of speech imposed by the antitrust laws, securities laws, and labor relations laws are thus constitutional without requiring justification under the commercial speech standard. See, *e.g.*, *SEC* v. *Wall Street Publishing Institute*, 851 F.2d 365, 372 (D.C. Cir. 1988), *cert. denied*, 489 U.S. 1066, *citing, inter alia, NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 912 (1982). *See also NLRB* v. *Retail Store Employees*, 447 U.S. 607 (1980). Our restrictions on display bias come within the bounds of permissible economic regulation, for we are prohibiting display bias in part to prevent unfair methods of competition and to carry out the United States' obligations under bilateral aviation agreements with foreign governments.

Furthermore, the rules would pass muster under the usual test for determining whether a government regulation of commercial speech is permissible under the First Amendment, even if display bias were not deceptive or misleading. The Supreme Court held in *Central Hudson* that a government may restrict commercial speech that concerns lawful activity and is not misleading, if the government has a substantial interest and if the restrictions directly advance that interest and are no more extensive than necessary to serve that interest. *Central Hudson, supra*, 447 U.S. at 566. *See also Board of Trustees* v. *Fox*, 109 S. Ct. 3028 (1989).

We have a substantial interest in CRS displays, even aside from their potential for deceiving the public, because a vendor's use of a biased display would cause a substantial diversion of revenues that would significantly reduce the ability of non-vendor carriers to compete. The restrictions imposed by our rules directly advance our interest in preserving airline competition, for the rules prohibit bias. The restrictions are no greater than necessary to carry out that purpose because they merely prohibit bias without dictating to the vendors what criteria must be used (or may not be used) in ranking and editing flight information. While CEI complains that we failed to consider other alternatives to the rules against display bias, it cites only one possible alternative, a requirement that travel agents tell customers which CRS is being used. As explained below, no party in this proceeding sees any merit in such a proposal as a replacement for other CRS rules. Such a requirement would provide little useful information for most consumers and would not help travel agents, whose ability to find the best service for their customers is hindered by biased displays.

VI. Procedural Issues

We tentatively determined in the NPRM that we could use notice-and-comment rulemaking procedures to adopt final CRS rules. 56 FR 12603. As we pointed out, the Seventh Circuit affirmed the Board's use of such procedures in its CRS rulemaking. *United Air Lines* v. *CAB, supra*, 766 F.2d at 1119–1121. No party challenges that determination as to the rules we are adopting (some parties argued that a formal hearing would be required before we could adopt certain other rules, but that issue is moot).

Several parties filed requests for leave to file reply comments, supplemental comments, and comments out of time. We will grant all such motions. We are also treating as comments a number of other documents submitted for the record without motions for leave to file, including several travel agency letters.

Even though our basic choice of procedures is uncontested, several other procedural issues require discussion.

A. Adequacy of Record

We have given the parties ample opportunity to present their views on the issues of whether we should readopt CRS rules and, if so, which rules should be adopted. We issued an ANPRM in this proceeding, received comments on the ANPRM (and allowed several parties to file reply comments), issued an NPRM with our tentative findings, authorized parties to file comments and reply comments on our proposals, and

again allowed parties to file additional pleadings.

In addition to relying on the parties' comments, we have been relying for certain purposes on our past detailed studies of the CRS business and its impact on airline marketing, the *1988 CRS Study* and the *Marketing Report* (published in early 1990), as well as on the Board's findings and the evidence submitted by Justice in the Board's rulemaking. Since the basic structure of the CRS and airline businesses has not changed significantly since the board conducted its rulemaking, we have found the earlier studies and the Board's analysis helpful in analyzing the potential competitive and deception problems that could arise if we allowed the rules to expire. Obviously the Board's analyses and even our 1990 study are not particularly useful in considering other issues in this proceeding, such as the alleged need for stronger rules on equal functionality, in light of the continuing technological developments in the CRS business in recent years.

Nonetheless, despite the parties' ability to file several rounds of comments and our limited use of earlier CRS investigations, Covia, United, and KLM charge that the record in this proceeding is too out-of-date to allow us to adopt new rules

We disagree with the assertions that the record is too old to be useful in deciding what CRS rules are necessary. First, the CRS industry's essential features—for example, the agencies' reliance on CRSs, the need of every carrier to participate in each system, and the unlikelihood of new entry—have remained the same for the last eight years. Furthermore, the developments cited by KLM—for example, the European Community's adoption of CRS rules—were considered by us. See, *e.g.*, 56 FR 12588, 12600.

More importantly, we have been liberal about allowing parties to file comments after the end of the formal comment period, a number of parties have filed such comments, and indeed we specifically invited parties to submit material updating the record if they thought recent developments were relevant to the issues, 57 FR 22645 (May 29, 1992). The parties accordingly have been able to update any of the evidence and analyses used in this proceeding.

B. Confidentiality of Reliability Information

In order to obtain additional information on one of the major issues in this proceeding, the extent of architectural bias, we directed each of the vendors to file information on the reliability of its system's transactions and related issues. Order 91–8–63 (August 30, 1991). The vendors' submission of reliability information has generated several requests for confidential treatment of the filings. When Northwest initially asked us to obtain the information from all vendors, it submitted information on the reliability of PARS, the system owned in part by Northwest, for which it requested confidential treatment. Covia opposed the request. We stated that we would rule on the motion later. Order 91–8–63 at 6.

Covia and System One asked for confidential treatment of their responses to the question asking for the total number of airline bookings made, measured by the number of segments booked, for each CRS service during specified periods of time (question 4 in App. A to Order 91–8–63), and Worldspan requested confidential treatment for all of its responses. We will rule on the requests for confidential treatment by a separate order.

VII. Specific Rule Proposals

Our general findings on the need for CRS rules and our authority for adopting them do not resolve the issue of which rules should be adopted. In discussing why we are or are not adopting specific rules and proposed rules, we will follow the same order followed by the NPRM. As a result, the order of the major issues is as follows: (i) The scope of the rules' applicability, (ii) the use of third-party hardware and software by subscribers and their use of one terminal to access several systems, (iii) display bias, architectural bias, and related issues, (iv) booking fees, (v) marketing information, and (vi) subscriber contracts. Given the complexity and number of issues, we will not discuss the less important issues raised in the comments.

A. Readoption of the CRS Rules

Due to the expiration date set by the CRS regulations, a provision designed to force us to reexamine the need for the rules, the first issue here is whether there is any need for the current rules. Justice and the great majority of the other parties in this proceeding contend that those rules are still essential (and should be strengthened). Only CEI, American, Covia, United, Kleit, and some travel agencies contend that CRS rules are unnecessary. We find that CRS rules remain necessary to prevent deception and a substantial reduction in airline competition, as explained in our discussion of the competition and deception issues. The more difficult issues in this proceeding concern whether the additional or stronger rules are needed. Those issues are discussed below.

B. The Coverage of the Rules

The first rule at issue concerns the scope of the regulations. The current rules cover the operation within the United States of CRSs owned by airlines and used by travel agencies for obtaining information, making bookings, and issuing tickets on passenger air transportation. The rules do not cover computer systems that provide some but not all of these CRS functions, systems not affiliated with an airline, and systems not used by travel agencies (that is, systems used by corporate travel departments and home computer users). 56 FR 12604–12605.

The limited scope of the rules results from the Board's reasoning on the need for CRS rules. Airline-owned CRSs posed a threat to airline competition because their owners had the incentive and ability to use the systems to weaken the competitive position of other airlines. The efficiencies provided by CRSs—their ability to enable travel agents to obtain information quickly, make bookings, and issue tickets—caused travel agents to rely on them in selling airline services. The Board therefore had its rules apply only to airline-owned CRSs, not to all services providing airline information and booking capabilities to travel agencies, and excluded the one non-airline system then operating. Similarly, given the significance and nature of the travel agencies' role in the marketing of airline tickets to the public, the Board excluded CRS operations from the coverage of the rules if the systems were not being used by travel agencies. Board Rule, 49 FR 32548, 32549.

In the NPRM we tentatively determined to readopt these limits on the rules' coverage without change. 56 FR 12604–12605. ARTA, ECAC and several foreign airlines contend that the rules should govern systems without an airline affiliation, systems used by corporate travel departments and home computer users, and systems without all CRS functions (*e.g.*, systems that cannot issue tickets). Several parties state that the rules should cover new databases developed in the future, even if they do not have an airline affiliation. America West and Midway ask that systems used by corporations and home computers and systems offered by non-airlines should also be covered. Southwest contends that non-airline systems should be covered, while System One wants the rules to govern systems used by corporate travel

departments. KLM argues that we should prohibit bias in CRSs used by corporate travel departments and available through home computers. The American Automobile Association argues that non-agency CRS users should be regulated to avoid putting travel agencies at a competitive disadvantage.

Two parties argue against expanding the scope of the rules: Covia, which asserts that the rules should not apply to foreign systems accessible by U.S. subscribers through a U.S. system, and the National Business Travel Association (NBTA), which seems to suggest that the rules should not apply to corporate travel departments.

Finally, the United States Tour Operators Association (USTOA) contends that the rules should cover tours (packages of air transportation and land arrangements), not just passenger air transportation.

1. Coverage of Non-Airline Systems

We will again limit the rules' coverage to airline-affiliated CRSs used by travel agencies. This decision flows largely from our basis for readopting the rules. CRSs present potential competitive and deception problems because the systems are owned or affiliated with carriers who have the incentive (and the ability) to use their control to prejudice the competitive position of other airlines. As we explained in the NPRM, no non-airline system operates in the United States and none appears likely to enter the CRS business in the future, given the various barriers to entry that exist, including the agencies' reluctance to use any system not marketed by a major airline. 56 FR 12594. In addition, if a non-airline firm did not operate a CRS, it would not have an incentive to use the system to capture additional airline bookings. Such a firm would also have to market its system on the basis of its value as a stand-alone system. See, e.g., Marketing Report at 49.

Although several parties urge us to apply the rules to non-airline systems, none of them has shown that a non-airline system is likely to enter the CRS business in this country. Their concern that at some time a non-airline system might become viable is at this point theoretical and not an adequate basis for adopting rules. Some parties express concern that a vendor could circumvent the rules by selling its system to a non-airline firm subject to a condition that the latter firm bias the displays in favor of the former vendor. Such a transaction seems unlikely, particularly since we are amending the rules to make them applicable to systems marketed by a carrier or its affiliate.

2. Systems Without All CRS Functions

CRSs require regulation because their combination of capabilities—the provision of information on almost all airline services and the ability to quickly make bookings and issue tickets—causes travel agents to rely on them to determine what airline services are available and to book flights. Because the systems are so efficient, airlines cannot practicably provide these information and transaction capabilities to agencies through any alternative means.

Delta, several foreign carriers, ECAC, and ASTA urge us to apply our rules to systems and databases lacking one or more CRS functions. However, any system that does not provide both airline information and a booking and ticketing capability is not likely to be relied upon by any agency as either its primary information source or means of booking airline seats. Although admitting that such a system would be no more than a supplementary system, ASTA nevertheless asks that we regulate them. ASTA Reply at 20. We are unwilling to do so at this time, since such systems would not be used as an agent's primary information source. We note, moreover, that we do not now regulate other sources of airline information, such as the Official Airline Guide.

We recognize that our rules on third-party hardware and software will enable new firms to provide information on travel services to travel agencies. Indeed, our expectation that new databases will appear is a major reason for our adoption of those rules, as explained below. Although some parties urge us to regulate any new databases, we decline to do so for the reasons stated above. An agency will only subscribe to such a service if it is a useful addition to the CRS services already purchased by the agency, so the market should prevent abuses from occurring. On the other hand, our rules impose some detailed requirements on the display of airline services and on other system operations, and we prefer not to burden new entrants with those regulations unless there is a clear need for doing so.

We also expect that our rules on third-party hardware and software will enable carriers to create direct links between their internal reservations systems and travel agency CRS terminals. If an agent accessed a carrier's internal system through such a direct link and the internal system provided the information and functions of a CRS, it would become subject to the rules. SAS, a carrier that wishes to create such direct links, states its willingness to do so in accordance with the rules. SAS Comments at 19. If the internal system does not meet the definition of a "system", it would not be subject to the rules.

Under the definition of "system", the rules apply to a reservations system that provides information on carriers besides the owner or affiliate and that provides a booking and ticket issuance capability, even if only on the carrier that owns or markets the system. We think that applying the rules to direct links like that contemplated by SAS will be overly burdensome and unnecessary, since such a link is not likely to serve as an agency's primary tool for obtaining airline information and making bookings and since the rules would bar the carrier from paying travel agencies to use its direct link for bookings. We will therefore modify the current definition by adding the condition that a "system" charge carriers other than the owner for system services. If a carrier providing a direct link does not charge other carriers, it should be a type of service that need not be regulated, since the carrier owner would be unable to obtain the type of compensation relied upon by the existing systems for their profitability.

3. Systems Not Used by Travel Agencies

We also will not apply the rules to systems used by persons other than travel agencies. First, systems used by corporate travel departments should not require regulation, because corporations operating their own travel offices can choose which system they will use and control their employees' airline bookings. This being the case, there is no need to apply the bias rules to CRSs used at such locations, since the companies should be able to protect themselves. Similarly, other carriers should be able to compete with a vendor for a corporate travel department's airline business and thereby make the application of the rules unnecessary. The Board similarly saw no reason to extend the rules to systems used by corporate travel departments. Board Rule, 49 FR 32549. Although the American Automobile Association complains that applying the rules only to CRSs used by travel agencies will give other ticket sources a competitive advantage, AAA Comments at 3, it has not provided a factual basis for this assertion.

Although some vendors provide airline information and booking capabilities to home computer users, Marketing Report at 14, we will not make our rules applicable to systems

available to home computer users. In our competition study, we found that home computers accounted for a very small proportion of all airline bookings. Marketing Report at 14. Nothing in this record indicates that that proportion has increased significantly. More importantly, the record has no evidence on the manner in which CRS services are marketed to persons using home computers and no proof that vendors have used home computer systems in a way prejudicial to airline competition. In view of these evidentiary gaps, we could not reasonably apply the rules to CRS services directly offered to consumers.

4. CRS Display of Tours

USTOA asks that we require the vendors to provide better information on tour packages. Tour operators package air travel with land arrangements and, according to USTOA, compete with the airlines (including the vendors) and travel agencies. USTOA alleges that the CRSs discriminate against the products of independent tour operators by giving preference to the vendors' in-house tour products. In addition, the systems' failure to provide adequate information and functionality for tour packages hampers the marketing of independent tours.

We will not expand the reach of our rules to cover tour products. USTOA has not shown in detail how the systems fall short in handling tour products, how they discriminate in favor of the carriers' own tour operations, or how the vendors' alleged practices affect competition in marketing tours. Without facts like these, we have no basis for regulating the CRS's handling of tour packages.

In addition, USTOA misunderstands our role when it argues that we should impose rules on the vendors because they assertedly have fallen behind the Europeans in developing CRS capabilities for tour products. Telling the vendors (or anyone else) how they should operate their business is outside our authority in this proceeding unless we find a specific competition or consumer deception problem requiring action under section 411. If there is a demand for better CRS information and functionality on tour packages, either the vendors or other firms will meet that demand.

5. Foreign CRSs Provided to U.S. Subscribers

Unlike most of the parties commenting on the scope of the rules, Covia contends that their scope is too broad, for assertedly the rules should not apply to foreign systems made available to U.S. subscribers. Covia alleges that it may wish to give U.S. subscribers access to its European affiliate, Galileo. Covia Reply at 19. Worldspan, on the other hand, supports applying the rules to foreign systems available to U.S. subscribers. Worldspan Comments at 34–35.

In our view, if a U.S. travel agency can gain access to a foreign CRS that is within our definition of a "system", that CRS should comply with our rules. Otherwise a vendor like Covia, for example, could evade the rules by allowing (or encouraging) its subscribers to access its foreign affiliate. Covia has shown no reason why applying the rules to foreign systems would be unfair or burdensome. Our rules would apply only to their operations within the United States. We note, moreover, that the major foreign systems—Amadeus and Galileo—operate under the more stringent European rules, so they should be able to comply with our rules without difficulty.

C. Definitions

The rules' proposed definitions drew little comment except for the proposed terms "system owners" and "system vendors" (and except for the definitions delineating the scope of the rules discussed above). Under our proposal, a "system owner" would be any carrier that held an equity interest in a system or that had an affiliate that owns such an equity interest, while a "system vendor" would be any carrier or its affiliate that controlled or operated a system. Under § 255.2 of the proposed rules, every carrier that owns, controls, operates or markets a system would be responsible for ensuring that the system complies with the rules. However, the rules make system vendors directly responsible for following the regulations. A system owner has an additional obligation: it must participate in the features of other systems, to the extent such participation is commercially reasonable, and provide other systems complete and accurate information on its fares and services under proposed § 255.7.

American, Covia, and USAir suggest that the definition of "system vendor" should be clarified, since the proposed rule's wording assumes that each system is controlled by a single airline or airline affiliate. They suggest that the applicability of the rules to Worldspan would be unclear, since that system has no majority owner. American is concerned that any reduction in the amount of United's ownership could raise a question about the applicability of the rules, since Covia would also have no majority owner. Wordspan and Aer Lingus, on the other hand, contend that the definition of "system owner" is too broad, since it would require mandatory participation in other systems by carriers with a very small share of a U.S. CRS (for example, the Asian carriers who are partners in Abacus). American and Covia, however, assert that all owners should be deemed system owners.

In view of the ambiguities noted by America, Covia, and USAir, we will modify the wording of the rules. As American suggests, we will make the entity directly responsible for carrying out the rules "the system," not the "system vendor." As a result of that change, we need not create the term "system vendor." We will leave in place the proposed obligation that every carrier owning, controlling, operating, or marketing a system must ensure that the system operates according to the rules.

The term "system owner" is primarily relevant to the requirement of mandatory participation in other systems but is used elsewhere in the rules as well (for example, in defining "participating carrier"). As a general matter, we agree with American that every owner should be considered as a system owner for most purposes. The only exception concerns the mandatory participation requirement. This rule is intended to prevent a carrier from limiting its participation in competing systems so that agencies at its hubs—agencies that usually need the best information and transaction capabilities on that carrier—will be forced to subscribe to its system. Given this intent, applying that definition to every carrier with an ownership interest in a CRS, no matter how small, is unnecessary. We will therefore adopt Aer Lingus' proposal that carriers owning less than five percent of the equity of a system will not be deemed system owners. A carrier with such a small ownership interest is unlikely to have the incentive or the ability (particularly if it is a foreign carrier) to limit its participation in competing systems in order to further the marketing of the system in which it holds an equity interest.

We will also adopt American's proposal that both direct and indirect ownership will be used in determining whether a carrier is a system owner, but not Covia's suggestion that one carrier's equity interest in another carrier with a CRS interest should be excluded in determining whether a carrier is a system owner. The latter proposal could enable a major carrier to evade compliance with the rules by transferring its CRS interest to an affiliated carrier.

D. Third-Party Hardware and Software; Access to other Databases

1. Introduction

In the NPRM we proposed rules allowing subscribers to use third-party hardware and software in conjunction with their CRSs, subject to the condition that the third-party products must be compatible with the system, and allowing subscribers to access more than one system and other databases from a single CRS terminal. We tentatively found these rules necessary and procompetitive, because the vendors restricted their subscribers' ability to use third-party hardware and software and denied U.S. subscribers the ability to access other databases from their CRS terminals, a denial that made it relatively impracticable for agencies to use more than one system. We also observed that the vendors' restrictions on the use of third-party products appeared to be tying restrictions that could be unlawful under the antitrust laws. 56 FR 12605–12608.

Most commentors urge us to adopt the rules. System One, Delta, Southwest, America West, Midway, Alaska, ASTA, ARTA, Woodside, Hewins Travel, Aer Lingus, Air France, Alitalia, Sabena, SAS, Varig, and Virgin Atlantic support the third-party hardware and software proposal, while Alaska, America West, Midway, ASTA, ARTA, Hewins Travel, Aer Lingus, Air France, Alitalia, Sabena, SAS, Varig, and Virgin Atlantic support the proposal allowing agencies to access different databases from a single terminal. Southwest takes no position on the latter proposal, since it assumes that the third-party product rule will allow agencies to run a link between their CRS terminals and other databases, such as internal airline reservations systems.

Several of these commentors strongly support the proposals. America West, for example, calls them "beyond question, the most important step the U.S. government has ever taken with respect to enhancing the competitive environment for computer reservations systems." America West Comments at 15. Equally importantly, Southwest and two foreign carriers state their eagerness to use the rules to set up direct links between their internal reservations systems and travel agency CRS terminals so that agents can book them without going through a CRS. Woodside suggests, moreover, that travel agencies are likely to use such direct links to internal carrier reservations systems, which would put downward pressure on booking fees. ARTA notes that the travel agencies' ability to use third-party hardware and software will make other regulations (for example, on the terms of subscriber contracts) less necessary.

However, not all parties endorsed the proposals. American, USAir, Air Canada, and TAP oppose the third-party hardware and software proposal, while Covia, United, Delta, USAir, Air Canada, and TAP oppose the proposal allowing agents to access different databases from a single terminal. To a large extent, however, their opposition stems from the mistaken assumption that the proposals would limit the vendors' freedom to operate their systems and even place an affirmative obligation on vendors to modify their CRSs to facilitate agency use of a single terminal to access different systems.

Although Justice had supported similar proposals in its comments on the ANPRM, 56 FR 12605–12606, its comments on the NPRM assert that the rules on third-party products and giving agencies the right to access several systems from a single terminal will not be effective and will not solve the major CRS problems, which Justice considers to be supracompetitive booking fees and architectural bias. Justice Comments at 10–17.

We have determined to adopt the proposals with one significant change. We find them necessary and desirable on competitive grounds. While we will give all agencies the right to use third-party software and hardware if they wish, we will not require vendors to allow subscribers to use vendor-owned equipment to access other databases and systems. If a subscriber is using terminals owned by the vendor, we think the vendor should have some ability to control the use of its equipment.

While we seek to give agencies the opportunity to use third-party hardware and software and to access multiple systems and databases, we will require vendors neither to modify their systems to facilitate the use of third-party products nor to provide support for such products. We will preserve the vendor's right to protect the integrity of its system against its subscriber usage of incompatible equipment and programs.

2. The Vendors' Restrictions on Third-Party Products

Because subscribers are increasingly using PCs as their CRS terminals, they have the technical ability to obtain and process information and access several systems and databases from a single terminal. The vendors, however, impose contractual restrictions on their subscribers which have thwarted the agencies' ability to use existing technology to exercise the full capability of their PC terminals.

We found in the NPRM that each vendor supplies the equipment used by agencies as CRS terminals, that each controls the use of that equipment and prohibits its subscribers from using that equipment to access other systems or databases, and that each restricts the ability of its subscribers to use third-party software and hardware in conjunction with its CRS terminals. 56 FR 12605–12606. We further found that the record indicated that vendors unreasonably denied agencies the ability to freely use third-party hardware and software in conjunction with their CRS equipment, as shown by comments filed by Justice and Megadata, and that vendors never allowed U.S. subscribers to access more than one system from a single terminal. 56 FR 12606.

No one has denied that vendors bar their U.S. subscribers from accessing more than one system from a single terminal. American and Covia nonetheless claim that they are willing to allow agencies to use third-party software, and American recently announced its creation of programs to help independent firms design third-party products for use in conjunction with Sabre. June 30, 1992, Letter of Richard J. Fahy, Jr. While American's new programs are welcome, they still assume that the independent firms should work with American in developing their products rather than doing so on their own.

Furthermore, the comments on the NPRM have provided additional evidence that vendors unreasonably restrict the use of third-party hardware and software by their subscribers, even though they allow subscribers to use some products produced by independent firms. For example, TravelPro, a firm that developed a program and communications capability allowing an agent to access any system from a single terminal, has shown that no vendor would allow its subscribers to use its product except as a back-office system (that is, a system performing recordkeeping and accounting functions). No vendor contended that TravelPro's product would damage the integrity of its system. Instead, Covia stated that it was declining to consider TravelPro's request for certification of its product as a front-office program for Apollo subscribers largely because "at this time we are not in a position to understand the advantage to our customers" of the product's use. TravelPro Reply, Attachment B. Similarly, Worldspan told TravelPro that it would consider certifying its product only if so requested by a

subscriber or potential subscriber, that it therefore would not act on TravelPro's request for certification, and that no supplier of third-party products certified by Worldspan was permitted to advertise the certification. TravelPro Reply, Attachment C.

Travel Facilitators, a Florida travel agency, charges that neither System One nor Worldspan will allow the agency to access its system unless the agency uses equipment purchased from the vendor. Jonathan Parker, a lawyer with computer expertise who recently negotiated a subscriber agreement for a Florida travel agency, alleges that Sabre arbitrarily refused to let the agency use certain equipment in conjunction with Sabre even though the equipment was clearly compatible.

These vendor practices have nothing to do with a vendor's legitimate interest in preventing the use of incompatible equipment and programs. Furthermore, travel agencies should have the right to determine for themselves whether a product like TravelPro's would be advantageous. Vendors should not be able to usurp a subscriber's right to determine what is in its best interest.

3. Benefits of Terminating the Restrictions

We find that eliminating the vendors' unreasonable restrictions on the use of third-party hardware and software and on using a CRS terminal to access other databases will promote competition in the CRS and airline industries, enable agents and travellers to obtain more accurate and complete information on airline services, enable travel agencies to operate more efficiently, and promote technological innovation. These benefits can be obtained, moreover, without imposing any obligations or costs on the vendors. And a rule establishing the agencies' right to use third-party hardware and software should reduce the need for detailed regulation of other CRS issues.

While the rules on third-party hardware and software (and on using one terminal to access different systems) will all be pro-competitive, their benefits are somewhat different. We will begin by discussing the third-party software rule.

In the NPRM we identified the primary benefit of giving agencies the freedom to use third-party software as the ability to use programs to reconfigure the display of information provided by a CRS in ways which may better reflect customer preferences than the display algorithms now used by vendors. If agencies could create better displays, they would be more likely to choose the best possible airline services for their customers. 56 FR 12605–12606. Third-party software can also enable agencies to automate various steps in selling air transportation and thereby increase their efficiency. Marketing Report at 22.

Enabling agencies to use third-party hardware would similarly improve agency efficiency, since agencies could obtain equipment that would perform CRS and related functions more efficiently than the equipment provided by the vendors. See, *e.g.*, Megadata ANPRM Comments. In addition, if agencies owned their own terminals, they could use them to access several different systems and databases, which would enable new travel information firms to arise. Carriers could also set up direct links between their internal reservations systems and travel agency terminals that would bypass the CRSs entirely.

In theory, of course, agencies can access several different systems now, and carriers could establish links between their internal reservations system and travel agencies. However, each vendor's refusal to allow any subscriber to use the same terminal to access its system and another system or database makes it uneconomical and impractical for most agencies to use more than one system, since the agency must then pay for additional equipment and its agents must continually switch between different terminals. See, *e.g.*, ASTA Comments at 18; Woodside Comments at 2. While there are other reasons deterring agencies from using multiple systems (for example, the expense of training agents to use different systems and additional recordkeeping costs), the vendors' insistence that a separate terminal must be acquired for each system accessed by the agent is a substantial impediment to the use of multiple systems. 56 FR 12607. No commentor has claimed the contrary.

If agents had easy access to different systems and databases, they could acquire more accurate and complete information on the airline services available for their customers. The agents' ability to switch between systems would encourage vendors to compete more on the quality and range of their information and system capabilities, 56 FR 12606–12607, a factor that should further reduce architectural bias. Furthermore, three carriers—Southwest, SAS, and Varig—contend that they would use a third-party hardware and software rule to establish direct links between their internal reservations system and agency CRS terminals. That would increase travel agency efficiency and save costs for the carriers, since they would pay no CRS fees on bookings made through such links. SW Reply at 3–4; SAS Comments at 19; Varig Comments at 23. The carriers' ability to enable agents to bypass CRSs for some bookings could also hold down booking fees, since fee increases could cause carriers to establish more direct links with more agencies. TravelPro Reply at 5, 11; Woodside Comments at 9. Finally, the agents' ability to use the same terminal to access different databases would enable new databases and systems to do business in this country, something that is otherwise unlikely to happen due to the existing vendors' hold on travel agencies. See, *e.g.*, ASTA Comments at 18.

We also believe that these rules will promote technological innovation. Independent firms have created a number of programs that benefit travel agency CRS users, and in some cases (TravelPro being only one example) the vendors have tried to stifle their use. See, *e.g.*, Hewins Reply Comments at 6; Megdata ANPRM Comments.

Moreover, these rules allowing agencies the ability to use third-party hardware and software and to access several databases from a single terminal would make CRS practices consistent with those in other information businesses. For example, computer information services like Compuserve and Prodigy do not restrict their subscribers' ability to buy equipment of their choosing, and we doubt that any such service tries to prohibit its subscribers from accessing competing services. ARTA Comments at 7. As we noted in the NPRM, our rules will be comparable to the FCC decisions barring telephone companies from arbitrarily denying their customers the ability to connect third-party equipment with the telephone system. 56 FR 12605.

The rules will additionally make our regulations on this subject consistent with the European rules, which specifically deny vendors the authority to impose unreasonable restrictions on the use of third-party hardware by their subscribers.

American points out that our authority under section 411 is limited to the marketing of airline transportation. American Comments at 17. While we are modifying our rule accordingly, we trust that vendors will not seek to deny subscribers the ability to use their equipment (unless the vendor owns the equipment) to access non-airline databases, given our findings on tying.

4. Antitrust Analysis

Because they hamper airline and CRS competition, the vendors' restrictions on

third-party hardware and software and on using one terminal to access different systems and databases are comparable to tying and exclusive contract practices prohibited by the antitrust laws. In the NPRM we stated, "Unreasonable denials of agency requests to use hardware and software supplied by independent firms could well be considered an unlawful tying of equipment sales or rentals to CRS services in violation of the antitrust laws," a statement supported by the citation of *Jefferson Parish Hospital* v. *Hyde*, 466 U.S. 2 (1984). No vendor has challenged our tentative finding that their practices could be unlawful tying arrangements. Given the effects of the vendors' practices, we think that the vendor restrictions are contrary to the principles of the antitrust laws. However, as is true of our other findings on unfair methods of competition, we are not finding that the vendors' conduct does violate the antitrust laws. No such finding is required for our adoption of the rules.

As the Court recently reaffirmed in *Eastman Kodak Co.* v. *Image Technical Services*, 60 U.S.L.W. 4465 (June 9, 1992), a tying arrangement—a seller's agreement to sell one product only on condition that the buyer purchase a second product from the seller (or promise not to buy the product from another seller)—is a per se violation of the Sherman Act if the seller has appreciable market power in the tying product and if the arrangement affects a substantial volume of commerce in the tied product. Tying arrangements are objectionable because they force buyers to accept conditions that they would not accept in a competitive market. See, e.g., *Jefferson Parish Hospital*, 466 U.S. at 12–15.

The vendor restrictions are comparable to illegal tying arrangements. First, each vendor is willing to provide CRS services to travel agents only on the condition that a subscriber either purchase equipment and software from the vendor or agree not to purchase such products from others without the vendor's consent. As Justice suggested in its comments on the ANPRM, the vendors appear to impose these restrictions in part to keep agencies from buying third-party programs that compete with programs offered by the vendors and in part to deny agencies the ability to offset the factors in their displays that make it harder to find better services offered by other carriers. 56 FR 12606. Secondly, CRS services and hardware and software are separate products that could be and would be sold separately if the vendors allowed it. Thirdly, the vendors have the market power in the tying product—CRS services—to compel agencies to accept the condition that no hardware or software can be acquired from other sources without the vendor's approval. In several cities, such as Dallas-Fort Worth, one airline's dominant position in the airline market makes its CRS the only attractive system for most agencies. In other markets, such as Chicago, only two systems will be attractive for most agencies, since only those systems are marketed by carriers with a major share of the local airline market. Fourthly, the tying arrangements affect a substantial volume of commerce, given the number of CRS terminals used in this country. For example, there were over 62,000 Sabre terminals in use at the end of 1988, 56 FR 12605.

In addition, the vendor restrictions at issue are similar to the kind of exclusive dealing contracts that violate the Sherman Act, given the market share of each vendor, the widespread use of the restrictions in U.S. subscriber contracts, and the lack of any apparent justification for them. *Cf. Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320 (1961); *Standard Oil Co.* v. *United States*, 337 U.S. 293 (1949); *see also Jefferson Parish Hospital, supra*, 466 U.S. at 44–45 (O'Connor, J., concurring).

Finally, the vendors' denial of the use of their terminals for access to other systems and databases could be viewed as comparable to monopolization and attempted monopolization practices prohibited under the Sherman Act. As discussed above, in several cities a vendor's market share of the CRS market exceeds 60 percent. By restricting their subscribers' ability to use alternative systems and databases, vendors with market power are protecting their market share against competition. Furthermore, each vendor's subscribers (with few exceptions) are unlikely to use other systems or means of information to learn what services are available and to book them. By unreasonably limiting its subscribers' ability to use their existing equipment to access other information sources, each vendor maintains its market power over access to the agencies using its system.

5. Lack of Justification for the Restrictions

According to the vendors, the proposals should not be adopted for several reasons. First, at least some claim that they are liberal about allowing agencies to use third-party hardware and software. However, as shown above, those claims are contrary to the record, and no vendor claims that its subscribers may use CRS terminals to access more than one system.

Vendors assert, with some merit, that restrictions are necessary to protect the integrity of their systems, since incompatible software could damage a system. In that regard USAir cites a problem caused by an agency's use of incompatible software in connection with its access to USAir's internal reservations system. USAir Comments at 2–3. We agree that vendors are entitled to some assurance that agencies will not use products that are likely to damage a system. We are accordingly adopting a condition allowing them to bar the use of third-party hardware and software unless its use is certified by the vendor.

We see no justification, however, for allowing vendors to exercise unlimited discretion over the use of third-party products. As shown, the record demonstrates that the vendors have denied permission for the use of third-party products on incompatibility grounds (or imposed onerous certification requirements) where there is no likely incompatibility. See, e.g., Parker Comment; TravelPro Reply. ARTA, moreover, points out that Compuserve and Prodigy do not impose compatibility restrictions on their subscribers, even though they operate similar computer information networks. ARTA Comments at 7.

Vendors also claim that the proposals will impose burdens on their operations, but these claims are largely based on a misunderstanding of our proposals and are overstated. Vendors, for example, claim that the use of third-party hardware and software by subscribers will increase the costs of servicing CRS equipment and can downgrade the quality of the CRS service received by a subscriber. Even if this claim is true (and no vendor cited evidence in support of it), that could not justify the broad restrictions placed by vendors on the use of those products. Moreover, vendors can charge agencies for increased service costs.

The vendors have expressed other concerns that require a clarification of the intent of the rules. American is concerned that it may no longer be free to upgrade its system, as it has been doing, because its improvements might make useless the third-party products used by its subscribers. Our rule will not have that effect. Subscribers must bear the risk that system improvements will make programs and equipment acquired from independent firms unusable.

Vendors also portray our proposal as a requirement that they become

responsible for creating the communications links and software needed for an agent to access more than one system from a single terminal. We never intended to make the vendors responsible for implementing the links, and we see no reason why any effort would be required on their part. TravelPro's product, for example, would give agents access to all systems from a single terminal without any need for additional work by the agent's original vendor. Furthermore, Southwest and others point out that a carrier or a database firm can easily make its services available to a travel agent by running a communications line into the agent's terminal. Any messages between the agent and the carrier or other firm would travel on that line and would never enter the CRS' network. SW Reply at 3–4. We are imposing no obligation on vendors to modify their systems or to provide communications links with other databases. We have reworded the rules in several respects to clarify this.

Moreover, we find that neither rule will significantly interfere with the economics of the CRS business. CRS vendors should be able to do business without compelling subscribers to acquire their equipment and software. In fact, we understand that some U.S. vendors provide CRS services to subscribers overseas through a terminal used for access to the national carrier's system. 56 FR 12607; SW Comments at 3–4. Similarly, the CRSs are likely to remain the only services providing agents with availability and other information on all airline services and the ability to make bookings, so other databases accessed by agents will only supplement the CRSs. Given the capabilities provided by the systems, we doubt that travel agents will stop making substantial use of them. Indeed the vendors claims that few agents will make use of the freedom to access other databases, a claim that is consistent with out findings that the rule should have little impact on the vendors' business.

We think that each vendor can preserve the efficiency of its operations by adopting pricing structures ensuring that it will receive compensation for making CRS services available to agencies that also use other systems and make some bookings directly with a carrier. While Southwest urges us to prohibit productivity pricing on the ground that it may discourage agencies from using direct links with the internal reservations systems of carriers like Southwest to make bookings, almost all commentors support productivity pricing, including many supporters of the third-party hardware and software rules. We will therefore not prohibit it (but we are prohibiting minimum-use clauses, which unreasonably interfere with agency usage of multiple systems). We are, moreover, revising the language of the rules to make it clear that vendors may charge subscribers on a transaction basis, as requested by American and Covia. American Comments at 11; Covia Comments at 41.

While Covia fears that the agencies' ability to switch between systems could cause great variability in the volume of a system's transactions, Covia Comments at 46–47, we find that unlikely, especially given the vendor's claims that few agencies will wish to use a switch capability. The systems, moreover should have devices that can protect them against a surge in usage. Covia Comments at 41; Travel Facilitators Comment.

Furthermore, while our rules will prevent an agency's current vendor from limiting the agency's use of non-vendor equipment to access other databases and systems, the agency will still have to obtain another vendor's consent before it can begin using that vendor's CRS services. ASTA Reply at 22, n.7; TravelPro Reply at 1. While our NPRM suggested the possibility of restricting a second vendor's ability to deny CRS services to an agency using another system, we have determined not to adopt any such rule. A vendor would violate the rule, however, if it refused to provide CRS services to an agency because the agency is using third-party products or is accessing other systems and databases from a single terminal.

According to American and others, travel agencies will use third-party software to create biased displays. We recognize that some agencies may choose to introduce bias into their CRS displays, but travel agencies will lose business if they give customers poor or incomplete advice. Therefore, as discussed below in connection with proposals to ban the use of biased displays by travel agencies, we do not expect many agencies to use third-party software in a way that would result in customers receiving inaccurate or biased information.

With respect to our proposals that agents should have the option of accessing other systems or databases from a single terminal, the vendors claim that we should not adopt it because most agencies will be uninterested in using that freedom. See *e.g.*, Covia Comments at 42–43. This argument is extraordinary—while the vendors elsewhere ask that we rely solely on market forces to resolve alleged CRS problems, here they argue that we should decide what travel agencies should want. We prefer to rely on market forces where we can. Travel agencies can then decide for themselves whether they want to use the ability to link their terminals with different systems. We believe that a number of them will want that freedom, as shown by the support of ASTA and ARTA for our proposals.

6. Conditions on Compatibility

In the NPRM we proposed to allow vendors to ensure the compatibility of third-party software and hardware used by travel agencies. However, given the complaints about past abuses of certification process, we proposed to limit the vendors' authority to disapprove the use of third-party hardware and software to those products whose use would damage the system and to bar unreasonable certification procedures. We also asked whether we should create a presumption that a product is compatible with a system's functioning unless shown otherwise. 56 FR 12606.

The commentors generally support limiting the vendor's ability to establish unreasonable and expensive certification requirements but dislike the presumption proposal. A number of parties suggest that the best solution for encouraging compliance with compatibility requirements would be the adoption of a rule requiring vendors to publish the specifications of their systems so that developers of third-party products can ensure that compatibility of their software and hardware. See *e.g.*, American Comments at 13; ASTA Comments at 20; ARTA Comments at 7; TravelPro Reply at 6.

We have determined to preserve the vendor's ability to disallow the use of incompatible third-party products, subject to the limits proposed in the NPRM, but with a rule requiring the publication of specifications rather than the creation of a presumption of compatibility. The vendors have not refuted our tentative conclusions that existing certification procedures can be unduly time-comsuming and expensive, and the TravelPro documents cited above demonstrate that the vendor's current procedures are burdensome and arbitrary.

In the NPRM we asked whether we should require vendors to publish a list of the products certified for use on each system. 56 FR 12606. We will not adopt such a requirement, since a firm whose products have been certified can advertise the fact (obviously Worldspan's prohibition against a

supplier's advertising a certification would violate our rule against unreasonable restrictions on the use of third-party products).

We will endorse the proposal that vendors be required to provide specifications to third-party vendors of hardware and software so they could develop products that would be compatible. This rule should be less burdensome than the creation of a presumption of compatibility and should facilitate the development of third-party hardware and software.

7. Vendor-Owned Equipment

We originally planned to grant travel agencies the freedom to access other systems and databases from any CRS terminals they used, whether the equipment was owned by the agency or the vendor. We have determined to limit the rule to equipment owned by the agencies. If an agency is using terminal equipment owned by the vendor, the vendor should have some control over its use, particularly since the vendor is entitled to compensation for the use of its property and since its charges for the property presumably assume the agency's use of the terminals for a certain level of bookings. Since an agency can obtain the ability to access other systems and databases from a terminal if it buys its own equipment, it can evade any vendor's restriction on the use of vendor-owned equipment. Thus our rule allowing agencies to use third-party hardware should eliminate the exclusionary effects of the vendors' current conditions on the use of their equipment.

8. Transition Period

We have determined to create no special transition period for the rules on third-party hardware and software. The restrictions against the use of third-party products are contrary to the spirit of the antitrust laws and to the Board's original findings that agencies should have the ability to use multiple systems if they wished. Moreover, vendors have been on notice since March 1991 that we were considering the adoption of these rules. They have had an opportunity to adjust to their likely impact. The record also indicates that relatively few agencies will take immediate advantage of the options created by these rules. See *e.g.*, ASTA Comments at 19.

Our decision to make these rules effective on the effectiveness of the entire rule will not, of course, excuse an agency from its obligations to pay for equipment currently being leased from a vendor.

9. Non-Vendor Payments to Agencies

The rules now prohibit each vendor from conditioning its payment of a commission to a travel agency on the agency's use of that carrier's system. Section 255.6(d). The rule neither covers non-vendor carriers nor would prevent a vendor or non-vendor carrier from paying an agency to use a direct link between the agency's CRS terminals and the carrier's internal reservations system. For now we will maintain this rule. If a carrier wants to cause travel agencies to use a direct link, it is likely to compensate them for doing so, a result which should make economic sense for the carrier, which then saves the CRS booking fee. However, until we see how the third-party product rules operate in practice, we do not wish to allow vendors to pay agencies to use one CRS rather than another.

E. Vendor Participation in Other Systems

In the NPRM we proposed a rule requiring each system owner to participate in other systems and their enhancements, to the extent that the price for such participation was commercially reasonable, if the system owner participated in such an enhancement in its own system. That requirement would include the obligation to provide other systems with complete, timely, and accurate information on all services and fares that it made generally available to the subscribers of its own system. We based this proposal on our concern that some vendors were handicapping the marketing efforts of other CRSs by refusing to participate in enhancements offered by the competing systems. 56 FR 12608.

Covia, Worldspan, America West, USAir, ARTA, and Swissair support the proposal, but ECAC, Air France, and Lufthansa oppose it. Delta supports the proposal that system owners provide complete information to other systems and supports in principle the mandatory participation proposal, but it asserts that the latter proposal should be drafted carefully to avoid denying vendors the ability to bargain over participation in enhancements offered by other systems.

We have determined to adopt the proposed rule. The rule is necessary, for some system owners do not participate in enhancements in other systems and do not provide complete information on their fares and services to competing CRSs, as we tentatively found in the NPRM. No one has argued that system owners never limit their participation in other systems as a weapon to obtain more subscribers at their hubs, and no one has denied the potential usefulness of such tactics. While a system owner will lose bookings from subscribers in another system when it reduces the level of its participation in that system, the loss in airline bookings can be outweighed by the gain in CRS subscriptions (and the likely increase in its airline revenues from the new subscribers). We conclude that this requirement is justified on competitive grounds, since it will keep a CRS owner from using its dominance of a regional airline market as a tool for obtaining dominance in the area's CRS market.

We do not believe that this rule will require us to review the reasonableness of vendor fees for participation in enhancements or of the quality of service provided by participation in an enhancement. We expect that the refusal of many carriers to use a particular enhancement should conclusively demonstrate that the terms for participation are not reasonable because the price and other expenses are too high. On the other hand, if every carrier but one system vendor participates in a particular enhancement, that would strongly suggest that the latter's refusal to participate is not based on a determination that the terms of participation are unreasonable.

Since, as discussed above, we have revised the definition of "system owner" to exclude carriers with a small equity interest in a system, few carriers will be subject to the requirements of this rule.

This rule will also be consistent with our decisions that U.S. airlines would be denied a fair and equal opportunity to compete in a foreign country if the dominant carrier in that country denied subscribers using the U.S. carrier's system the authority to use it to issue tickets. *American Airlines* v. *British Airways*, Order 88-7-11 (July 8, 1988). Having taken that position as to the obligation of a foreign carrier dominating its homeland market, we should require U.S. carriers holding a dominant market share in some areas to participate fully in competing U.S. CRSs.

For the same reasons, we will require system owners to provide complete and accurate information on their own services and fares to other systems. A system unable to obtain such information from a competing CRS owner will be unable to compete effectively for subscribers in that carrier's hub. See, *e.g.*, Delta Comments at 38; Long Island Travel Agents Ass'n Comments.

We do not intend to impose a rigid participation requirement on system owners. Nonetheless, Delta has stated a

concern that the rule could reduce a system owner's ability to negotiate for better terms and features in another system's enhancements. We believe that the rule would not have such an effect. It states that a system owner would not have to participate in another system's enhancement if the terms of participation were not commercially reasonable. Delta mistakenly assumes that the only relevant terms would be the fees charged by the other system. If, however, as Delta suggests, the enhancement or feature offered no significant benefits for the participating carrier or its travel agency distributors, then the terms of participation might well be unreasonable. If participation in the enhancement or feature required a significant investment in software or communications links by the system owner, that would also be relevant to determining whether the terms for participation were commercially reasonable. If the feature contains other flaws, participation would also not be required. Moreover, we find impracticable Delta's proposed solution, a rule that would require a system owner's participation in a particular enhancement or feature of another system only if the owner's unwillingness to participate resulted from its intent to handicap the marketing of the other system. We believe that our rule should be relatively easy to apply. Delta's proposal, on the other hand, could require the resolution of relatively difficult issues of intent.

Delta is additionally concerned over the possibility that a vendor's bundling of enhancements will, as a result of this rule, force owners in other systems to participate in enhancements against their will. Delta has not explained, however, why it would refuse to participate in an enhancement if the overall terms of the package of features was available on reasonable terms. If the inclusion of the objectionable enhancement made the terms for the whole package unreasonable, then Delta could legitimately decline to participate in the package.

As indicated, the rule will also require each system owner to provide complete, accurate, and current information on its services and fares. Delta and Worldspan urge us to broaden an owner's obligation by requiring each of them to provide competing systems with all of the information it provides its own system. According to Delta, a system owner can give its own system a competitive advantage by providing seat maps and frequent flyer information updates only to its own system. Delta Comments at 38–39. Despite Delta's reasoning, we will not extend the requirement so far. The requirement of system owner participation in enhancements on commercially reasonable terms should prevent such practices as a system owner's refusal to provide seat map information to other systems, since seat selection is an enhancement in CRSs. Requiring owners to provide all information, on the other hand, would create an open-ended obligation that we are unwilling to impose, particularly since carriers traditionally do not provide information on subjects like frequent flyer information to other systems.

A related matter involves complaints that some carriers offer corporations special discount fares that may be booked only through an agency using their CRS. American and Covia charge Northwest with using such a tactic to compel agencies to use Worldspan. American Comments at 36; Covia Comments at 90. On the other hand, System One and Aer Lingus claim American also offers fares that may be booked only through Sabre. System One Comments at 7; Aer Lingus Reply at 9–10. Hewins similarly complains that vendors are coercing travel agencies into taking a vendor's system by telling corporate clients that they can obtain corporate discounts only through an agency using the vendor's system. Hewins Final Comments at 2. Obviously a vendor's tactic of telling businesses that certain discount fares may be obtained only through its subscribers could be an effective means of using a dominant share of the local airline market as a tool for obtaining a larger share of the local CRS market. If the fare was widely available to corporations, this tactic would resemble an unlawful tying of discounted airline service and CRS usage. On the other hand, American has noted that an airline offering some corporations special discount fares typically will make them available only through its own system. American Reply, App. C, at 9. At this time we will not adopt a general prohibition against an airline's tying the availability of special corporate fares to use of its affiliated system for booking the fares. If, however, an airline widely offers a discount fare to businesses on the condition that they use its CRS for booking the fare, that would be a violation of the requirement that commonly available fares be made available to all systems.

Worldspan asks that the language of the rule be clarified so that a system owner's denial of certain information to some subscribers does not exempt it from providing that information to other systems. We are modifying the rule to require each system owner to provide other systems with the fare and service information that is "commonly available" to its own system's subscribers, that is, available to the majority of a system's subscribers. This reflects our intent that fare and service information available to a large proportion of a system's subscribers (*e.g.*, the majority of subscribers within the category of large agencies) must be made available to other systems as well. Information made available to a few subscribers—for example, discount fares that few agencies are authorized to sell—would not have to be disclosed to other systems.

F. Display Bias

Before the Board adopted the CRS rules, vendors biased their displays of airline services in favor of their own flights and against the flights of competitors. The bias took two forms: Whenever possible each vendor placed some of its own flights at or near the top of the first screen provided travel agents, even if competitors offered flights better suited for the customer's travel needs, and each vendor eliminated many flights of competing carriers, *e.g.*, by not using competitors' hubs as possible connecting points when constructing displays of connecting services. Board ANPRM, 48 FR 41177. These practices led to consumer deception, since agents were led to book customers on the vendor's flights when competing carriers offered better service. Board NPRM, 49 FR 11646; Board Rule 49 FR 32547.

The Board accordingly prohibited display bias in each system's primary display. This prohibition, contained in § 255.4, bars the use of criteria directly or indirectly related to carrier identity in ranking and editing flights and in choosing connecting points. Each system must also use at least nine points in constructing displays of connecting services, unless in a particular market fewer than nine points meet the carrier's editing criteria for displaying connecting services.

We have modified the display rules twice since the Board's sunset. First, because vendors began using secondary displays that resurrected the bias barred in primary displays by the Board's rules, we obtained each vendor's agreement that it would not offer biased secondary displays to its subscribers. Marketing Report at 82. Secondly, our rulemaking on flight delays and airline service quality imposed a requirement on the systems to display certain delay information and a prohibition against

the display of other delay information. 52 FR 34056 (September 9, 1987), adding § 255.4(e) to the CRS rules in part 255. Except for the requirements imposed by that rulemaking, the rules give the vendors the discretion to select criteria for ordering and editing flight displays, as long as they are not based on carrier identity.[3]

Our NPRM proposed to maintain the current rules with some changes. We proposed to increase the required number of connecting points and to make the rules applicable to secondary displays as well as each system's primary display. Since the accuracy of CRS displays depends on the quality of information provided by participating carriers, we tentatively decided to adopt a requirement that such carrier must provide complete and accurate information. In addition, we asked for comment on whether we should regulate the creation of biased displays by travel agencies. On the other hand, we chose not to adopt numerous suggestions for additional changes, including rules that would prohibit the use of various factors in ranking and editing displays. 56 FR 12608–12613. After considering the comments, we have determined to readopt the current rules with the changes proposed by the NPRM.

Before discussing the specific changes sought by parties to the general prohibition against display bias, we must address the need for keeping that rule. As explained earlier, display bias can mislead travel agencies and their customers and can substantially reduce airline competition. Justice and most other parties contend that display bias should remain prohibited. While a few argue that display bias should be allowed, we found their arguments unpersuasive, as discussed above. We accordingly find that the current rule against display bias should be readopted.

However, while most parties agree on the need for a prohibition against biased displays, they disagree on what constitutes bias. Various carriers, for example, urge us to outlaw the use of service features for ranking and editing flights in CRS displays that, according to other parties, give travel agents useful advice on available airline services. The display bias issue as a result involves a lengthy discussion of a number of specific ranking and editing criteria.

1. Secondary Displays

The current display bias rules apply to a primary display of schedule, fare, and availability information offered by each vendor but do not apply to other displays (secondary displays) of such information offered by the vendor. After the Board rules took effect, some vendors introduced secondary displays that were equivalent to their previous biased displays; vendors also provided travel agencies the ability to force their agents to use only the biased secondary displays. Because these biased displays became controversial, each vendor agreed with us that it would stop offering such secondary displays to its subscribers. Marketing Report at 82.

In the NPRM we proposed a rule ratifying this agreement, since biased integrated secondary displays created by a vendor could recreate the competitive and consumer harm that was to have been ended by the rule against biased primary displays. 56 FR 12611. Alaska, System One, Worldspan, and Air Canada support the proposal, although System One and Covia have concerns about its effects on access to internal reservations system displays and Covia claims the rule is unnecessary.

We see no reason not to adopt our proposal. While Covia suggests that a ban on biased primary displays should be sufficient to protect the public interest, experience has proven the contrary. Covia, moreover, does not claim that biased secondary displays benefit travel agents or consumers.

We intended that the rule would apply to all integrated displays of airline information, not just the basic availability display. As shown by Sabre's omission of Continental's new discount fares from its display of low fares, a vendor can prejudice competition and hide information from the public by creating misleading displays of fare information. Applying the prohibition against bias to such displays is consistent with our goal of ensuring participating carriers equal treatment in the systems when that can be done without imposing substantial costs on vendors.

Because we agree with System One and Covia that our rule should not prohibit subscribers from gaining access to a carrier's internal reservations display (for example, by using direct access), we will modify the rule to make this clear, as suggested by System One (Comments at 24). However, under our rule on enhancements, each vendor must make available to all participating carriers the ability to provide its subscribers with access to their internal systems. We will make this requirement explicit, as suggested by Air Canada. Air Canada Reply at 12–13.

2. Prescribed Algorithm

ECAC, British Airways, KLM, and Varig are dissatisfied with the discretion given vendors by the current rules to choose the criteria used in ranking flights, subject to the prohibition against the use of criteria directly or indirectly relating to carrier identity. In arguing that giving the vendors this discretion is unfair and injures competition, these parties seize upon our statement in the NPRM that vendors now may be choosing seemingly neutral display criteria that will improve the position of their flights in the display. 56 FR 12609. They argue that we must prescribe an algorithm for ranking services, preferably the European Community's algorithm (the algorithm is the set of rules for editing and ordering a system's displays). The European Community algorithm requires the display of all nonstop flights first, followed by all single-plane flights with stops, with all connecting flights being shown last. On the other hand, Worldspan and Delta oppose our creation of an algorithm to be followed by all vendors.

We see no reason to dictate how flights will be ranked in CRS displays. As we stated in the NPRM, when vendors choose criteria benefiting the display of their own services, those criteria will give the same advantage to similar services operated by other carriers. We reasoned that maintaining the vendors' current discretion seemed unlikely to create substantial competitive disadvantages for other carriers. In addition, we doubted that there was a single best way for displaying airline services. Justice also believed that any effort by us to create a standard algorithm would be unwise. 56 FR 12609.

The comments urging us to impose a standard algorithm on all systems have not persuaded us that this reasoning was wrong. Moreover, we do not believe it is appropriate or necessary to engage in a micromanagement of the systems, which would be the result of granting this and other requests by parties for additional and more detailed CRS display rules. For example, the required use of elapsed time in European systems gives a high ranking in displays of transatlantic connecting services to connections including a Concorde flight, even though relatively few travellers would be interested in such service due to the cost. This experience confirms our view that it would be difficult—and perhaps impossible—to construct an algorithm that always displays the best service first.

[3] The vendors, however, agreed they would not use elapsed time to rank nonstop flights, as noted in the NPRM. 56 FR 12610.

Furthermore, subscriber demands seem to be causing vendors to offer travel agents alternative displays using some algorithms similar to the European standards. For example, Covia states that it has added an ECAC display due to agency demands. Covia Comments at 59. American created a display ranking nonstop flights first, other single-plane flights second, and connecting flights last as part of a settlement of a CRS dispute with British Airways, Order 88–12–35 at 3 (December 15, 1988), and Varig points out that both System One and Worldspan offer subscribers the choice of a European-type display. Varig Comments at 20–21. These developments suggest that there is little need to prescribe an algorithm. More importantly, as Delta points out, "[A] prescribed algorithm would reduce the multiple algorithm choices available today from CRS vendors." Delta Comments at 19.

In addition, the parties requesting a standard algorithm have not refuted our tentative conclusion that a vendor's discretion to choose an algorithm was not causing significant competitive harm. They complain that certain ranking factors, primarily the on-line preference, downgrade the position of their flights in the displays, but they do not show that the vendors' discretion in general has caused competitive harm (the on-line preference issue is discussed below). While the Orient Airlines had submitted a series of examples purporting to show that vendors discriminated against their flights, we found the study to be unpersuasive for several reasons. 56 FR 12609, n.5. Although the Orient Airlines continue to argue that the study is compelling evidence, Orient Airlines Comments at 36–37, we disagree. The Orient Airlines have not provided enough information to convince us that the study demonstrates that the vendors' algorithms are badly biased. However, our rules should address some of the Asian carriers' concerns, such as the arbitrary exclusion of connect points used by non-vendor carriers.

On the ground that the vendors' algorithms prejudice foreign carriers by using ranking criteria that give an unwarranted preference to U.S. carrier services, several foreign carriers contend that we will deny their fair and equal opportunity to compete if we do not prescribe an algorithm or at least bar such U.S. CRS practices as the on-line preference. However, the right to a fair and equal opportunity to compete does not guarantee foreign carriers the exact same opportunities that U.S. carriers have. See, *e.g., Visit USA Fare/Export Inland Contract Rate Investigation*, Order 84–8–55 (August 10, 1984) at 36–37, *aff'd, Japan Air Lines* v. *Dole*, 801 F.2d 483 (D.C. Cir. 1986). As pointed out there, for example, U.S. and foreign carriers must each contend with the practical advantages of route structure and market identity that competing carriers have within their own countries. As a result, we find unpersuasive the complaints of several foreign carriers that the United States will violate their bilateral rights if we do not adopt all their proposals.

As an alternative to a prescribed algorithm, the Orient airlines have proposed a requirement that each vendor demonstrate that its ranking and editing criteria meet consumer demands. Orient Airlines Comments at 49–51. While this proposal would avoid our dictation of an algorithm for all systems, it would still obligate us to review and second-guess carrier decisions about ranking and editing criteria, a task that would be burdensome for us and would be unlikely to lead to significant changes in the vendors' display algorithms. Since our rules require vendors to publish their display criteria (and since we are tightening that requirement), the Orient airlines can see what criteria are being used by each vendor, can complain to the vendor about objectionable criteria (and enlist subscriber support on criteria that make an agent's search for the best service more difficult), and can complain to us.

3. On-Line Preference

A number of foreign carriers have long complained about the preference given on-line connections over interline connections in the primary displays of all CRSs except Sabre and DATAS II. In the NPRM we tentatively concluded that we should not bar the use of such a preference, for it is consistent with the preference of most travellers for on-line service. We noted, however, that the vendors' use of the on-line preference had caused a series of disputes with foreign governments and that the preference had some troubling aspects. We accordingly invited parties to comment further on this issue. 56 FR 12609–12610.

Covia, United, TWA, and Alaska support our tentative decision on the on-line preference. On the other hand, Aer Lingus, Air France, British Airways, Lufthansa, the Orient airlines, Sabena, SAS, Varig, and Virgin Atlantic urge us to prohibit the use of the preference. They claim that the preference overstates the advantages of on-line connections, at least for international flights; that it gives U.S. carriers an unfair advantage over foreign carriers, since U.S. carriers can provide on-line connecting service to U.S. points beyond U.S. gateways while foreign carriers cannot; and that allowing the preference to continue would violate the United States' obligation under its bilateral aviation agreements to ensure that foreign carriers have a fair and equal opportunity to compete.

We have determined to make final our tentative decision to allow use of an on-line preference. Travellers usually do prefer on-line service, as conceded by several opponents of the preference. See, *e.g.*, ECAC Comments at 5; British Airways Comments at 7. See also United Reply at 13–14. The opponents' complaint involves whether the size of the display advantage accurately reflects the degree of consumer preference for on-line service. Adopting their proposals of allowing an on-line preference only when the on-line service is superior would require a detailed management of the systems that would be unwise and impracticable. We note, moreover, that these commentors have not proposed a guideline for determining when on-line service would or would not deserve a preferential display position.

Furthermore, the U.S. vendors no longer universally use displays that include an on-line preference. Sabre has no display with such a preference, and the other three systems make displays available to travel agents that do not give on-line connections better treatment than interline connections. Varig Comments at 20–21; Covia Comments at 59. Although Varig complains about the treatment of its interline connections on the Apollo display using an on-line preference, Varig notes that Apollo offers agents a display without an on-line preference. Varig Comments at 22, fn.

Even if the on-line preference gives U.S. carriers an advantage in obtaining international traffic from interior U.S. points, foreign carriers have similar opportunities in their homelands. Their services to the points beyond their homeland gateways receive a preference in U.S. systems and presumably thereby attract more passengers to those points due to the preference. In addition, code-sharing agreements between a U.S. carrier serving an interior U.S. point and a foreign carrier providing transoceanic transportation can obtain the benefits of on-line preferences. SAS, for example, notes that it has benefited from the preference as a result of its code-sharing agreement with Continental, SAS Comments at 4, although SAS opposes the on-line preference.

While we had been concerned that the on-line preference could prejudice the competitive position of smaller U.S. carriers, 56 FR 12610, we note that Alaska supports the preference, Alaska Comments at 34, and no U.S. carrier opposes it. This suggests that the preference does not create a significant competitive handicap for smaller U.S. carriers.

4. Change of Gauge Flights

Some carriers operate "change of gauge" flights—flights using a single flight number for the entire trip although passengers transfer from one aircraft to another at an intermediate stop. CRSs usually display change-of-gauge flights as direct flights involving one or more stops, not as connecting flights, and in the past did not always disclose the change in aircraft. In the NPRM we proposed to require CRS displays to give notice of the change in aircraft, a requirement that would be consistent with our existing enforcement policy on this issue of notice. At the same time, we declined to adopt proposals that change-of-gauge flights be listed as connecting flights rather than as direct flights. As we pointed out, change-of-gauge service differs from typical connecting service, because the airline will usually hold the second aircraft for the arrival of the first aircraft in change-of-gauge service. 56 FR 12610.

TWA supports our tentative decision to allow the display of change-of-gauge services as direct flights, subject to the notice requirement, and American and Alaska support the notice requirement. Aer Lingus, British Airways, SAS, Swissair, ARTA, and the Dallas-Fort Worth Parties assert, however, that change-of-gauge flights should be treated as connecting flights, not as direct flights with a stop.

We have determined to make our tentative decision final. Since no one questions the desirability of the proposed rule requiring notice of any change in aircraft, the only controversy concerns our view that we should not bar the display of change-of-gauge flights as direct flights. We are not convinced that additional regulation is needed. In particular, the proponents of additional regulation have not questioned our finding that change-of-gauge service is different from connecting service. See also SAS Comments at 15, fn.; TWA Comments at 7.

Of course, while we are not prohibiting the display of change-of-gauge flights as direct flights, we are not prescribing how such services should be treated. Any vendor can choose to treat them as connecting services in any or all of its display formats if it wishes. We also note that each U.S. system already offers a display that does treat them as connecting services in accordance with the European display rules. TWA Comments at 7.

British Airways contends that our notice requirement by itself will be inadequate, because vendors cannot always tell from the schedule information provided by participating carriers that particular flights involve a change of aircraft. British Airways Comments at 10. However, we are requiring participating carriers to provide sufficiently accurate and complete information to vendors to enable the systems to display flights in conformity with our rules. Our rule will therefore require carriers operating change-of-gauge service to mark those flights so that they can be displayed accurately.

5. Padded Displays

Because some parties believe that vendors unfairly list some flights several times (*e.g.*, twice if the flight is operated as a code-sharing flight, since then the flight is listed separately under the code of the carrier operating the flight and the code of its partner), they have urged us to adopt a rule prohibiting such "screen padding." We declined to take such action in the NPRM, largely because the vendors themselves should have enough interest in providing a useful display to travel agents that they would curb abuses in this area. 56 Fed. Reg. 12610.

In response to the NPRM, Alaska, America West, Aer Lingus, the Orient airlines, and ARTA request a prohibition against screen padding.

We will not adopt a prohibition or limitation on screen padding. Listing a flight several times may affect the display position of competing flights and make the display less useful for travel agents, but it also allows each participant in a code-sharing agreement to establish its own market presence. Those parties supporting a rule on screen padding typically seek to eliminate the perceived problem by prohibiting funnel flights, change-of-gauge services, and code-sharing flights. We do not find that the record supports a prohibition of screen padding on competitive grounds, especially since each provides some benefits (*e.g.*, code-sharing encourages the code-sharing partners to offer better service by coordinating their flight connections).

6. Funnel Flights

A related issue involves so-called funnel flights. A funnel flight is a flight (*e.g.*, a transatlantic flight) connecting with a number of other flights (*e.g.*, from the U.S. gateway to interior points in the United States) where a single flight is used for each connecting flight combination, with the result that the transatlantic flight is listed under a variety of flight numbers in different city-pair markets. Our NPRM did not address the issue of the display of funnel flights, but a number of parties—Delta, Northwest, Air France, Lufthansa, Sabena, Varig, Virgin Atlantic, and the Dallas-Fort Worth Parties—urge us here or in a docket created by American's petition for a rulemaking on this issue (docket 47546) to prohibit the display of funnel flights. In their view such services should be displayed as connecting flights.

We will not adopt a rule on the display of funnel flights in this proceeding. The issues raised by funnel flights can be better considered in the rulemaking requested by American, since the parties opposing funnel flights believe that the alleged deception problems created by the use of funnel flights are not limited to CRS displays. This broader issue cannot be considered in this rulemaking, which is limited to CRS issues, and the CRS aspect should not be decided separately from related funnel flight issues.

7. Code-Sharing Flights

CRS displays use a two-letter code to identify the airline holding out the service (for example, American's code is "AA"). For many years carriers have had cooperative service arrangements that include code-sharing whereby one carrier uses the other carrier's code in information sources like CRSs and the Official Airline Guide. Such arrangements began with substitute service agreements between USAir and the Allegheny Commuters. EDR–470, 49 FR 9430,9431 (March 13, 1984). Our rules prohibit a vendor from refusing to display a carrier's services on the ground that it is using another carrier's code, 14 CFR part 256, a provision not subject to the expiration date of part 255.

In order to ensure that travellers receive adequate notice on the identity of the carrier operating a flight under a code-sharing arrangement, seven years ago we adopted a policy statement, 14 CFR 399.88, that states that the sharing of a single airline designator code by two or more airlines would be considered a deceptive and unfair practice unless the airlines give reasonable notice of their code-sharing arrangement. Such notice must include, among other things, identifying flights operated by one carrier under another carrier's code in the carriers' written

schedules and in schedules given the Official Airline Guide and CRSs.

Although Varig and ARTA ask that the Department prohibit or more strictly regulate the display of code-sharing flights in CRS, we see no need to take such action. In our opinion our policy statement has taken care of the potential deception created by code-sharing arrangements. Furthermore, code-sharing arrangements often provide for a better linking of flights between the code-sharing partners and for better coordinated services that result in travellers receiving improved service. See *e.g.*, PSDR-65, 49 FR 43709, 43711 (October 31, 1984). Restricting the use of code-sharing arrangements could therefore lead to poorer rather than better service.

8. Use of Elapsed Time

Several parties ask us to adopt a rule on the use of elapsed time as a factor in ranking flights in CRS displays, but their positions are totally opposite. On the one hand, American asks that we cut back the use of elapsed time as a factor for ranking flights. On the other hand, ECAC, the Orient airlines, Sabena, and Virgin Atlantic argue that we should require the use of elapsed time as a ranking factor.

We find both positions unpersuasive and will adopt no rule either prohibiting or mandating the use of elapsed time in CRS algorithms.

In the NPRM we rejected American's argument that the use of elapsed time should be banned, because we saw no harm from it and because travellers and travel agents often use elapsed time as an important factor in determining which multistop flight or connecting flight is the best. We pointed out as well that an American document submitted by the Justice Department indicated that ending the use of elapsed time as a ranking factor would benefit American by improving the display position of its flights in other CRSs. 56 FR 12610-12611.

Despite our rejection of that request, American thereafter filed a separate rulemaking petition (docket 47762) asking for a rulemaking to outlaw the use of elapsed time as a criterion for ordering CRS displays (except to the extent that a flight is at least 90 minutes shorter than another flight). In its comments American contends that elapsed time should not be usable unless the difference in flight times is at least 30 minutes. American Comments, App. D at 6. American's petition claims that restrictions on the use of elapsed time are needed to discourage carriers from publishing unrealistic schedules. American, however, does not address our observation that its earlier proposed ban was self-serving, since it would improve the display position of American flights in those systems currently using elapsed time as a ranking factor. United, Worldspan, ECAC, and the Orient airlines filed answers opposing American's petition.

Since the issue presented by American's rulemaking petition in docket 47762 has already been considered in this proceeding and is closely related to the other issues in this proceeding, we will rule on that petition in this final rule.

American has again failed to justify its proposal that a factor of importance to consumers—elapsed time—should be substantially eliminated from the ranking of flights in CRS displays. Although American claims that a restriction on the use of elapsed time is important to keep carriers from providing false flight times in order to improve the display position of their services, American has not shown that carriers are engaging in such deceptive practices to any significant extent. Our rules on the disclosure of on-time performance data have discouraged the use of unrealistic schedules. Given American's repeated statements that we should allow market forces to operate in the CRS industry (including with respect to CRS displays) (see, *e.g.* American Supplemental Comments), we would be acting contrary to American's stated principles if we ordered the other vendors to reduce the importance of elapsed time in their algorithms.

Other parties, as noted, argued that we mandate the use of elapsed time as a crucial ranking factor. These parties—ECAC, the Orient airlines, Sabena, and Virgin Atlantic—say their services receive unfair treatment because their flights typically offer travellers a shorter elapsed time than those operated by other carriers and that the systems' failure to give adequate recognition to elapsed time also denies travellers an adequate opportunity to choose the best service.

However, we also see no need to require a greater use of elapsed time. While elapsed time is important to consumers, we are reluctant to specifically prescribe how vendors should rank flights without a showing that such action is essential. We do not believe such a showing has been made here.

9. On-Time Performance as a Ranking Factor

In our 1987 rulemaking on flight delays, we adopted several provisions in order to provide accurate on-time performance information to the public while avoiding both the release of misleading information and an over emphasis of on-time performance data that could encourage airlines to take undue chances with the safety of their operations. The rules adopted then require each carrier to report monthly to each vendor the percentage of time that each of its domestic flights arrived on-time. 14 CFR 234.4. Vendors must include that information on individual flights in their primary displays, 14 CFR 255.4(e), but they may not use the information to rank flights, 14 CFR 255.4(e)(2). The rules also prohibit vendors from displaying any information about on-time performance that is not based on data reported to us. 14 CFR 255.4(e)(3). When these rules were adopted as part of our rulemaking on flight delay issues, CEI sought judicial review of them, but the court refused to consider CEI's arguments since it did not have standing to challenge the rules. *Competitive Enterprise Institute* v. *U.S. Dept. of Transportation*, 856 F.2d 1583 (D.C. Cir. 1988).

CEI now demands that we delete the prohibition against the use of on-time performance standards as a basis for ranking individual flights. American urges us to require all vendors to include them in ranking flights. American Comments, Ex. D at 5. We will deny that request but we will end the current prohibition against the display of any on-time performance data other than the data whose display is required by the Department's rules.

In asking us to remove the prohibitions on the use of on-time performance data as a ranking factor and on the publication of other performance data, CEI wrongly contends that administrative convenience was the only reason for adopting them. Instead we took that action for two reasons: we did not want to encourage carriers to take chances in maintaining and flying their aircraft in order to avoid being stigmatized for having unreliable schedules, and we wished to reduce the vendors' ability to bias their displays against participating carriers by misusing on-time information, even though we also wished to provide accurate information to travellers on on-time performance.

We are reluctant to change here the rules adopted in the 1987 rulemaking. A number of parties commented on the issues in that proceeding while only two parties—American and CEI—have mentioned these rules here, and neither has provided any factual information on the issues. *See* American Comments, Ex. D at 4-6; CEI Comments at 4-6. Thus no other airline and no travel agency party

apparently sees any reason to loosen the restrictions on the display of on-time performance data. Nonetheless, we have determined that CEI is correct in contending that the rule's prohibitions may be broader than necessary, so we will reduce the scope of the rule. On the other hand, we do not believe that allowing algorithms to use on-time information would provide significant useful information to travel agents and their customers that would overcome our reasons for adopting the restrictions on algorithms. We will therefore maintain the prohibition against ranking flights on the basis of the on-time statistics.

American contends that on-time performance should be a factor used in ranking flights in CRS displays because it will reward carriers with dependable service and will provide more useful information to travel agents, who would like to recommend reliable flights to their customers. CEI agrees that vendors should be able to use important information like on-time performance in constructing CRS displays.

We cannot agree that allowing the use of on-time performance figures in CRS algorithms would provide additional information of significant value to travel agents and their customers. After all, the display itself must provide the actual statistics. Using those figures in ranking flights, on the other hand, would not convey that information to the agent, since other factors are used in ranking flights and the travel agent cannot tell the degree to which a flight's ranking reflects the reliability of its schedule rather than other factors. While allowing algorithms to use on-time arrival statistics to rank flights could benefit carriers with more reliable schedules, American has not shown that the former problem of unreliable schedules is still so prevalent that such action is necessary.

Furthermore, allowing vendors to use on-time performance figures for ranking flights would create a possibility that vendors would abuse their discretion and use the figures in a way that disproportionately benefited their own flights. A number of carriers submitted comments in the 1987 delay rulemaking that argued against giving vendors the discretion to use the figures because doing so would create new opportunities for biased displays. 52 FR 34065–34066, 34068 (September 9, 1987).

However, the current rules prohibit vendors from providing any on-time performance information in any display unless it is derived from on-time performance information filed with us. While no vendor has supported CEI's demand that this prohibition be terminated, we have decided that there appears to be no reason to maintain it. While our delay rule carefully considered whether on-time performance data could be used in CRS algorithms, the rule gave relatively little explanation for this prohibition against the use of other information. The prohibition is too broad because a vendor or other participating carrier should be able to use a system's bulletin board feature (the feature that enables carriers to provide information through the CRS to travel agents) to provide information in this area on its own flights, as CEI suggests. Any display of on-time performance information, however, will remain subject to the requirements of section 411 of the Act and to each vendor's obligation not to discriminate against other carriers in the display of information and provision of services.

10. Separate Algorithm for International Services

Our rules currently require each vendor to use the same algorithm in all markets, both domestic and international. However, we have granted limited exemptions from this requirement to allow Sabre and Worldspan to use somewhat different algorithms for the display of international services. See, *e.g.*, Orders 90–8–32 (August 14, 1990) and 90–7–34 (July 13, 1990). Nevertheless, when Worldspan requested open-ended exemption authority to establish a separate display algorithm for international services, we denied the request. Order 90–11–55 (November 28, 1990).

Several parties—American, USAir, ECAC, Aer Lingus, KLM, Swissair, and Varig—urge us to allow vendors to use one algorithm for domestic services and a different algorithm for international services, particularly if we do not accept foreign carrier proposals on such issues as the on-line preference and change of gauge service. Worldspan does not object to the request, but United opposes it.

We considered similar proposals in the NPRM, where we noted that the Board explained that it was requiring each vendor to use the same algorithm in all markets to keep vendors from varying "their display criteria market-by-market to maximize the sales on their flights and continue the very harm this rulemaking was meant to address." The Board declined to allow vendors to use different algorithms for domestic and international service, since the evidence did not justify such a departure from the general requirement. 56 FR 12610–12611. When we addressed this issue as a result of American's request for an exemption allowing Sabre to use a different algorithm for international markets, we held that American had not shown that a difference in treatment was warranted. Order 88–9–51 at 8–10 (September 23, 1988). See also Order 90–11–55, *supra*. In the NPRM we therefore tentatively declined to allow vendors to use one algorithm for domestic services and a different one for international services.

Giving vendors unlimited discretion to use different algorithms for domestic and international services continues to appear unwise. We are afraid that such a rule would give vendors some opportunity to vary their displays to give themselves an advantage over their competitors. Furthermore, as noted above, the vendors' practice of offering displays with different algorithms to their subscribers should alleviate the concerns of the foreign carriers. While we are not giving vendors blanket discretion to create a different algorithm for international services, we will continue to give careful consideration to requests by U.S. vendors for limited exemptions from the current rule so they can use somewhat different factors in ranking and editing international flights. Moreover, the adoption of these rules will not affect the validity of the existing exemptions granted Sabre and Worldspan.

11. Publication of Display Criteria

Under § 255.4(b)(2) of our current rules, each vendor on request must provide any person its current factors for ordering flights in the primary display and the weight given each factor. The Board adopted this rule to make the display bias prohibition more effective and enforceable. Board NPRM, 49 FR 11658. The comments on our ANPRM, however, indicated that vendors may not be complying with this requirement. Northwest and TWA thus asked that the rule be amended to require vendors to provide the instructions used by programmers to create the algorithm. We tentatively decided to modify the rule to include such a requirement in light of the apparent discontent with the lack of specificity in some vendors' publication of their display criteria. 56 FR 12611.

Covia, Worldspan, Northwest, America West, Aer Lingus, Air France, and Varig support this proposal; some argue that we should strengthen it, *e.g.*, by applying the requirement to fare displays. American supports the proposed rule in principal but contends that the better means of obtaining our goal would be a rule specifying the

information to be provided, not a rule requiring the delivery of programming instructions. No one opposes it.

We will make the proposal final. Despite American's suggestion (and the parties' apparent agreement that American in the past has provided adequate information to other carriers, unlike some vendors), we believe, as Northwest argues, that the proposal requiring the delivery of programming instructions is needed to ensure that other carriers obtain adequate information. We will modify the proposal, however, to make the obligation cover editing procedures, as Worldspan suggests, and expand the requirement to cover fare displays, as suggested by some, since fare displays affect competition. The requirement to provide programming instructions, however, does not obligate vendors to turn over proprietary information and trade secrets, except to the limited extent necessary to provide participating carriers and others with adequately detailed information on the construction of their displays.

12. Advance Notice of Algorithm Changes

While the rules require vendors on request to describe their algorithm, they do not require vendors to give advance notice of algorithm changes. Northwest and SAS contend that vendors should be required to give such advance notice. Northwest asserts that advance notice will give participating carriers an opportunity to adjust their own flight schedules so that the vendor's changes will not injure their display position. American contends that advance notice of algorithm changes is unnecessary but that vendors should be required to inform participating carriers within 30 days of any changes made to the algorithm.

The comments have not shown that requiring notice of algorithm changes is necessary. As we stated in the NPRM, we have no evidence that vendors routinely change their algorithms or that those changes put competitors at a significant disadvantage. 56 FR 12611. The commentors have not presented any evidence that algorithm changes are frequent or significant enough to undermine airline competition or that vendors conceal them.

13. Connecting Points

In view of the widespread use of hub-and-spoke systems, airlines cannot compete effectively for agency bookings and consumers cannot obtain adequate information if CRS displays provide inadequate or skewed information on connecting services. If a CRS does not use a carrier's hub as a connect point in constructing the display of connecting services in a particular market, it will not display any of the carrier's connections over that hub. Board ANPRM, 48 FR 41177. The Board accordingly imposed two requirements on the display of connecting services: vendors may not use factors related to carrier identity in editing or displaying connecting flights or in choosing connect points, and vendors must use at least nine connect points for each city pair in constructing connections for display. Section 255.4(c), adopted by ER-1395, 49 FR 44451 (November 7, 1984).

Despite these requirements, a number of carriers have complained that vendors choose connecting points under criteria that give a preference to their own hubs and deny participating carriers an equal opportunity to designate connecting points. Some vendors impose burdensome procedures on requests by other carriers to designate additional connecting points, as shown by documents submitted by the Justice Department. Justice Dept. ANPRM Comments, App. at 12. Northwest and TWA charged, moreover, that vendors had failed to comply with their obligation under § 255.4(c)(3) to provide detailed information on the display of connecting services. 56 FR 12612-12613.

The participating carrier complaints suggested a need for strengthening those rules. We accordingly proposed to increase the minimum number of connect points by requiring vendors to use fifteen single connect points and six double connect points in each city-pair market and to prohibit vendors from imposing unnecessary and burdensome procedures on requests for the inclusion of connect points. We also reaffirmed the vendors' existing duty to choose connect points without discrimination. We asked for further comments on the issue raised by Northwest and TWA regarding the vendors' alleged non-compliance with their obligation to provide detailed information on their choice of connecting points and display of connecting services. 56 FR 12612-12613.

In general the commentors support our proposals. Covia questions some details in the proposals but does not oppose them. American, Delta, Alaska, America West, USAir, Aer Lingus, Air Canada, Alitalia, the Orient Airlines, and Swissair support them. Some of these parties suggest that the rule should be further strengthened, and ECAC recommends a revision to the proposals.

We have determined to adopt our proposals with some revisions and clarification. We will require the use of at least 15 single connect points in constructing displays, subject to the application of reasonable editing criteria to eliminate points of little value as connecting points. Although the use of editing rules may reduce the number of connect points below 15 in some markets, the vendors' obligation to use nondiscriminatory editing rules should prevent a system from using editing to eliminate the hubs of competing carriers providing satisfactory connecting service in a market. This requirement should not impose any significant burden on vendors, particularly since the parties agree that each system can use more than the 15 single connect points proposed as a minimum by us. American states, for example, that each system can use 30 points. American Comments, App. D at 9-10.

We will also adopt the proposal requiring use of six double connect points in each market, again subject to a vendor's ability to use nondiscriminatory, reasonable editing criteria applied in all markets to eliminate unattractive airline service options. American states that Sabre is the only system currently incapable of using double connect points and will need 12 to 18 months to complete the programming needed for including double connect points (American represents that it was planning to include double connect points in its displays anyway). Am. Comments, App. D at 11-12. We will make this rule effective in one year, so American will have time for its programming.

The major connecting point controversy concerns the alleged limited willingness of vendors to accept carrier requests to include additional cities as connect points in individual city-pair markets. The vendors limit the number of connecting points a carrier may request for an individual city-pair market: Sabre allows five requests, System One four, Worldspan three, and Covia only one. Am. Comments, App. D at 11; Covia Comments, Blackney Affidavit, paragraph 1; USAir Comments at 6 (USAir believes that Covia accepts unlimited requests, however). American complains, moreover, that Covia will not accept carrier requests for the use of additional connecting points for a particular city-pair market if Apollo is unable to store any more points for that market, a practice that limits American's ability to have new hubs used as connecting points in Apollo displays. Am. Reply, App.F. Several commentors urge us to adopt a requirement that each vendor must accept all participating carrier requests for additional connecting points; if a system cannot accommodate all of the points requested

by the vendor and other participating carriers, the vendor must choose as many points as can be accommodated by its system on the basis of reasonable nondiscriminatory criteria.

We will require each vendor to allow each participating carrier to request five connect points in each city-pair market, as American suggests, but we will not require a vendor to use all points requested by participating carriers up to the limits of the system's storage capacity for connect points, as requested by several carriers. A vendor may eliminate points requested by other carriers only by using a nondiscriminatory editing standard that is applied to all markets. We expect these rules to alleviate concerns like those expressed by Air Canada, which fears that a vendor will abuse its discretion by devising editing standards for connect points that result in the inclusion of its hubs in its system's displays while excluding a disproportionate number of its competitors' hubs.

As is true of the current rules, a vendor need not use 15 connecting points in a particular city-pair market if fewer points satisfy the vendor's reasonable nondiscriminatory criteria for eliminating services of little or no value to travellers in a market (for example, in the Los Angeles-San Francisco market few, if any, intermediate points would offer connecting services of interest to travellers), as long as the vendor has used all points requested by participating carriers. A vendor using such criteria must apply the same criteria to all markets.

A vendor's standard for editing connect points must be reasonable. In that regard, we do not consider it reasonable for a vendor to reject new connect point requests because its system cannot accommodate any more connect points in a market, a practice followed by Apollo that Covia asked us to endorse. A practice of rejecting connect point requests merely because a system's storage capacity is already full does not represent a rational method of determining which connect points are the most useful for travel agents and consumers. A vendor may, however, eliminate connect points if travel agents have been making little or no use of them, a practice that Covia states is followed in its system, if this editing is done on a non-discriminatory basis.

Covia requested clarification of the NPRM's statement that a vendor must include all hubs of all carriers as connect points if it includes all of its own hubs. It assumes that a vendor would not violate the rules if it includes all of its hubs but not all of the hubs of all other carriers as connect points if this results from the application of its nondiscriminatory criteria for selecting hubs. Covia's interpretation is correct, although it seems unlikely that a vendor could develop reasonable nondiscriminatory editing criteria that would create this result.

Because participating carriers are entitled to request the use of connect points, and because a vendor's criteria for selecting connect points must be reasonable, nondiscriminatory, and applied in all markets, we are surprised by the Orient airlines' complaint that vendors rarely use foreign points as connect points. Orient Airlines Comment at 40. We would not consider the elimination of foreign points as hubs as a legitimate nondiscriminatory means of selecting connecting points. If the Orient carriers can demonstrate that vendors discriminate against foreign connecting points, we will consider taking enforcement action.

ECAC suggests that we prohibit vendors from displaying connecting services that are too circuitous. ECAC Comments at 10. While a system's display of excessively roundabout routings would reduce the usefulness of its displays, we are more concerned that such a rule would restrict the number of competitive services displayed in given city-pair markets. The consumer should be able to decide whether a particular routing is too circuitous.

Our rules now require each vendor to provide any person on request information on the connect points used in each market, the criteria used for selecting connect points and for editing connecting services, and the weight given each factor. Section 255.4(c)(3). Since the comments on the ANPRM filed by Northwest and TWA suggested that some vendors failed to provide the detailed information required by this rule, we invited parties to propose alternative rules that would be effective. 56 FR 12613. In response American states that Sabre, System One, and DATAS II (but not Apollo or PARS) provide an on-line display of the connecting points used in any market, and American contends that every vendor should have to provide such a display. American Comments, App. D at 12. Air Canada supports this proposal, since it would enable carriers to monitor a vendor's compliance with the rules. Air Canada Reply at 16. No other carrier commented on this issue.

While an on-line display of the connecting points used by a vendor for constructing the display of connecting services in market would be useful, such a display would not provide all of the information that participating carriers and others are entitled to obtain now under our rules. Moreover, few carriers have supported this proposal. We accordingly will not adopt American's proposal, but we remind vendors of their duty to provide the information on the display of connecting services required by the rules.

Finally, the Orient airlines complain that vendors use discriminatory editing criteria to eliminate the display of interline connections that provide better service than the on-line connections kept in displays. Orient Airlines Comments at 48. We doubt that we should adopt a rule on this issue, since the relative attractiveness of on-line services may make it reasonable for vendors to use somewhat stricter standards for editing interline connections.

14. Participating Carrier Obligations

In order to display the schedules, fares, and availability of other carriers, the vendors necessarily depend on those carriers to provide the necessary information. We pointed out in the NPRM that each vendor's ability to display information on airline services accurately and fairly depends on the accuracy and completeness of the information provided by participating carriers. We therefore proposed to require carriers to provide accurate and complete service information to vendors. The proposed rule would apply whether the information was provided directly or indirectly (*e.g.*, through the Official Airline Guide). 56 FR 12609.

We will adopt this proposal, which no one opposes. Although the current rules implicitly require vendors to display accurately the information provided by participating carriers (*e.g.*, § 255.4(d) in the Board's rules), we will make the vendor's obligation mandatory, as suggested by ECAC. ECAC Comments at 2–3. This rule does not authorize vendors to unilaterally determine that information submitted by participating carriers is inaccurate and will not be displayed; in such cases the vendor should seek corrective action from the participating carrier or enforcement action from us.

SAS suggests that the proposed rule should be strengthened, and the Orient airlines want us to prohibit each participating carrier from providing schedules to CRSs that are different from the schedules used for internal purposes. SAS' suggested strengthening primarily reflects its fear that carriers otherwise would not be obligated to provide the information necessary for the display of change-of-gauge and

code-sharing flights in accordance with these rules. SAS Comment at 16–17. Our final rule will incorporate its suggested language. The Orient airlines' request (Orient Airlines Comment at 47) is already included in the proposal, since a participating carrier would be in violation of the rule if it submitted schedules to CRSs that showed a shorter elapsed time than the schedules used internally by the carrier, unless the carrier could show that its internal schedules were inaccurate.

Since this rule applies to information provided vendors for use in constructing integrated displays, it does not cover information shown by a carrier in its internal reservations systems. If that information is inaccurate, the carrier would be subject to enforcement action under section 411.

15. Travel Agency Displays

Travel agencies hold themselves out to the public as providers of impartial advice on travel services. However, some airline parties fear that agencies prefer some carriers over other carriers, usually in order to obtain override commissions from the favored carriers, and that agencies accordingly give incomplete or biased advice to their customers. The travel agency parties, on the other hand, contend that an agency cannot afford to give its customers poor service because it will lose a lot of business as a result. See, *e.g.*, Woodside Comments at 6, n. 11; ASTA Reply at 4.

In the NPRM we stated our concern over the possibility that agencies might be creating biased displays to increase their commission revenues without giving notice to their customers of the use of the biased display. We proposed no rule on the issue, but we invited parties to comment on whether there was a problem with agency use of biased displays and whether we should adopt a rule on this subject. We also explained, however, that we were reluctant to generally regulate the manner in which agencies choose airline services for their customers. 56 FR 12611–12612.

System One and TWA ask us to prohibit the creation of biased displays by agencies but would support as an alternative a requirement that agents give customers notice if they use a biased display. Northwest, Alaska, Aer Lingus, British Airways, Sabena, Swissair, and Varig urge us to bar the use of agency-created biased displays. Delta and America West recommend the adoption of a notice requirement. The Orient airlines ask us to take some action on the problem. Since ARTA wishes to maintain the agencies' reputation for impartiality, it asks us to block agencies from using biased displays. Woodside thinks that a notice requirement would be unwise. ASTA asserts that agencies do not create biased displays but will accept a rule prohibiting the practice. Covia contents that agencies do not create biased displays.

We have determined not to adopt a regulation on this issue. We have no convincing evidence that many agencies are creating biased displays at this time.

ASTA, for example, alleges that the use of such displays by agencies is "very rare," ASTA Comments at 28, although Northwest claims some agencies do create biased displays, NW Comments at 5. We assume that agencies using biased displays now often do so because the customer has asked to fly on a specific carrier (or because the customer's employer has special fare arrangements with some carriers). American Automobile Ass'n Reply at 3. We also note that some systems at least provide agents with the ability to request displays showing the services of a single participating carrier. Covia Comments, Powers affidavit, para. 25; Covia Reply at 8–9. We know that United got some agencies to use biased secondary displays after the Board's rules took effect, Orient Airlines Comments at 26, but there is not enough evidence of a current problem with agency bias to demonstrate that a rule is necessary.

Moreover, travel agencies seem to have a limited ability to run the risk of losing business by giving customers incomplete or inaccurate information on airline options. Although there are only four CRSs in this country and a limited number of major airlines, there are many travel agencies, so customers dissatisfied with one agency's service can easily switch their business to another agency. Although it is not easy for customers to discover that an agency gave them poor advice, it is possible, and the risk of discovery should be great enough to deter most agencies from biasing their recommendations. See, *e.g.*, Woodside Comments at 12.

To the extent that agencies use biased displays when a customer has not requested a particular carrier, they are most likely doing so because of an incentive commission arrangement with a carrier. Woodside at least believes that preferred supplier arrangements including override commissions benefit agency customers. However, as we stated elsewhere, the subject of such commission arrangements is outside the scope of this proceeding. See also Covia Comments at 60. As we noted in the NPRM, moreover, carriers can compete to be a travel agency's preferred supplier. 56 FR 12612.

In any event, this record does not show that agents commonly provide biased information. The states submitted the results of a Pennsylvania investigation of travel agency responses to requests for information which purportedly shows that a number of the travel agents called by the state provided incomplete advice. We find the survey unpersuasive for several reasons. Among other things, the states did not tell us what questions were asked in the investigation, and the survey does not say whether some of the flights not mentioned in the agent responses may have had no available seats. The persons conducting the survey requested specific flight times, yet the survey does not indicate whether all of the carriers in the market even offered service at the requested times.

We also recognize that our rule allowing agencies to use third-party software will enable agencies who are so inclined to create biased displays. However, some agencies already have that ability now, and several systems give agents the option of obtaining a display limited to a single carrier's services. As explained above, agencies appear to be subject to enough competitive discipline to discourage most of them from using third-party software to create biased displays.

G. Travel Agency Notice to Customers

In the NPRM we requested comment on whether we should require travel agencies to give their customers notice that the agency was using a CRS affiliated with one or more air carriers and that that affiliation could affect the information being provided by the agencies. We asked whether such a notice might give consumers knowledge that could perhaps offset the effects of CRSs in influencing agent recommendations. 56 FR 12613.

No party suggests that such a notice would avoid the need for other CRS rules. America West supports such a requirement, along with certain other proposals on requiring travel agency notice of carrier ties, but urges us to adopt a number of rules as well. Covia states that it would not object to the proposal but that it disagrees with the premise that an agent's use of a system affiliated with one or more carriers will make the agent more likely to book those carriers. A number of parties, on the other hand, oppose any such notice requirement. They include Delta, Aer Lingus, Air France, American Express, ASTA, ARTA, Woodside, and the American Automobile Association.

These parties point out that such a requirement would impose significant costs on travel agencies and that the notice would not be helpful to agency customers. Delta, moreover, asserts that the problem of system bias should be dealt with directly, not through a notice requirement.

We agree with the opponents of the notice suggestion. If the notice requirement would not avoid the need for other CRS rules (and no party says that it would), the imposition of such a requirement would merely add another burden on travel agencies. Since notice would presumably be given on every customer inquiry, the total cost of such a notice requirement would be very large. That burden seems unlikely to produce significant competitive and informational benefits for travellers. Since travellers are unlikely to understand the effects of an agency's CRS affiliation, it is doubtful that they would ask the agent to check the services of carriers unaffiliated with the system and to make a booking on such a carrier if it provides the best service. The required notice would be time-consuming, since customers would presumably ask the agent what the notice meant. See, *e.g.*, ASTA Reply at 6. Finally, all systems except Sabre and System One are affiliated with several carriers, and explaining the affiliations of systems with multiple owners would probably be confusing and take more time.

H. Equal Functionality

1. Summary of Decision

The current rules require vendors to provide participating carriers with the basic CRS functions (displaying schedules, fares, and availability, making bookings, and issuing tickets) on non-discriminatory terms, but they do not require vendors to make other CRS services available to participating carriers or to provide the basic services in the same way that they are provided the vendor carrier, except that each vendor must apply the same standards of care and timeliness to the loading of each participating carrier's fare, schedule, and availability information that it applies to the loading of information on its own services. 56 FR 12613–12614. As we explained in the NPRM, the Board did not try to regulate CRS functionality in more detail because it sought to limit its intervention to areas where regulatory action was clearly required and because guaranteeing equal functionality was not technically feasible. 56 FR 12614.

Since the Board adopted the rules, each system has moved a long way toward providing equal functionality for the vendor and participating carriers. Nonetheless, each system treats its vendor differently than other participating carriers in some respects. See American Reply, app. A. As a result, bookings on the vendor are often more reliable and require less work from the agent. Architectural bias is the term commonly used for the differences in the quality and ease of functionality between transactions on the vendor carrier and transactions on other carriers.

As a result of architectural bias and other factors, each vendor continues to receive a disproportionate share of the bookings made by its subscribers, as shown by our past studies of CRSs and by the vendors' own internal studies. The additional revenues obtained by the vendors—usually called "incremental revenues"—are very large. 56 FR 12596.

Large revenue shifts from non-vendors to vendors impose a substantial competitive handicap on non-vendor carriers. We tentatively found that architectural bias creates a large share of the incremental revenues obtained by vendor carriers and that we should consider rule proposals that could eliminate the differences in functionality and thus a large part of the vendors' competitive advantages created by incremental revenues. We therefore invited parties to comment on two possible equal functionality rules. One proposal ("the dehosting proposal") would require each vendor to separate the CRS' computer system from the computer system used for the vendor's internal reservations system. Such a rule would require structural changes in only two of the four systems, since Worldspan is developing a "hostless" system and since Continental's internal computer system is separate from the System One computer system, which had grown out of Eastern's internal reservations system. The other proposal ("the equal functionality proposal") would require each vendor to provide the same level of functionality for itself and for participating carriers, at least for certain key functions. 56 FR 12614–12616. Since any proposal requiring radical changes in the functioning of the systems necessarily involves issues of feasibility and cost and require a judgment on whether its benefits would exceed its costs, we asked the parties to address a series of questions relevant to the dehosting and equal functionality proposals. 56 FR 12615–12616.

We also asked for comment on two other proposals that would not force radical changes in system operations: A rule requiring vendors to make all enhancements available to participating carriers and a rule directing vendors to provide participating carriers the ability to load their fares and schedules on the same basis as the vendor. 56 FR 12616–12617.

After reviewing the comments, we have determined to adopt the proposals requiring equal access to enhancements and equal loading of information, as well as a rule prohibiting systems from using defaults that favor the vendor carrier. We find, on the other hand, that the record in this proceeding does not justify a rule mandating either dehosting or equal functionality, since each would provide benefits of uncertain size while imposing substantial costs. In addition, the vendors have been moving toward providing more equal functionality without being required to do so. That movement toward equal functionality eliminates much of the need for a rule mandating radical changes in CRS operations in order to reduce architectural bias.

We note that our conclusion as to the lack of record support for the dehosting proposal is consistent with the determinations made by the GAO in their recent report on architectural bias Computer Reservation Systems: Action Needed to Better Monitor the CRS Industry and Eliminate CRS Biases (1992). The GAO concluded that there was not enough evidence for a conclusion that the benefits of dehosting would outweigh its costs.

The following discussion explains in detail the reasoning for our conclusions.

2. Incremental Revenues and Functionality Differences

It has long been apparent that each vendor captures a significantly larger share of an agency's bookings when the agency uses its CRS, 56 FR 12596–12597. Our study of airline competition concluded that there are two major causes of the incremental revenues received by the vendors: The on-going business relationship between the vendor and its subscribers that creates goodwill toward the vendor, and architectural bias. Marketing Study at 61. As we pointed out, however, there was no study demonstrating which was the primary cause of incremental revenues and no consensus in the industry on the relative importance of these two causes. *Id.* at 65.

Architectural bias primarily results when the same computer is used for both the CRS and a vendor carrier's internal reservations system (the vendor is then the "host" of the CRS). At this time, every system but System One has a host (System One's host had been

Eastern until that carrier ended its airline operations). The hosts in Sabre and Apollo are respectively American and United. Northwest and TWA are the hosts in PARS, and Delta in DATAS II. However, Worldspan is creating a hostless system that will replace PARS and DATAS II. A vendor's position as a host stemmed from the origins of the CRSs. Each system grew out of its original owner's internal reservations system.

Being the host gives a carrier significant advantages, since an agent using its CRS will obtain realtime access to the carrier's availability information since the CRS computer is the same computer used for handling the vendor's internal reservations system. In contrast, the CRS obtains availability information on other carriers for its primary display by means of communications links which create a risk of transmission errors and which involve delays that may make the information outdated when displayed in the CRS. Marketing Report at 65–67. The direct access features developed by the systems in recent years have eliminated much of this difference. "Look but not book" direct access enables an agent to gain access to the internal system of another carrier and obtain the same realtime information available for the host on the primary display. "Look and book" direct access allows an agent to make a booking in the participating carrier's internal system, thereby eliminating the delays inherent in making a booking off a system's primary display. Marketing Report at 67–69. However, while direct access features can eliminate or substantially reduce certain reliability problems in information-gathering and booking, using direct access requires somewhat more effort from travel agents. Marketing Report at 67–70. Nonetheless, Covia asserts that in 1990 over 80 percent of Covia bookings were made on United or through Inside Link, even though some U.S. carriers participate only partially or not at all in that direct access function. Covia Comments at 69.

Although architectural bias primarily stems from the advantages created when the vendor is the system's host, a vendor can intentionally structure its system's operations so that travel agents can obtain information and make bookings more easily and reliably on the owner carrier than they can on other carriers, even if the owner is not the host. See, *e.g.*, American Reply to Worldspan at 8–9. In particular, the record shows that in various respects vendors have created default mechanisms that make it easier for travel agents to book customers on the vendor carrier than on another carrier. For example, some fare information inquiries in System One default to Continental—not a host carrier in System One—unless the agent asks for a neutral display. American April 13, 1992 Comments at 9.

While the individual differences between a system's functionality for the host and participating carriers may be small, they seem to affect agent booking decisions. Agents generally work under substantial time pressure and may tend to prefer booking the host when doing so is quicker than booking another carrier, unless the customer wishes to fly on a carrier other than the host. Similarly, since errors irritate customers and cause more work, agents may often prefer to book the host because doing so is more reliable than booking another carrier, again assuming that the customer has no carrier preference.

The parties disagree on the extent to which architectural bias increases a vendor's share of its subscriber's bookings. American and United argue that the functionality differences are too insignificant to cause any shift in an agency's booking patterns. Woodside similarly contends that architectural bias has little, if any, effect on agent bookings. Woodside Comments at 4–6. On the other hand, Justice, the smaller vendors, and most U.S. and foreign carrier parties in this proceeding contend that architectural bias gives vendor carriers a major advantage in marketing their services. See, *e.g.*, Justice Reply at 2–7.

3. The NPRM's Findings

In the NPRM we tentatively found that architectural bias existed and that we should consider proposals to eliminate that seemingly unfair competitive advantage. We accordingly asked parties to comment on proposals made by Justice and Texas Air that assertedly would eliminate architectural bias, the dehosting proposal and the equal functionality proposal. 56 FR 12613–12616. At the same time, however, we noted that the proposals might be unnecessary or unwise, 56 FR 12616:

> [W]e are not yet certain that we should adopt a rule mandating the partial or complete elimination of architectural bias. It is possible that functionality factors are not as significant a cause of incremental revenues as we now believe, or that other changes * * * may * * * make a rule on architectural bias unnecessary or unduly burdensome * * *. Moreover, vendor competition for subscribers appears to be causing vendors to improve information-gathering and booking capabilities for participating carrier transactions, as shown by Sabre's recent announcement that it is upgrading its direct access feature * * *.

To help us judge whether either the dehosting or the equal functionality proposal should be adopted, we asked the parties to respond to a series of questions (some suggested by Justice). We asked, for example, how a vendor could comply with Texas Air's equal functionality proposal without dehosting its system and whether participating carriers would be willing to make the investments needed to take advantage of a rule requiring more equal functionality. 56 FR 12615.

The dehosting and equal functionality proposals drew many comments. While Justice, most carriers other than American and United (including every partner in Covia except United), and ARTA supported one or both of these proposals, the major vendors argued that neither proposal was necessary and that dehosting would be too expensive. ASTA stated that it would support the proposals only if they did not reduce the quality of the functionality on transactions involving the host, and Woodside alleged that architectural bias is insignificant and has no effect on travel agency bookings.

4. Submissions on CRS Reliability

The vendors' benefits from architectural bias assertedly result in large part because bookings made on the system's host are more likely to be accurately transmitted and recorded than are bookings on other carriers and because the communications links between a system and participating carriers at times do not function. At Northwest's suggestion, we directed the vendors to provide us additional information on the reliability of their systems. Order 91–8–63 (August 30, 1991). That order instructed each vendor to tell us, for its basic CRS service (*i.e.*, for information requests and bookings made from the primary display) and for each direct access service, the amount of time that the communications links were inoperable and the percentage of total transactions that could not be completed correctly due to communications failures and delays and other problems. Order 91–8–63 at 4 and app. A.

While the vendors were unable to provide all of the information we requested and while the information submitted to us may not fully measure the reliability problems faced by agents booking nonhost carriers, the vendors' information supports the position of Covia and American that the reliability of the booking process is substantially the same for vendor and non-vendor

carriers. The vendors generally reported that each direct access function operated correctly more than 99 percent of the time. We gave all parties in this proceeding an opportunity to comment on the information provided by the vendors. However, only Northwest and Worldspan chose to file comments questioning the reliability figures submitted by the vendors, and their comments do not show that the figures are inaccurate.

5. Potential Benefits of Dehosting and Equal Functionality Rules

To assess whether the dehosting and equal functionality proposals should be adopted, we must compare the probable costs of each proposal with its probable benefits. We will begin by measuring the likely benefits of those proposals, a question that involves estimating the amount of incremental revenues generated by architectural bias and the amount of architectural bias that will continue if we take no action.

On the basis of the record before us, we cannot determine with any exactness the benefits obtainable through the elimination of architectural bias. While, as indicated, vendors obtain incremental revenues from their systems, it is not clear what portion of those revenues is produced by architectural bias. Our past analyses indicate that other factors also produce incremental revenues, and nothing in the record of this proceeding (or in our earlier CRS studies) enables us to calculate the relative importance of these factors in producing incremental revenues.

A group of parties has submitted a study undertaken by Dr. Franklin Fisher which concluded that architectural bias imposes heavy expense on the public by causing travelers to take flights that they regard as inferior to other available services. "Architectural Bias in CRS: The Loss in Consumer Welfare," submitted by the July 14, 1992 letter of Raymond Rasenberger and Frank J. Costello. Dr. Fisher, however, failed to present all of the bases for his estimates, so we cannot fully evaluate his study. For example, he has not published the regression analysis on which he relies to derive demand elasticity. It appears, however, that his study incorporates both empirical and theoretical weaknesses that undermine its reliability.

On the other hand, as the major vendors point out, they have been improving the technological capabilities of their systems for bookings on other carriers, particularly by introducing "look and book" direct access features. Significantly, a growing number of carriers are participating in those features, which are relatively recent developments. For example, other carriers began participating in System One's "look and book" feature only recently. July 1, 1992 System One Comments, Lenza affidavit at 3. Because of these developments, the estimates in our earlier studies of the size of the vendors' incremental revenues almost certainly do not accurately measure the current impact of architectural bias, since those studies looked at CRS operations at a time when "look and book" features did not exist or perhaps were too cumbersome to use. See Marketing Report at 68–69 for a discussion of the flaws in "look but not book" direct access features. The travel agents' interest in ensuring the reliability of bookings is presumably a major factor affecting their booking patterns. *Cf.* Justice Reply at 4. CRS developments equalizing the reliability of bookings on the vendor and non-vendor carriers should therefore reduce the incremental revenues created by architectural bias. System One, for example, states that Continental gained a larger share of System One subscriber bookings during the period when it was the only carrier participating in that system's "look and book" feature. System One July 1, 1992 Comments, Lenza Affidavit at 3.

Furthermore, the vendors' competition for subscribers appears to be strong enough to encourage vendors to continue reducing functionality differences. While the Justice Department argues that the vendors' interest in obtaining incremental revenues will keep them from eliminating architectural bias, Justice Reply at 5–6, that argument seems to be contradicted by the record. If Justice were correct, we would not expect to see vendors develop features like "look and book" direct access. Presumably they have taken such steps because travel agencies have some desire for improved functionality on participating carriers and because enough competition for subscribers exists to encourage vendors to improve the information-gathering and booking capabilities of their systems for all carriers, not just the vendor. United Reply at 5–6; American Supplemental Comments at 7–9. The vendors' incentives and actions to reduce architectural bias would reduce the benefits realizable from a rule requiring dehosting or equal functionality, because the continuing technological improvements in the systems will lead to reductions in the level of unequal functionality even if we adopt no rule. In that regard we note American's statement that Sabre is developing a "seamless connectivity" capability that will virtually eliminate all functionality differences. American Supplemental Comments at 7–9. See also 56 FR 12616.

Congressman James L. Oberstar, the Chairman of the Subcommittee on Aviation of the House Committee on Public Works and Transportation, advises us in his July 2, 1992, letter that Covia and Sabre have represented to his Subcommittee and to other members of Congress that they are in the process of eliminating all functionality differences between the host carrier and other participating carriers. The Chairman's letter is consistent with our view that the vendors are working to equalize functionality.

While we recognize that functionality differences must influence agency booking patterns to some extent, the record does not convincingly demonstrate that non-vendor carriers are subject to serious disadvantages in functionality. Some of the differences cited by proponents of a rule involve matters that appear unlikely to shift a large number of bookings to the vendor and away from non-vendor carriers. And several of the differences in functionality (for example, the travel agent's ability to confirm the accuracy of frequent flyer program information for the vendor's members but not for members in non-vendor programs) result from the non-vendor carriers' unwillingness to share certain sensitive data with the vendor. Covia Comments, Blackney affidavit, para. 48, 54.

Moreover, while many of the parties urging us to adopt a rule eliminating architectural bias had argued that such action was required because of the alleged substantial differences in reliability between bookings on a vendor and bookings on a non-vendor carrier, the information submitted to us on this subject suggests that reliability is not a substantial problem, as explained above.

In addition, according to several parties' comments, some carriers (*e.g.*, United and Northwest) have declined to participate in certain enhancements offered by other systems, allegedly to encourage agencies in their hubs to subscribe to their systems. 56 FR 12608. Although any booking losses for those two CRS owners due to inferior functionality in other systems could be offset by greater CRS profits arising from a greater share of the CRS market, their alleged willingness to decline participation suggests that functionality differences may be less important than we thought earlier.

It is also not clear whether everybody would or could participate if we required vendors to provide more equal functionality. As noted, Northwest does not participate now in the look and book access functions offered by systems other than Worldspan, and Alaska and America West have not participated in all direct access functions. See, *e.g.*, Covia Comments at 61. The comments indicate that a carrier's participation in enhanced functionality could be quite expensive, a factor which could reduce the number of participants in any upgrading of functionality mandated by us.

Even if we adopted an equal functionality rule, it would produce no immediate benefits for participating carriers in view of the time needed for compliance with the rule. Northwest, for example, estimates that a vendor would need 30 months to achieve dehosting. NW Comments at 3.

Nonetheless, we believe that vendors continue to obtain additional airline bookings due to functional differences. We note in that regard Worldspan's estimates that United and American would each gain $200 million or more in additional airline revenues each year if architectural bias caused each carrier to get one more booking per week from each CRS terminal used by its system's subscribers. Worldspan Reply at 6–7, 17. However, as explained next, the costs of adopting either a dehosting or equal functionality rule would be so high that we could not justify such action without solid evidence that such a rule would provide substantial benefits. Worldspan's calculations of the possible impact of architectural bias are only theoretical.

6. The Costs of Dehosting

We will first assess the costs of requiring dehosting and in the next section discuss the costs of an equal functionality rule. As indicated, System One is a hostless system, and Worldspan is creating a hostless system to replace PARS and DATAS II. Thus any dehosting rule would impose costs only on Covia and Sabre. Although Sabre and Covia are the largest and most profitable systems, we would be reluctant to adopt a rule which significantly burdens them while not affecting their competitors unless there is good cause for such action.

Several parties have provided estimates of the costs required to separate a host carrier's internal system from a CRS computer. Worldspan, which supports the dehosting rule proposal, estimates that creating a new CRS processing system would cost between $44 million and $50 million; this estimate, based on Worldspan's own experience in creating a hostless system, includes the costs of programming, network development, computer processors for production and test systems, and planning, but not the costs of land and buildings or non-CRS production purposes, or the on-going expenses of operating two systems instead of one. Worldspan Comments at 22–23.

Northwest in conjunction with PARS developed an estimate of the costs of converting a system of PARS' size into a no-host system. Northwest estimates the task would cost perhaps $50 million spent over a period of thirty months. Northwest Comments at 20.

Covia alleges that dehosting would cost it tens of millions of dollars and require between one and two years. Covia Comments at 71.

American filed detailed estimates on the cost of dehosting. American initially estimated that a dehosting rule would force American to spend $65 million to build a new data center, $52 million to acquire additional hardware, and at least $5 million to develop new software. American Comments at 21–22. After considering the matter further, American concluded that its initial estimates were incomplete and too low. It now estimates "that separation of Sabre from its airline computer operation will cost over $215 million to accomplish, take three years to complete, and effectively stifle any Sabre innovation for that period" and will also increase ongoing CRS costs and require substantial increases in booking fees and subscriber charges. American Reply Comments, App. D at 3, 7.

The parties supporting a dehosting rule have not attacked the detailed analysis provided by American. Rather than argue that dehosting would not be an expensive requirement for the two major vendors, they argue that the costs of dehosting would be small compared to the major vendors' incremental revenues and overall revenues or if calculated as an amount per booking. See, *e.g.*, Worldspan Comments at 22–23. Such comparisons cannot justify our imposing large costs on the major systems unless we can expect to obtain comparable benefits. As shown, we have no evidence demonstrating that the benefits of a dehosting rule would offset its costs. The proponents of dehosting also concede that participating carriers would incur expenses as well to take advantage of the more equal functionality, Northwest Comments at 21, a fact which further reduces the attractiveness of that proposal.

In addition to the financial costs of dehosting, it would force Sabre and Apollo to have their programmers spend their time creating separate computer systems rather than developing improvements for their existing systems. See, *e.g.*, United Reply at 8–9.

Furthermore, a dehosting rule would necessarily impair the functionality of each system for transactions on its host for some period. Until the system was able to provide a level of functionality for all carriers equal to that provided now for the host, the functionality for the host could be no better than it is now for participating carriers. While this reduction in functionality might not be substantial, it would occur and would thus reduce the efficiency of agents using Sabre and Covia to book their hosts. As a result, while ASTA supports more equal functionality for participating carriers in principle, it opposes any rule that would impair the systems' current efficiency. ASTA Comments at 17–18.

7. The Costs of Equal Functionality

An equal functionality rule would apparently affect only Sabre and Covia, for System One represents that Continental receives no significant architectural advantages in its affiliated system. An equal functionality requirement, of course, would not be as expensive as a dehosting requirement, since its advocates assume that it would not require a vendor to create and operate a second computer system. Instead, they estimate that it would cost each vendor approximately $10 million to implement such a rule. 56 FR 13615, citing Texas Air's estimates. Despite that advantage, such a rule would have serious flaws.

First, as a practical matter, we do not see how an equal functionality requirement could be implemented without a separation of the computer operations for the CRS and the host carrier. The current differences in functionality result in large part from the inherent advantage created by the lack of any need for communications links when an agent requests information and engages in transactions on the host carrier. Similar tasks involving other carriers necessarily require communications links, and the existence of those links creates the potential for delays and errors that discourage agents from selling seats on participating carriers when the host carrier offers comparable service. Although an equal functionality requirement would eliminate other differences (*e.g.*, any difference between the host and other carriers in the number of keystrokes

required for transactions), such a rule could not eliminate the differences created when a vendor is hosted in its CRS. Justice accordingly argues that an equal functionality rule would not eliminate all architectural bias. Justice Reply at 9.

When we requested comment on this issue, we specifically asked parties to tell us how an equal functionality standard could be met by the hosted systems without creating separate computer systems for the host's internal system and the CRS. 56 FR 12615. No one answered that question.

Justice further points out that the inherent differences in the functioning of the systems for host and nonhost carriers "may make evasion of functional parity rules difficult to detect and prevent," Justice Reply at 9. Covia alleges that an equal functionality rule would inevitably force us to regulate technology. Covia Comments at 62. For this and other reasons (*e.g.*, the lack of objective performance criteria for determining whether a vendor was complying with the rule), enforcing such a rule would be difficult and costly. Justice Reply at 10.

The version of the equal functionality rule proposed by its original proponent, System One, would not cover every function. Instead, the rule would govern five key functions: Reservations and ticketing, creation of the passenger name record, seat selection and issuance of boarding passes, fare and schedule information, and frequent flyer program information. Limiting the rule in that way could create future problems. As other parties point out, the key functions for travel agents may change in the future. For example, the issuance of boarding passes is now a key function but did not exist as a function when the Board adopted the rules. While the rule would provide some protection for participating carriers at first, in the long term it could lose much of its effectiveness. See, *e.g.*, Justice Reply Comments at 9; Air Canada Comments at 34; Delta Reply Comments at 9.

We also must consider the costs that an equal functionality rule would impose on those participating carriers that wanted to take advantage of it. System One estimates that a carrier would have to spend $5 million to participate in the upgraded functionality required by an equal functionality rule. System One Comments, Heinzman Affidavit at 2. Covia suggests, however, that some carriers—Alaska and America West, for example—would not make the investment needed to take advantage of equal functionality. Covia Comments at 61. Moreover, a vendor would make it quite expensive for a participating carrier to take advantage of an equal functionality rule by designing the improved connections so as to place much of the cost burden on the participating carrier rather than the vendor (any improved access feature like direct access requires enhanced communications links between the CRS and the participating carrier's computer and the development of an interface, which require a substantial investment from the participating carrier). Orient Airlines Comments at 16; Aer Lingus Reply at 4; Air Canada Reply at 34. We could not stop such conduct without engaging in detailed technical regulation of the systems, something we are not equipped to do. While the Orient Airlines suggest that this problem could be cured by setting up a committee to establish technical standards, Orient Airlines Comments at 18–19, that suggestion confirms our view that a practicable equal functionality rule would require substantial intervention by us into CRS management.

Because we are reluctant to engage in a regulation of the technical operations of the systems, we will not adopt American's proposal that we require each system to provide "seamless connectivity," a capability that American represents is being developed for Sabre to provide equal functionality on information requests and booking transactions for American and the participating carriers. American, moreover, has provided no cost estimate for this development, and Covia contends that any requirement of seamless connectivity would be unduly expensive for both the other vendors and for participating carriers. Covia Reply at 13.

8. Defaults in Vendor's Favor

Although we have determined not to adopt the parties' major proposals for eliminating or reducing architectural bias—dehosting and equal functionality—we wish to adopt rules reducing architectural bias when doing so will impose little or no cost on the vendors. There are three such rules we will adopt. The first of these will eliminate default features that favor the vendor (the other two, discussed below, will require vendors to make enhancements available to all carriers and to give carriers the ability to load fare and schedule changes as quickly and efficiently as the vendor).

The systems now follow procedures for some functions that assume that an agent is seeking information (or wishes to perform a transaction) on the vendor's services and automatically provide a display or capability for the vendor. In order to perform the same function with respect to another carrier's services, the agent must tell the system that he or she wishes to carry out the task on that carrier, a step which requires more keystrokes from the agent. These defaults typically involve requests for carrier information like seat maps and information on the status of a particular flight. Worldspan Comments at 12–13; Delta Comments at 15. System One and Sabre automatically respond to certain types of fare information requests with information on the fares of Continental and American, respectively, unless the agent specifically requests a neutral response. Orient Airlines Comments at 14.

In addition, a number of parties complain that the systems have created an autovalidation procedure that favors the vendor unless the agent chooses to override it. The systems normally validate a ticket on the host carrier whenever it is included in the passenger's itinerary instead of following the traditional procedure of validating the ticket on the first carrier included in the itinerary. This particular default feature gives the vendors cash flow benefits, since the ticketing carrier holds the customer's payment for the trip until the carriers provide the transportation, which may be months after the customer pays for the ticket. See, *e.g.*, Worldspan Comments at 25; Alaska Reply at 30–31; USAir Comments at 7; ASTA Reply at 24, fn.

American recommends the adoption of a rule prohibiting such defaults rather than a dehosting or equal functionality rule. American also represented it would eliminate all defaults favoring itself in Sabre. American Reply at 4–5. Several other carriers support rules eliminating defaults favoring the host. System One both concedes that the default features in its system benefit Continental and states its willingness to give them up if the other vendor carriers do the same. System One July 1, 1992 Comments, Lenza Affidavit at 3. Worldspan, Delta, USAir, Alaska, Aer Lingus, Alitalia, and ASTA urge us to proscribe the vendor practice of making the host carrier the validating carrier whenever it appears in an itinerary.

We have determined to adopt American's proposal. It is consistent with our original wish to provide more equal functionality for participating carriers, since it will equalize system functionality in certain respects for the host and other participating carriers. On the other hand, this rule will impose no significant costs on the vendors, since it will require only a modest amount of programming. American Reply at 5.

American estimates that it can complete the removal of defaults favoring American by April 1993. April 13, 1992 American Comments at 8. No other vendor commented on the amount of time needed to eliminate defaults. We will make this rule effective on October 1, 1993, which should give all vendors adequate time to remove the defaults.

9. Enhancements

The second of the three rules we are adopting on equal functionality concerns access to enhancements. Under section 255.7 of the current rules, a vendor must make an enhancement—a service like the ability to issue boarding passes that is not one of the basic CRS functions—available to all participating carriers on a nondiscriminatory basis only if it is offered to any such carrier. The rule thus allows a vendor to reserve an enhancement for itself. Our NPRM proposed a rule requiring vendors to make all enhancements available to participating carriers, although we would not require that the ease and reliability of access for enhancements be equivalent for participants and hosts. 56 FR 12616. We tentatively concluded that such a rule would provide important benefits by keeping vendors from using enhancements to benefit the marketing of their own airline services at the expense of their competitors. At the same time, we concluded that it would not discourage innovation and would not impose unwarranted costs on participating carriers, for each carrier could choose which enhancements it would use. We also noted that one vendor—Covia—stated that it made all enhancements available to all participating carriers and that the Worldspan partners did not object to such rule. Finally, we pointed out that the current rule required modification in any event, since it did not take account of the ownership of two of the CRSs by more than one carrier. 56 FR 12616.

Worldspan, Delta, and Alaska support the proposal. No one opposes a requirement that all enhancements be made available to all participating carriers. American claims that Sabre makes all of its enhancements available to participating carriers and that it does not oppose the proposal. American Comments at 23. Air Canada points out that the Canadian government imposed a similar requirement on the major Canadian system after American had urged Canada to take such action. Air Canada Reply at 20.

We will therefore adopt the rule as proposed for the reasons given in the NPRM. However, as we explained there, 56 FR 12616, the rule will not require vendors to make enhancements immediately available to all carriers, for we recognize that a vendor may need time to develop and perfect an enhancement before making it generally available and that making an enhancement available to all participating carriers at once may often not be feasible. Since we are not adopting an equal functionality requirement, we will not add Alaska's proposed condition that the use of enhancements be as reliable and easy for participating carrier transactions as they are for vendors.

The term "enhancement" requires some clarification. As defined in the NPRM, it excludes the display of information on schedules, fares, rules, and availability and the ability to make reservations or issue tickets, yet we believe that the industry would view direct access as an enhancement, even though "look but not book" direct access involves the display of information and "look and book" direct access involves both the display of information and the ability to make reservations. Worldspan accordingly points out that the proposed definition would be too narrow. Worldspan Comments at 34. See also Delta Comments, Ex. A at 4. Other parties have cited features benefiting a vendor that are comparable to the issuance of boarding passes and that should therefore be covered by our rule. For example, British Airways complains that Sabre allows American to show nine fare classes on transatlantic flights in its display while limiting British Airways to eight classes. British Airways Comments at 18. System One similarly notes that Sabre gives a travel agent the ability to see whether a particular American fare is available on any flight within a 30-day period but does not allow agents the ability to conduct similar searches on fare availability for other carriers. System One Comments, Lenza Affidavit, para. 13. Each of these features should be covered by a rule requiring participating carrier access to enhancements, unless technical requirements make access impossible (*e.g.*, if participation in the feature is impossible for a non-hosted carrier). As a result, we will modify the definition of "system enhancement". Once again, since we are not requiring dehosting, our rule on enhancements cannot require vendors to provide participating carriers access to a feature used for the host carrier if that feature is an inherent element of being a host.

We will make the rule on enhancements effective on the same date that this rule becomes effective, but, as noted, vendors are not required to make enhancements immediately available to all participating carriers if that is technically impracticable. If our rule requires vendors to modify their systems, we would not expect them to provide participating carriers with access to all enhancements on the effective date.

10. Loading of Fares and Schedules

Section 255.4(d) of the current rules requires vendors to apply the same standards of care and timeliness in loading information from participating carriers as they apply to the loading of their own information. However, several comments on the ANPRM charged that Apollo and perhaps other systems vendors load their own information on a quicker schedule, because the vendor provides its information directly to its own system while forcing other carriers to send their fare and schedule information through intermediaries (Airline Tariff Publishing Company, "ATP," for tariffs and Official Airline Guide for schedules). Covia conceded that United's information is sometimes loaded on a faster schedule than is information from other carriers. Covia ANPRM Reply, Powers Affidavit at 10–12. In addition, some systems imposed procedures on participating carriers for providing information on fare and schedule changes that appeared to be unnecessarily burdensome and costly. 56 FR 12616–12617.

We therefore proposed a rule requiring each system's owner to use the same procedures for loading its fares and schedules that were available to participating carriers. We tentatively found that a vendor's use of faster procedures would give it an unfair competitive advantage, since the owner's changed fares and schedules would then be available in its system before its competitors could have their changes displayed. Moreover, since each vendor alleged it always or almost always loads the information on participating carrier services as quickly as information on its own services, such a rule would not significantly burden any vendor or delay the availability of information on a vendor carrier's services. 56 FR 12616–12617. We also note that some systems allow hotels and rental car companies to update their information electronically. Air Canada Reply at 19, n. 8.

Worldspan, Delta, Aer Lingus, Lufthansa, and the American Automobile Association support our proposal. American states that the proposal would be acceptable as long as American is not precluded from using a relatively quick procedure for loading information merely because other

carriers choose to use a slower procedure. Covia contends that no such rule is necessary, although it admits that United's fare and schedule changes are sometimes loaded more quickly than are changes for other carriers. Covia Comments, Blackney affidavit, para. 50. Covia also does not claim that such a requirement would be burdensome or costly.

We have determined to adopt our proposal, since it would provide significant competitive benefits while not placing any significant cost burden on the vendors, as we explained in the NPRM. While Covia states that current information on fares and schedules is always available through direct access for carriers participating in that function, the information should be available on the primary display as well, if the carrier chooses to use the same procedures as the vendor.

American, moreover, is mistaken in thinking that the rule will force a vendor to abandon a loading procedure if many participating carriers choose not to use it. The rule only requires vendors to make available the ability to use the loading procedure that it uses. As a result, for example, if the vendor updates its information electronically, it must provide that capability to participating carriers. If some participating carriers choose to use another loading procedure, that would not bar the vendor from using the better procedure. Of course, if a system's loading procedures for the vendor are somewhat slower than they are for participating carriers, as American claims is the case for Sabre, participating carriers would not be interested in using the inferior procedure. American Comments, Ex. F.

I. Booking Fees

1. Background

Each vendor charges participating carriers fees (usually called booking fees) for having its services displayed and sold through its system. While our rules now require all fees for participating carriers to be non-discriminatory, the rules do not limit the amount of the fees. 56 FR 12617. Vendors typically charge a specified fee per booking for each level of service. See Marketing Report at 56. If a carrier participates only in the basic CRS display and booking functions, it pays one fee, while a higher fee is charged carriers that participate in a direct access function. After the vendors' 1990 fee increases, Sabre, Worldspan, and System One charged carriers $2 per segment for each basic booking and $2.25 per segment for each booking made on carriers participating in direct access. 56 FR 12595. In 1991 Sabre increased the basic booking fee from $2 to $2.15 per segment booked (the direct access surcharge remained $.25). NW Reply Comments at 6–7. Presumably the other vendors matched Sabre's fee increases. While Apollo earlier charged fees per booking like the other vendors, it recently began charging carriers fees based on the type of transaction (for example, $1 per segment for each basic booking, $1.15 per segment for each booking made on direct access, and $.20 for each canceled booking).

In the NPRM we found that these booking fees are not subject to competitive discipline and that supracompetitive booking fees injure airline competition. 56 FR 12600. Nonetheless, we did not propose a rule limiting booking fee levels, although we proposed to maintain the rule requiring nondiscriminatory fees. As we explained, 56 FR 12617:

> [W]e are reluctant to begin regulating fee levels * * *. We believe any effort to regulate fee levels may well have more disadvantages than advantages. A rule limiting booking fees would be equivalent to rate regulation, and rate regulation usually creates inefficiencies.* * * In addition, the smaller systems have had the highest costs due to the economies of scale in the CRS business, so any rule limiting booking fees could substantially reduce the profitability of the smaller systems. Moreover, * * * each of [the] proposals [for limiting fees] seems to have flaws that outweigh its merits.

In addition, we noted that our other proposals could reduce the vendors' ability and incentive to charge supracompetitive booking fees. We suggested that giving travel agents the ability to access several systems from a single terminal might give carriers the ability to withdraw from some systems charging high fees, which would decrease the need for a rule limiting booking fees. We stated nonetheless that we were willing to consider the issue further if someone proposed a practicable rule relying on competition to restrain fee levels. 56 FR 12617.

2. Comments

Justice and most of the carriers except the vendors urge us to adopt a rule limiting booking fees. The three largest vendors and several travel agency parties argue that we should not regulate fee levels.

Justice argues that we should adopt a "zero fee" rule that would prohibit vendors from collecting booking fees from participating carriers. Justice contends that such a rule is economically justified, because travel agencies, unlike the airlines, have some ability to choose between systems and to regulate the amount of use of a CRS. Justice Comments at 17–18. A zero fee rule would force vendors to obtain all of their compensation from travel agencies, whereas now they obtain the largest share of their compensation from booking fees. Justice considers that change beneficial to some extent, since it would eliminate the monopoly rents now obtained by vendors. Consumers now pay for those rents in the form of higher airfares. Justice Comments at 19–21.

While many carriers assert that a rule limiting booking fees is essential, none supports a zero fee rule. Instead, they suggest other possible rules, particularly rules limiting vendors to charging fees found reasonably related to their costs by someone (usually an arbitrator). Alaska and America West propose as an alternative a rule limiting each vendor's total booking fee charges each year to an amount equal to the charges paid by its subscribers. ECAC and several foreign carriers assert that we should adopt a rule requiring fees to be reasonably related to costs.

Some carriers, such as TWA, claim that even if all of the proposals for regulating the fee levels have flaws, the need to limit the vendors' imposition of supracompetitive fees requires us to adopt some rule. Midway and America West, on the other hand, ask that we hold a supplemental proceeding to develop an adequate rule if we dislike the current proposals.

American, Covia, and Worldspan oppose any regulation of fee levels. ARTA not only opposes any limit on booking fees—it demands that all CRS costs be paid by participating carriers and none by travel agencies. ASTA, American Express, and AAA oppose the zero fee proposal or any rule that would substantially shift CRS costs from airlines to travel agencies.

System One took no position on this issue.

3. Decision

We will readopt the rule barring discriminatory fees, which no one opposes. However, we will not now adopt a rule regulating booking fee levels, since each of the proposals for regulating fee levels has serious flaws and since none of the parties proposing such a rule has addressed the concerns stated in our NPRM. As noted above, we stated in the NPRM that we would consider a rule proposal on booking fee levels that relied on market forces. No such proposal has been made. Instead, the proponents of rules limiting booking fees either contend that we (or an

arbitrator) should directly regulate fee levels or, in the case of Justice, argue that we should confine the vendors' power to charge fees to those areas where competition will discipline fee levels. As we explained in the NPRM, despite the harm inflicted by supracompetitive booking fees, each proposal contains disadvantages and costs that exceed its potential benefits.

Moreover, we believe—and several parties agree—that our rule allowing agencies to use third-party hardware and software (and to access several systems and databases from a single terminal if not owned by the vendor) will begin to discipline booking fees by giving airlines an alternative to CRS bookings. As we discussed in connection with that rule, each carrier will have the opportunity to establish direct links between its internal reservations system and PCs used by travel agencies as CRS terminals. Because an agency can use the same equipment for accessing the CRS and a carrier's internal system, a number of agents should be willing to use such direct links to make bookings, especially since our rules would allow the carrier to pay the agency to use the direct link (the booking fee savings generated by use of the direct link could enable the carrier to make a substantial payment to the agency). As a result, the rules on third-party hardware and software should create some market discipline on the level of booking fees and thereby reduce the need for more intrusive regulation.

Furthermore, several other factors suggest that the need for a rule limiting booking fees is not so urgent that we should ignore the serious flaws in the various proposals before us. First, while the vendors have not shown that their fees are restrained by competition, their fees are below monopoly levels, apparently due to political considerations. Justice Comments at 5, n. 3; NW Reply, Levine affidavit at 4. Presumably for the same reason, the vendors' fee increases since 1985 have been less than the rate of inflation in the economy. In addition, the average fee is equal to somewhat more than two percent of the average ticket price per segment; travel agency commissions, in contrast, on average equal nine to ten percent of airline fares sold through agencies. Marketing Report at 14. These factors, of course, do not eliminate the desirability of finding a practicable market-based means of holding down booking fees, but they do eliminate the need to simply adopt any rule on booking fees, however troublesome, in order to prevent fee increases.

4. The Zero Fee Proposal

Of the fee proposals presented by the parties, the most rational in terms of economic theory is Justice's zero fee proposal, as we stated in the NPRM. 56 FR 12630. While vendors do not compete for airline participants, they do compete to some extent for subscribers.

Such a rule would be very disruptive if adopted, however, since it would shift the burden of paying CRS charges from the airlines to travel agencies. In 1988 Sabre and Apollo drew more than 70 percent of their revenues from booking fees, while PARS and System One generated about 60 percent of their revenues from booking fees. Marketing Report at 52. The major systems now obtain an even greater share of their revenues from booking fees and an even smaller share from travel agency fees. Covia July 1, 1992 Supp. Comments at 5. Thus shifting the burden of CRS charges to the agencies would force a restructuring of the agency business, even if a substantial portion of the fees paid by airlines represent monopoly rents that could not be obtained by vendors from travel agencies. See also NW Reply Comments, Fisher Affidavit, par. 48.

While Justice believes that travel agencies could recover their increased CRS costs by obtaining higher commissions from the airlines, travel agency parties claim that the carriers are unlikely to be willing to pay higher commissions. See *e.g.*, ASTA Reply at 10. Even if travel agencies ultimately did obtain higher commissions, that process presumably would require some time. Moreover, different types of agencies might be affected differently by the increased CRS costs and the payment of higher commissions. See, *e.g.*, Worldspan Reply Comments at 19. And CRS costs per booking are larger compared to a typical agency's revenues than they are compared to an airline's revenues. ASTA Reply at 9–10. A zero fee rule accordingly would force substantial changes on the agencies' cost structures and methods of operations.

The zero fee rule also presents a practical problem, since such a rule would require a determination of which CRS services would be covered by the ban against booking fees. 56 FR 12617–12618. See also Worldspan Reply Comments at 21.

As a result, we will not adopt the zero fee rule.

5. Rules Requiring Reasonable Fees

A number of carriers urge us to adopt a rule requiring reasonable (or cost-based) fees. We recognize that these proposals for reasonable fees (that is, fees related to costs) are consistent with traditional practices in public utility industries. But even in traditionally regulated industries, like the electric industry, public utility ratemaking has significant flaws. Reasonable rate requirements typically do not encourage regulated companies to be efficient, and rate determinations are often time-consuming and burdensome for the regulated firm, the agency, and other parties. Furthermore, the characteristics of the CRS business make the setting of CRS fees through ratemaking proceedings particularly unattractive. A CRS has three sets of users—the host carrier, participating carriers, and travel agency subscribers—and allocating costs between those groups would be extremely difficult, if not impossible. In addition, the economies of scale in the CRS business would create an anomaly if fees were set administratively: The smaller systems would be able to charge higher fees than the larger systems. 56 FR 12617, 12618. Ratesetting may be relatively straightforward in traditional public utilities because there is little technological change in the industries. In the CRS business, in contrast, technology is continuously developing.

The parties urging the adoption of a reasonableness standard for CRS fees have not refuted these objections to such a rule. Although they contend that CRS ratemaking proceedings would not be as cumbersome and difficult as we found in the NPRM, they have provided no explanation for that position.

Several parties seemingly misconstrue our opposition to the reasonable fee proposals as an unwillingness on our part to determine what fees are reasonable but a willingness to allow someone else to make such a determination. Our basic objections to a reasonable fee requirement flow not from the identity of the decisionmaker but from the serious flaws in any such requirement. Having an arbitrator determine what the fees should be, however, would further worsen such a rule, particularly if the arbitrator's award were largely insulated from agency or judicial review, as a number of parties have proposed. The arbitrator would not necessarily have any expertise in the complex ratemaking issues that would be presented in determining the reasonableness of CRS fees, and insulating the arbitrator's decision from agency or judicial review would enable a single person to make judgments that would shift millions of dollars in revenue between different types of users of a system. Unless the same arbitrator heard every case, there

would be no guarantee that the decisions on the different vendors' fees would be consistent. No party has given any reason for believing that an arbitrator could decide the ratemaking issues better than we could.

While we plan to watch booking fee developments, we are unwilling to impose the rule suggested by Varig requiring vendors to publish their costs. Varig's proposal could provide new information, since no vendor has provided such information in this proceeding. However, we have found from experience that the vendors' figures on profit, loss, and expenses provide little, if any, guidance unless adjusted to reflect general accounting principles and to provide identical treatment for each system's financial results. Given the amount of work involved in that task, requiring vendors to provide cost information does not seem useful. We also prefer not to compel a private firm to publish detailed financial statistics unless there is a clear benefit from doing so, since such a disclosure requirement would help its competitors and be contrary to the usual rights of private firms to keep detailed financial information confidential.

6. The Parity Fee Proposal

Alaska and America West support another proposed limitation on booking fees. Under their proposal, the total payments received annually by a vendor from participating carriers could not exceed the total payments received from subscribers. While we recognized in the NPRM that this proposal had some attractive features (*e.g.*, it would not require ratemaking and would give vendors the discretion to vary their fees for different services), we concluded that such a rule would create an accounting nightmare. We noted, for example, that the vendors' receipts from agencies covered their subscribers' use of the systems to book non-airline services, such as hotels and rental cars, and that some system owners (*e.g.*, Northwest and TWA) partially subsidized the CRS payments made by their system's subscribers. We noted that system owners could also offset the rule's limits by increasing the commissions paid their subscribers. 56 FR 12618.

In addition, the proposal would shift a substantial share of CRS costs from participating airlines to travel agency subscribers.

The parties supporting this proposal claim that the difficulties identified by us are not serious enough to make the proposal unworkable, but the proposal would require us to closely examine each system's receipts to ensure that the systems were not evading the limitation on carrier fees. We think such an audit of each system's income and the sources of agency payments would be overly complex and time-consuming. We therefore think that this proposal is not practicable. In addition, the proposal that carriers pay no more than half of the total CRS costs is itself somewhat arbitrary. ASTA Reply at 14.

The Orient airlines make a similar proposal, which has similar flaws.

7. Air Canada's Proposal

Rather than regulate the amount of fees, Air Canada proposes that we bar any system owner from initiating a fee increase if it receives more booking fees than it pays out. As a practical matter, such a rule would restrict only Sabre, since American is the only carrier whose fee receipts exceed its payments. We are unwilling to adopt Air Canada's proposal, which was not raised until Air Canada filed its reply comments, since other parties have not had an opportunity to comment on it.

8. Transactions Covered by Fees

According to a number of carriers, the vendors have also abused their power by charging carriers for transactions for which no fee could be fairly charged. In general these carriers contend that a participating carrier should be charged only for transactions that produce new bookings for it. They argue, for example, that we should stop vendors from charging booking fees when a traveller who made a reservation directly with a carrier then has a travel agent issue the ticket through a CRS. Some carriers also object to Covia's new fee structure. Although Covia established a lower fee for each booking, it created fees for such transactions as cancellations and schedule changes. In response the vendors argue that the cited transactions—whether or not they produce new revenue for the carrier—require processing by the system and so are legitimately subject to booking fees. See, *e.g.*, Worldspan Reply at 26–27.

When this issue was raised before, we tentatively concluded that we should not try to define which transactions would be subject to fees. We recognized that the vendors' apparent arbitrary power to determine what types of transactions would incur a fee liability further demonstrated the vendors' ability to ignore the wishes of participating carriers. Nonetheless, we also noted that vendors might have legitimate reasons for charging fees for transactions other than new bookings. 56 FR 12619.

Although a number of carriers urge us to limit the kinds of transactions subject to fees, we remain unwilling to take such action. In essence, their proposal would require us to determine on some basis when fees could be legitimately charged by a vendor. The customary approach to such questions for public utility regulation would involve a complex and partly arbitrary synthesis of cost analysis, equity, and the ability of different parties to pay charges. Deciding which transactions should or should not incur fees would require a similar analysis, which we are unwilling to do.

9. Booking Fee Bills

A related issue concerns the alleged inadequacy of the booking fee bills delivered to participating carriers by the vendors. In their comments on our ANPRM, several carriers complained that the vendors refused to provide carriers with enough information in a readily usable form to enable carriers to verify the accuracy of the bills without undue expense. We proposed to require vendors to provide detailed billing information, and we asked whether the rule should specify the type of information to be required and the media on which bills should be sent. We noted that a vendor could evade the prohibition against discriminatory booking fees by imposing false charges on carriers, which would be feasible if carriers could not conveniently audit bills. 56 FR 12619.

Northwest, Alaska, America West, a number of foreign carriers, and ECAC support our proposal and generally contend that we should specify the information to be included in bills. Several carriers assert that the vendors' continuing refusal to provide billing information on magnetic media makes the auditing of the bills unduly expensive. See, *e.g.*, Alaska Comments at 29. Varig, for example, alleges that correcting a half million dollar set of billing errors cost it thousands of dollars because of the cost of enlarging the bills' microfiche information and copying it on paper. Varig Reply at 5. Northwest provided more detailed evidence on the inadequacy of current bills, which, among other things, makes it very difficult for a carrier to identify fictitious bookings made by an agency to satisfy a productivity pricing contract with its vendor. NW Comments, App. D at 1–2. In January 1991 Covia sent Northwest a bill for 1 million bookings and over 440,000 cancellations supported by 51 microfiche cards totalling over 24,000 pages that provided only summary data on each transaction. For example, the transactions are not listed by the agency making the booking or cancellation. NW

Comments, App. D at 2–3. While Sabre is now providing billing information in a machine-readable form (for which it imposes an additional fee), the information is still hard to audit. *Id.* at 3–5.

Justice did not comment specifically on the proposal on adequate billing information, but its position that market forces have no effect on the level of booking fees is consistent with the NPRM's conclusion that a rule is necessary to ensure that vendors provide adequate billing information.

Covia and Worldspan say no rule on booking fee bills is necessary. If a rule is adopted, Covia would not object to a specification of the information required in bills. Covia Reply at 17. American agrees that a rule on the issue should specify the data required in bills. American Comments at 27.

Whether the vendors should be allowed to charge for providing bills on magnetic media was discussed by several commentors. American and Covia assert that vendors should be able to charge more for providing bills on magnetic media, which allegedly costs more, but they have provided no evidence to support this claim. Air France notes that American has proposed a fee schedule for magnetic media billing that would require each interested carrier to make an upfront payment of $4,000 (the total payments to Sabre potentially could exceed $1 million) as well as annual payments thereafter of $1,800 per carrier. Air France Reply at 17. In a late filing, Air France asserts that a magnetic tape costs less to produce than microfiche and that a tape is usually needed to produce a microfiche bill. September 3, 1992 Air France Comments at 13, n. 20. Alaska is not ready to agree with American's claim that magnetic media costs more and that vendors should be able to charge for billing information provided on magnetic media. Alaska Reply at 34.

We have decided to adopt the proposed rule requiring vendors to provide adequate information in booking fee bills and on magnetic media so that participating carriers can readily audit the bills. As explained above in our analysis of the basic need for CRS rules, participating carriers have no ability to bargain over the terms of their participation in the systems and therefore cannot cause vendors to provide adequate billing information, the kind of information that a supplier in a competitive business would provide if it wished to keep its customers. Furthermore, as we noted in the NPRM, without adequate billing information vendors could evade the prohibition against discriminatory fees by imposing false charges. The rule requiring vendors to provide enough information to allow the auditing of bills for fees is accordingly essential to maintain the rule banning discriminatory fees.

As the parties suggest, we will specify the information that must be included in bills, since a rule requiring "adequate" information would lead to disputes over what information was adequate. The items to be required shall consist of the following for each segment: PNR record locator number, passenger name; booking status, agency ARC number, pseudo-city code, CRS transaction date, city-pair information, flight number, flight date, class of service, and type of CRS booking (*e.g.*, direct access). We have based this list on the list proposed in the NPRM, 56 FR 12619, and the comments of several parties, who generally agreed that these items should be included. NW Comments at D–1; Alaska Comments, Appendix; British Airways Comments at 29; Orient Airlines Comments at 32–33; Varig Comments at 30; Air Canada Reply at 46. This list is comparable to the information now being provided by American. American Comments, Ex. G.

At this time we will not bar vendors from charging carriers for providing bills complying with the rules. It may be that providing bills on magnetic media is more expensive, as claimed by American and Covia. However, we will monitor any vendor charges, given the importance of assuring that participating carriers receive adequate informahe accuracy of bills.

Finally, we have reworded the rule so it does not specifically authorize a participating carrier to withhold payment pending receipt of adequate information.

J. Other Terms of Carrier Participation

The rules currently bar any vendor from conditioning a carrier's participation in its system on the purchase of other goods or services. The Board adopted this rule as a result of its findings that vendors had coerced participating carriers into agreeing to buy non-CRS services on unfavorable terms by threatening to exclude them from the system. Board Rule, 49 FR 32554–32555. The NPRM's proposed rules maintained the Board's prohibition.

No party has objected to the continuation of that rule. However, Northwest, Aer Lingus, and Air Canada have raised a related issue, since they complain that Sabre is forcing carriers who wish to participate in Sabre in the United States to agree to participate in Sabre and its affiliated systems on a worldwide basis. These parties view American's conduct as particularly unfair because Sabre and its affiliates operate in a number of countries where there are no regulations protecting participating carriers against display bias and discriminatory treatment and because the booking fees charged by Sabre outside the United States are frequently higher than the fees charged for transactions inside the United States. NW Comments at App. B; Aer Lingus Reply at 12–13; Air Canada Reply at 5–6. SAS made a similar complaint against a U.S. vendor but did not identify the vendor.

We believe that Sabre's conduct may violate the current prohibition against tying U.S. CRS participation to the purchase of other goods and services, since participation in a CRS outside the United States, particularly a CRS not even operated in this country (for example, Fantasia, Sabre's affiliate in the Far East), appears to be a different service.

On the other hand, in several instances a foreign carrier has refused to participate in a U.S. system in its homeland in order to keep that system from competing effectively with its own system, and those situations can lead to serious international disputes. If Sabre uses its leverage from its U.S. operations to cause foreign carriers to participate in its international operations, such disputes can be avoided. Sabre may also be correct in alleging that Northwest's complaint on this issue is designed to help the marketing of Abacus.

Furthermore, the major complaint of the carriers opposing Sabre's practice seems to be Sabre's unwillingness to agree to comply with the non-discrimination requirements of our rules (or similar rules) in countries where CRS operations are now unregulated. We will accordingly modify our rule on tying so that a vendor may require a carrier to participate in its system overseas as a condition for participating in it in the United States only if the vendor promises to comply with the provisions in our rules requiring unbiased displays and nondiscriminatory terms for carrier participation in its foreign CRS operations to the extent they are not regulated by another government. We will not require compliance with the rules on subscriber contracts or marketing data.

The Orient airlines and Air Canada urge us to outlaw other allegedly unfair contract terms imposed by vendors on participating carriers, such as disclaimers of warranties by vendors. We will not grant this request. No other carrier has supported it. Moreover, the

record does not indicate that other contract terms are particularly unfair or have caused significant harm. We do not wish to become responsible for reviewing and rewriting CRS contracts unless there is a strong need for such intervention. The carriers requesting our intervention have not made out such a case.

Air Canada suggests that the terms of participating carrier contracts should be made public to help carriers enforce their rights. Since no other carrier has suggested that vendors discriminate among participating carriers on contract terms, we will not adopt this suggestion.

K. Domestic Marketing and Booking Data

Under section 255.8 of the current rules, if a vendor chooses to generate any marketing, booking, or sales data from the bookings made on its system for domestic travel, it must make that data available to all U.S. participating carriers on nondiscriminatory terms (as discussed in the next section of this rule, international booking data is treated differently under the rules). The Board found this requirement necessary because only the vendor had access to the data that could be derived from bookings made on its system. The data appeared to give each vendor a competitive advantage because it could learn how many bookings were made by each of its subscribers on each airline in each city-pair market. Rather than prohibit vendors from using the data, a prohibition which seemed unenforceable, the Board chose to require vendors to make the data available to all U.S. participating carriers. 56 FR 12619–12620.

We tentatively determined not to change this rule, although we did propose to change the rules on access to international booking data, as discussed below. The rule enables other carriers to obtain access to the data from domestic bookings and thereby ended one competitive advantage possessed by the vendors. While we recognized that the vendors' practice of charging for access to the data and their manner of providing the information made its use difficult, the only proposal for alleviating that situation—a proposal that third-party firms be able to reprocess and resell the data to interested airlines—would have allowed many carriers to obtain access to data without paying any fee to the vendor. 56 FR 12620.

Several participating carriers suspected that vendors use CRS-generated data for marketing purposes without making the data available to other carriers (or that vendors delay the availability of the data). We pointed out that we have little evidence that vendors are unfairly using information derived from CRS bookings on a routine basis or that the vendors' use of such data would substantially harm their competitors. We further observed that a rule prohibiting vendors from making realtime use of the data would be very hard to enforce. 56 FR 12620. However, we noted that we were investigating one vendor's apparent violation of the rule. That vendor was Covia, which provided fare information to United from Covia bookings without making that information available to other participating carriers, not even USAir. Covia later agreed to stop giving United exclusive access to the information at issue.

In their comments on our tentative decision to readopt the rule on domestic data without change, several carriers have asked us to strengthen the rule. ASTA and ARTA, in contrast, argue that the rule should be revoked since it harms travel agencies.

We have decided to readopt the rule as it stands. We will first discuss the comments from parties seeking to eliminate or weaken it and then the comments from parties seeking to strengthen it.

ASTA and ARTA remain concerned that our rule enables carriers to have access to data on the operations of each agency. We recognize that their concerns have some merit. 56 FR 12620. However, we agree with the Board that a rule denying vendors access to the data generated from their subscribers' bookings would be unworkable. ASTA predicts that such a prohibition would be effective, if we announced that we meant to enforce it and would impose severe penalties on violators. ASTA Comments at 14. We are not so confident about the deterrent effect of such a statement. Nor can we agree with ARTA's claim that even American has represented to travel agencies that Sabre and the airline are operated independently so that we should assume that Sabre would be unlikely to violate a prohibition against use of the marketing data. ARTA Comments at 16. The record shows that Sabre takes into account American's airline marketing interests, just as would be expected from the common ownership of the airline and the CRS. ARTA claims that violations of the rule would be detected by agencies, since they would know when a vendor was using the data to pressure its subscribers to give it a bigger share of their airline bookings. *Ibid.* We are not convinced, particularly since vendors could use the data in ways not visible to their subscribers and since subscribers might be unwilling or uninterested in telling us about vendor uses of the data.

ASTA charges that requiring vendors to disseminate the booking and marketing data generated from CRS bookings is a violation of antitrust principles. ASTA Comments at 13. When we addressed this argument before, we pointed out that ASTA had failed to explain how the rule would have anticompetitive results and that competition usually benefits when competitors have access to more information. 56 FR 12620. ASTA still has not provided a theory on how competition would suffer from the participating carriers' access to more data.

We are also unable to agree with the travel agency associations' premise that the data generated from agent bookings is clearly proprietary data belonging to the agency. Travel agencies, after all, operate as the airlines' agents, and they use CRSs owned by other firms for airline booking transactions. These facts suggest that travel agencies do not necessarily own the data.

We will not grant ASTA's request that we require vendors to give each subscriber access to the data generated from the agency's bookings through a system. ASTA Comments at 14–15. ASTA may well be correct when it asserts that agencies would be better able to bargain with airlines and vendors if they had the data. However, improving business opportunities for travel agencies is outside the scope of this proceeding, which is based on our responsibility under section 411 to prevent unfair methods of competition (that is, conduct violating antitrust laws and principles) and consumer deception. ASTA has not shown that its proposal would further the goals of this proceeding. We also do not have general authority to impose regulations on vendors (or carriers) in order to compel them to act in a manner which meets our standards of fairness. *Cf. Continental Air Lines* v. *American Airlines,* Order 85–12–69 (December 24, 1985) at 6. Moreover, ASTA concedes that an agency can compile its own data from its CRS bookings when it has an adequate backoffice system. ASTA Reply at 17.

NBTA, on the other hand, is concerned with the possible loss of confidentiality of corporate bookings, particularly bookings made by corporations' in-house travel offices. However, bookings made by those offices, unlike agency bookings, would not be subject to the rule requiring that data be made available to participating carriers. To the extent that corporations

book travel through travel agencies, any data generated from their bookings should be treated like other data generated from agency bookings.

Unlike NBTA, ASTA, and ARTA, several carriers contend that the rule should be revised to ensure greater access to CRS-generated data. Worldspan contends that we should require vendors to make the data available to other vendors as well as other airlines, since Worldspan—a system owned by several carriers, none of which ha: a majority interest—is at a disadvantage compared to a system like Sabre, owned entirely by American's parent corporation. Worldspan Comments at 25. Worldspan has not provided a detailed explanation of why its competitive ability is hurt by lack of access to data, and we note that some data on travel agency bookings is available from ARC. Accordingly we will not expand the rule's beneficiaries to include vendors.

America West again urges us to revise the rule to allow third-party firms to buy the data and process the information for resale to participating carriers. America West Comments at 25–26. While we are aware that the data tapes provided by vendors are often expensive and difficult for carriers to use, adopting a rule requiring vendors to resell the data to third-party firms would be inadvisable without a more detailed record on the issue. We note, moreover, that carriers currently can have the data tapes processed by a third-party firm after buying them from a vendor, so no change in the rule is needed to allow that.

According to Northwest, participating carriers will not have a fair chance to use the data in competition with the vendors unless vendors make the data available to participating carriers under the same standards of timeliness, accuracy, and completeness used for providing the data to themselves. Since the current rule requires each vendor to make available to participating carriers the same data used by the vendor, the rule implicitly requires the same standards of accuracy and completeness to be used. We will make the requirement explicit. On the other hand, we are unwilling now to require that the data be made available at the same time—such a requirement would be hard to enforce, as we said in the NPRM, and we have no information that participating carriers are being harmed because vendors have earlier access to the data.

L. International Marketing and Booking Data

While the Board determined that U.S. carriers should have access to marketing data generated from bookings for domestic travel, it found it unwise to impose a similar requirement on data generated from bookings for international travel. The Board did not want to give foreign carriers access to such data because there was no assurance that foreign carriers would make comparable data from their systems available to U.S. carriers. ER–1396, 49 FR at 46347 (November 26, 1984). The Board then determined that U.S. carriers should not have access to the data because that would give them an unfair advantage over foreign carriers. 49 FR 46348–46349. The current rule accordingly prohibits vendors from giving any participating carrier data generated from any carrier's bookings for international travel without the latter carrier's consent. The rule, however, does not bar a vendor from using data derived from the bookings for international travel.

We proposed in the NPRM to give both U.S. and foreign participating carriers access to data generated by a vendor from bookings for international travel, subject to the condition that a foreign carrier could obtain the data only if any foreign CRS affiliated with that carrier provided equivalent data to U.S. carriers. 56 FR 12620–12621. As we noted in the NPRM, we had already granted exemptions from the current prohibition so that American and Worldspan could provide data from bookings in certain international markets to foreign carriers who provided similar data to U.S. carriers. Orders 90–7–34 (July 13, 1990), 89–8–36 (August 21, 1989); 89–4–44 (April 19, 1989), and 88–12–35 (December 15, 1988). We asked parties to comment on whether foreign carriers should have access to data from all international bookings or whether, as in the Sabre and Worldspan exemption cases, each foreign carrier should have access only to data from bookings for travel between the United States and the carrier's homeland. 56 FR 12620–12621.

All of the parties commenting on the proposal—American, Covia, Delta, Northwest, Alaska, America West, USAir, Aer Lingus, Alitalia, British Airways, KLM, Lufthansa, Swissair, and ECAC—support a rule giving carriers access to international booking data. However, they disagree to some extent on whether reciprocity should be required of foreign carriers and how much data should be available to foreign carriers. Generally speaking, most parties view the reciprocity condition as reasonable and favor the widest availability of data.

We will adopt the proposal on providing U.S. carriers access to data drawn from bookings for international travel without further discussion, since no party has questioned our tentative finding that such a rule was desirable. The only issue concerns the conditions for foreign carrier access to data.

In response to our request for comments on the scope of data to be made available to foreign carriers, American, Covia, Delta, Northwest, Aer Lingus, British Airways, and ECAC assert that foreign carriers should be able to obtain data in all markets, not just in the markets between the United States and the carrier's homeland. Lufthansa, on the other hand, contends that carriers should have access only to data on markets served by the requesting carrier. We have determined to allow foreign carriers access to data on all international markets, subject to the reciprocity condition. Allowing them access to data on all markets should assist U.S. carriers in obtaining a broad range of data. Limiting a foreign carrier's access to data only for routes it serves would be too restrictive. A carrier operating between the United States and Germany, for example, is competing to a significant extent with carriers serving nearby European destinations from the United States. As noted, moreover, no U.S. carrier and no foreign carrier except Lufthansa has supported a rule that would limit the markets for which foreign carriers could obtain data.

As proposed, we will also condition a foreign carrier's ability to obtain data on bookings in the United States so that it may obtain the data only to the extent that any CRS affiliated with it provides comparable data to U.S. carriers. Without this requirement, a foreign carrier could obtain valuable marketing data from U.S. vendors without having to provide any data from systems operated by it in its homeland or other countries. Such a result would prejudice the competitive position of our carriers. We note that British Airways and ECAC consider a reciprocity condition reasonable. British Airways Comments at 27–28; ECAC Comments at 12. However, KLM believes that a reciprocity condition would lead to arguments between the United States and foreign governments, apparently because KLM views reciprocity as a United States dictation to foreign countries on CRS practices. Swissair considers reciprocity unfair, because it holds a small ownership interest in Galileo and so will be unable to cause

Galileo to provide data to U.S. carriers; Swissair is also concerned that Switzerland or the European Community may deny release of CRS-generated booking data, thereby preventing Swissair from obtaining any U.S. data.

We find the objections by Swissair and KLM unpersuasive. As indicated, no other foreign carrier or party objects to that proposal, and ECAC and British Airways consider it reasonable. We recognize that a carrier with a small ownership interest in a CRS cannot dictate the system's decisions on whether to release data to U.S. carriers, but it does have some ability to persuade its partners to agree to release data. The hypothetical difficulties cited by KLM and Swissair appear unlikely. KLM and Swissair are partners in Galileo with British Airways, and the latter does not seem to fear that Galileo will refuse to make data available. ECAC's acceptance of a reciprocity condition indicates that the European governments are unlikely to deny release of marketing data derived from CRS bookings, and neither KLM nor Swissair has cited any provision in the European Community rules which would require denying access to such data. Moreover, if an unusual case arises where a foreign carrier is denied access because of its affiliation with a foreign system that refuses to provide data, we can consider granting an exemption. Despite KLM's warnings, we doubt that a reciprocity condition will lead to any serious intergovernmental disputes, especially since we note that our rules and the European Community rules contain similar provisions authorizing vendors to discriminate against foreign carriers whose own systems do not provide nondiscriminatory treatment for other carriers.

Since some foreign systems like Galileo and Abacus operate in a number of countries, American asserts that the reciprocity condition should require affiliated carriers to provide data from bookings in all countries, not just bookings in the homeland of the particular carrier. American Comments, p. 29. We agree with American's condition, although that would require Sabre to make available to foreign carriers the data from its operations in all countries, not just the United States (and to make such data available to U.S. carriers participating in Sabre).

Covia suggests there is no need to require a vendor to provide notice to U.S. participating carriers when it begins providing data to a foreign carrier, a step which would entitle the U.S. participating carriers to obtain data from the foreign carrier. Covia alleges that most non-vendor carriers will have no interest in obtaining data from foreign carriers. We disagree. Providing notice to participating carriers should cost very little, and the cost will be worthwhile if a few carriers choose to obtain the information available from the foreign carriers.

American and USAir suggest that we allow carriers to provide a travel agency with information obtained from a vendor on the agency's own bookings. American Comments at 30; USAir Comments at 8–9. We are not prepared to incorporate such a provision in the rule, since we do not know the confidentiality restrictions placed by vendors on the use of data by participating carriers. The rule's purpose, however, is to give participating carriers the same ability to use the data for airline marketing that the vendors have—if a vendor discusses information with one of its subscribers drawn from that agency's bookings, the carriers participating in its system can do the same.

Finally, British Airways asks us to make it explicit that a vendor may not use any CRS-generated data that are not also made available to participating carriers. We think this limitation on the vendors' use of CRS data is already clear—it is the foundation of both the current rule and the revised rules on CRS-generated data.

M. Subscriber Contracts

1. Background

The Board found that travel agencies should have a realistic ability to switch or add systems in order to ensure that smaller or newer systems had an adequate opportunity to compete for subscribers. Unless the CRS rules limited vendor subscriber contract practices, the established vendors would impose contract provisions that would deny competing systems any opportunity to convert agencies that already had a CRS subscription. For example, some vendors were beginning to impose ten-year terms in their subscriber contracts. Board NPRM, 49 FR 11651–11652. The Board accordingly adopted rules prohibiting several types of restrictive contractual provisions: contract terms longer than five years, the tying of an agency's commissions to its use of a system, clauses mandating the use of the vendor's system for the sales of its tickets, prices for CRS services that varied according to which carrier was booked by the agency, and direct or indirect prohibitions by vendors on the acquisition or use of other systems by subscribers. 14 CFR 255.6.

The Board's expectation that these rules would give agencies substantial flexibility to change systems or to use more than one system has proven largely inaccurate. The vendors, particularly Sabre and Apollo, each adopted standard contract terms discouraging agencies from switching or adding systems. As we explained in the NPRM, the vendors created these various contract provisions in order to protect their subscriber base against the conversion efforts of other systems. 56 FR 12621.

Vendors rarely agree to a subscriber contract with a term of less than five years. They require subscribers to pay liquidated damages if an agency breaches its CRS contract (*e.g.*, by dropping a system in order to begin using another system), and the liquidated damages formula typically requires the agency to compensate the vendor for the booking fees that the vendor would have obtained if the contract had remained in effect until the end of its term. This liability for lost booking fees usually makes it economically impracticable for an agency to switch systems during the term of its CRS contract. Vendors also included "rollover" clauses in contracts that automatically renewed the contract for a new five-year term upon the happening of certain events (usually the subscriber's acquisition of more terminals or the opening of a new location). 56 FR 12621.

Other contract clauses deter subscribers from making substantial use of another system. In particular, under the vendors' "minimum use" clauses a subscriber who does not make a certain number of bookings on the system each month has breached its subscription agreement and become liable for liquidated damages including lost booking fees.

We therefore proposed to amend the existing subscriber contract rules to make effective their intent that agencies should have some ability to change systems and to use two or more systems. We proposed to fix the maximum contract term at three years instead of five years and to prohibit minimum use and rollover clauses (as discussed below, the proposed ban on minimum use clauses was so worded that it would have banned productivity pricing as well). Although a number of parties had asked us to prohibit the tying of an agency's CRS choice with its receipt of airline marketing benefits, we did not propose to expand the current prohibition against tying. 56 FR 12625–12626.

We recognized that these subscriber contract issues were complex, since the contract terms at issue could serve legitimate purposes and since the rule proposals could have untoward consequences. We therefore asked parties to address several questions involving this subject. 56 FR 12623.

2. The Parties' Comments

In general, the two major vendors oppose our tentative revisions of the rules on subscriber contracts. They contend that the contractual provisions at issue do not restrict the agencies' ability to switch systems (or add new systems) and that any restrictions are appropriate for protecting the legitimate economic interests of the vendors. Several large travel agencies assert that we should cut back the scope of the revisions and perhaps authorize the larger agencies to waive the protection of some rules. The two travel agency trade associations, on the other hand, support our proposed changes, as do some agencies, the smaller vendors, and several U.S. and foreign airlines. Almost all of the commenters, however, contend that productivity pricing must be allowed.

Justice believes that the vendors' restrictive contract provisions, including the five-year term almost invariably included in subscriber contracts, are designed to reduce competition, not to serve legitimate business goals. Nevertheless, Justice thinks that any effort to regulate such contract restrictions (other than the length of subscriber contracts) will be ineffective, primarily because the vendors have incentives to devise other contract terms that will prevent switching by agencies. Justice Comments at 4, n.2, and 13–15.

3. The Effects of the Contract Restrictions

We have determined to adopt our proposed changes with two substantial modifications: we will allow vendors to give travel agencies the option of a five-year contract term if they also offer a contract with a term no longer than three years, and we will allow productivity pricing. Before discussing the particular rule provisions at issue, however, we will explain in general why we have determined to adopt rules prohibiting certain restrictive contract provisions.

Promoting competition in the airline and CRS businesses requires us to eliminate vendor practices that unreasonably interfere with the ability of travel agencies to switch systems and use multiple systems, where taking such action is practicable. Not only do we wish to prevent the major vendors from foreclosing efforts by smaller systems to expand, but we want to give agencies an effective opportunity to use new databases and direct links with internal carrier reservations systems if they wish. However, we are unwilling to outlaw contract provisions that encourage efficiency and investment.

Obviously the contract terms at issue—five-year terms, "rollover clauses" that automatically extend the contract term, "minimum use clauses" that make an agency liable for damages for breach of contract if it fails to meet certain booking levels on the vendor's system, and liquidated damages clauses that impose substantial liabilities on agencies that breach their contract—restrict agency choices. Of course, any contract restricts the options of each party, since it must carry out its obligations or be liable for damages for breaching the contract. Usually such contract terms promote economic efficiency. However, as discussed below in connection with the specific rule proposals, we find that rollover clauses and minimum use clauses have no apparent purpose except to reduce competition for subscribers. Five-year contract terms, on the other hand, seem to provide some economic efficiency benefits.

The provisions at issue are of concern because of their widespread use. Very few subscriber contracts have a term of less than five years, and the major vendors at least impose minimum use and liquidated damages clauses as part of their contracts with the majority of their subscribers. ASTA Comments at 5;56 FR 12621. The record suggests that these contract terms are generally offered on a "take it or leave it" basis. Woodside Comments at 8; Parker Comments; see also NPRM, 56 FR 12622. American and Covia claim that travel agencies do not care about the restrictions and prefer to take the price benefits allegedly made possible by the restrictions. However, their reasoning is suspect in view of the opposition of the travel agency trade associations and the vendors' inclusion of restrictive terms in contracts where agencies pay undiscounted rates for CRS services. 56 FR 12623–12624.

The record indicates that the restrictive contracts do decrease CRS conversions and the use of multiple systems by agencies, a finding consistent with our conclusion that the restrictive contracts are designed to achieve that result. Justice ANPRM Comments at 29. Travel agencies, of course, would be reluctant to switch CRSs even if they had complete contractual freedom to do so, since changing from one system to another imposes costs for such things as retraining employees and transferring records. However, the contract provisions seem to make it much more difficult for agencies to switch systems.

While vendors initially competed vigorously for new subscribers, that competition occurred before the courts began upholding the liquidated damages clauses requiring subscribers to pay lost booking fees. Those decisions caused System One to substantially abandon its conversion efforts. 56 FR 12621, 12623. The record suggests that the number of conversions since then has declined significantly. Our NPRM invited commentors to provide more data on this issue in response to our tentative findings that competition had declined, 56 FR 12623, but only Covia of the parties opposing the proposed rules on contracts provided new data. Covia states that 300 Apollo locations switched to another system during a recent two-year period, Covia Comments at 11. Since Apollo had over 8,000 locations in 1988, Marketing Report at 51, in a two-year period less than four percent of Apollo's subscribers switched from Apollo to another system. This suggests that little switching now occurs, since in earlier years before System One's defeats in court more conversions took place.

We also find unpersuasive Covia's argument that the agencies already have the ability to use two or more systems, despite contract restrictions like minimum use clauses, since 20 percent of Apollo subscribers use at least one other system (Covia does not say whether this means 20 percent of the agency subscribers or 20 percent of Apollo locations). July 1, 1992 Covia Comments at 20. We noted in the NPRM that a significant number of agencies use two or more systems, but we pointed out that few make substantial use of more than one system. 56 FR 12593–12594. A minimum use clause may not prevent some agencies from using a second system, but the penalties for breaching the clause are severe enough that an agency will be unlikely to make substantial use of a second system.

American has provided no figures on the number of agency subscribers it has won or lost from other systems. Instead, American contends that in a number of markets there have been substantial changes in CRS market shares. March 2, 1992 American Comments at 12. However, significant market share changes in a few cities are consistent with the finding that the contract clauses reduce switching, since the cities where large market share changes have taken place have typically been

cities where a vendor established a hub or where the hubbing carrier acquired an interest in a CRS. NW Reply, Fisher affidavit. When a carrier has a large airline presence in a city, it can afford the expense of indemnifying agencies switching from other systems, since an increase in its CRS market share is likely to increase its airline revenues (and reduce its booking fee liability to other systems). See e.g., Delta Comments at 25; Justice ANPRM Comments at 29.

American and Covia also cite the decline in their net receipts from subscribers as proof that vendors still compete vigorously for subscribers. They claim that agencies are taking advantage of the vendors' competition for subscribers by demanding more CRS services for less money. While this argument seems plausible to some extent, it cannot substitute for more direct evidence on the number of agencies switching systems. Moreover, given the comments from the agency parties, we cannot accept the premise that most agencies have substantial ability to switch systems or use more than one system. See e.g., Woodside Comments at 8. We would prefer to have more data on the degree of switching, but given the modest scope of our rule changes—we are prohibiting only certain terms that seem to have no economic justification—the record on the number of CRS conversions is sufficient for our adoption of new rules.

We recognize that the travel agency industry includes large firms whose use of a CRS produces large amounts of booking fees and who are therefore very attractive CRS subscribers. As is apparent from the comments of several large agencies in this proceeding (*e.g.*, American Express and AAA), the largest agencies believe they have sufficient bargaining power not to need the protection of rules. However, large travel agencies do not produce most airline bookings. Large agency locations—those with annual revenues of $5 million or more—were responsible for 33 percent of the travel agencies' total revenues in 1987. Thus contract terms restricting only the CRS choices of medium-size and small agencies may still have a substantial impact on airline and CRS competition. Woodside's comments, moreover, suggest that vendors commonly refuse to waive restrictive contract provisions even when seeking large agencies as subscribers. Woodside Comments at 8.

As a result, we conclude that the restrictive contract terms significantly reduce the agencies' ability to change systems or to use multiple systems. That finding by itself cannot justify rules prohibiting the restrictions, since we must consider whether such rules would produce significant benefits.

Unduly restrictive contract terms are of concern to us because of their impact on competition in the airline and CRS businesses. We find that eliminating them would enhance airline and CRS competition. If subscribers are locked in to one system, other vendors will be denied the opportunity to compete for their business. As we explained in the NPRM, undue restrictions on the agencies' ability to change systems or use two or more systems injures airline competition in several ways. First, if agencies had a better opportunity to switch systems, that could enable a carrier with a CRS interest to enter a new city (or expand service at a city), because that carrier could expand its system's market share in that area and thereby support increased airline service. Secondly, the economies of scale in the CRS business place smaller systems at a competitive disadvantage. If the smaller systems had a greater ability to increase their market share, that could strengthen CRS competition (and thereby promote airline competition). Thirdly, increased competition for subscribers should cause vendors to improve the information-gathering and transactional capabilities of their systems (and thereby reduce architectural bias). 56 FR 12622.

The benefits of increasing agency ability to switch systems or use additional systems seem unlikely to be obtained through market forces. While Worldspan competed for subscribers for some time by offering them less restrictive contract terms, Worldspan states that it has become unwilling to offer less restrictive contracts because doing so exposes its subscriber base to conversions to other systems. See 57 FR 22643, 22644 (May 29, 1992).

Despite the benefits of the proposed rules, we would not regulate the contract provisions if they served legitimate purposes. However, the record indicates that they do not (and our decision to allow productivity pricing will enable vendors to obtain adequate compensation if a subscriber chooses to make little use of a system). Our review of the evidence caused us to conclude in the NPRM that the contract provisions at issue were developed to foreclose competition for subscribers. 56 FR 12621. No party has submitted evidence contradicting that finding.

Furthermore, the contract restrictions do not appear to be essential for the efficient marketing of CRS services. In the European Community, subscribers are free to terminate a contract at the end of its first year. In Canada, the maximum permissible term for subscriber contracts is three years. 56 FR 12623. We asked parties to comment on the effect of these foreign rules on CRS operations. No party provided any evidence that the European and Canadian limits handicap CRS operations.

While long-term contracts usually promote economic efficiency, as we noted in the NPRM, the vendors' contracts do not provide the benefits typically provided by multi-year contracts. 56 FR 12622. While the contracts protect the vendors' interests, they do not assure stability in price and service for most subscribers. As ASTA has pointed out, most subscriber contracts allow vendors to raise charges and fees significantly during the term of the contract. ASTA Comments at 5. No vendor has disputed that statement, although some large agencies contend that long-term contracts can benefit agencies. Covia claims nonetheless that the contract provisions are ineffective, since its subscribers continually receive buy-out offers from other vendors, which forces Covia to renegotiate the contracts and to offer better terms in order to keep subscribers. July 1, 1992 Covia Comments at 5. Covia's claims do not match other evidence on this issue and are inconsistent with Covia's arguments that the restrictive contract terms are necessary. If, as Covia asserts, it must renegotiate contracts every few years to keep subscribers from switching to another system, the restrictive contracts would presumably be ineffective. Covia nonetheless insists that it must be able to obtain such restrictions.

Covia also claims that our proposed rules will drive up agency costs and that the agencies likely to suffer the most will be the smaller agencies. Covia Comments at 30. We disagree. The rules are designed to increase competition for subscribers, so they should restrain agency price increases. Other parties doubt that the rules would have the dire effects predicted by Covia. For example, the Board's adoption of similar rules did not affect the quality of the deals offered agencies by subscribers. Ten Major Agencies Comments at 21. And Worldspan and System One have been seeking subscriptions from small agencies even though those two vendors make little use of minimum use clauses and other restrictions. Hewins Comments at 4–5. In addition, the larger agencies, not the smaller ones, are the recipients of free or discounted CRS

services. If subscriber charges increase, the smaller agencies would not necessarily be the primary victims.

On the other hand, we recognize that increasing vendor competition for subscribers will not be free of costs. It may facilitate efforts by the owners of smaller systems to use their airline dominance at their hubs to obtain a dominant position in the local CRS markets, as we recognized in the NPRM. 56 FR 12623. However, no one has shown that this threat at some cities outweighs the potential gains elsewhere in the country. In addition, if vendors compete more for subscribers, their costs may increase and thus lead to increases in booking fees. *Ibid.* The record does not indicate that increased booking fees are likely.

Even if the proposed rules would be beneficial in theory, we must consider whether they would be effective. We find troublesome Justice's observations that the vendors are likely to create methods for evading any contract rule, just as they did with the current rules; that trying to enforce stronger rules on contracts will be costly and ineffective; and that we will end up micromanaging contracts. Justice Comments at 13–14. Justice's comments have considerable validity and have helped persuade us not to adopt some of the rule proposals advanced by parties (*e.g.*, proposals to limit the damages obtainable by vendors on a subscriber's breach of a contract). However, given the relatively modest scope of our amendments on subscriber contracts, we doubt that Justice's concerns outweigh the apparent value of those amendments.

Against this background, we will now discuss our resolution of the specific rule proposals made by the NPRM and the parties.

4. Maximum Contract Term

Under the current rules, no subscriber contract may have a term longer than five years. In the NPRM we proposed to make the maximum term three years. After reviewing the comments, we have decided to modify that proposal by giving vendors the option of offering subscribers contracts with a term of not more than five years as long as the vendors also offer the subscriber a contract with a term of not more than three years.

When we proposed a three-year maximum term for subscriber contracts, we noted that the five-year rule had been based on American's representation to the Board that a five-year term was necessary to preserve certain tax benefits then available. The tax provision cited by American was later repealed, so the original justification for a five-year term no longer exists. 56 FR 12622. We proposed a three-year term to provide agencies a greater opportunity to change systems, but we requested comment on what maximum term should be allowed, since parties had made various proposals on this issue. 56 FR 12624.

The smaller vendors, ASTA, and ARTA support a rule prohibiting a term longer than three years. Other parties assert, however, that agencies should be able to obtain a five-year contract if they wish. Woodside supports a rule requiring vendors to offer travel agencies a three-year contract but allowing them to offer a five-year contract as well. Thomas Cook similarly would like a rule giving agencies the option of signing a five-year contract with lower fees for CRS services reflecting the cost savings obtained by vendors due to the longer term of the contract. The American Automobile Association suggests that agencies should be able to agree to a five-year term in an initial contract for CRS services, since the agency's expenses for first using the system would be amortized over the longer term. It also suggests that a three-year maximum term for renewal contracts would be workable. American and Covia state that a rule allowing a vendor to offer a subscriber a five-year contract as an alternative to a three-year contract would be acceptable to them. American Comments at 33; Covia Comments at 84. Finally, while ARTA supports our three-year proposal, it states that some of its members would prefer having the option of taking a longer contract instead of a three-year contract. ARTA Comments at 19.

We have determined to give agencies the option requested by several of them of choosing between a three-year contract and a five-year contract. Judging by the comments filed by some agencies, a longer term contract can provide economic benefits for subscribers by potentially providing some assurance that they will continue to receive CRS services from the vendor for a stated period and the possibility of lower CRS charges based on vendor cost savings from the longer contract.

We recognize that permitting agencies to accept a five-year contract will not create as much flexibility for subscribers as several parties wish. However, we think that the required offer of a contract with a maximum term of three years will provide substantially more flexibility for agencies desiring a greater ability to consider changing systems.

Since we are permitting vendors to offer a five-year contract in part because it may be more economical, vendors necessarily must be allowed to offer subscribers different terms if they agree to a longer contract. We expect, however, that the difference in terms will largely reflect the efficiencies created by the agency's acceptance of the longer contract. If the terms for the shorter contract are unduly onerous, then the vendor would not be deemed to have made a good faith offer of a contract no longer than three years in length as required by the rule.

5. Addition of New Equipment

In the ANPRM we tentatively found that the restrictive effects of the standard five-year contract term were aggravated by the vendors' common practice of making subscribers who acquired additional equipment sign a separate five-year contract for the new equipment. This practice often leads to an agency's obtaining CRS services and equipment under several five-year contracts that never expire at the same time. We therefore proposed to require vendors to include additional CRS equipment obtained during the term of an agency's subscription agreement under that contract, so that at its expiration the agency would be in a position to replace all of its CRS services at that time. 56 FR 12624. The proposed rule, however, contained the proviso that "the bona fide offering of alternative lease periods for additional components at commercially reasonable rates" would be permissible.

ASTA supports this proposal. ASTA Comments at 6–7. Covia considers it acceptable as long as the vendors may calculate their charges for the additional equipment in a way which reflects the remaining term of the agency's subscription agreement. Covia Comments at 90.

While our proposal might provide some additional flexibility to agencies, requiring the inclusion of new equipment within the term of an agency's existing contract, despite the proviso, could interfere with the goal of economic efficiency.

If an agency requested additional equipment when its existing CRS contract was close to its expiration date, the vendor might understandably be reluctant to provide the additional equipment. The rules as a result might preclude a subscriber from obtaining additional equipment as its contract neared the end of its term. Alternatively the price charged for the additional equipment might be unduly high due to the short time left on the contract. In either event the rule could have untoward consequences. In addition, the rule would probably be difficult to

enforce. We have accordingly determined not to adopt it.

6. Rollover Contracts

After the current rules took effect, vendors began imposing rollover clauses—clauses that cause a contract to be automatically renewed for an additional five-year term whenever certain events happen (usually the agency's acquisition of additional CRS equipment or its opening of a new location)—in many subscriber contracts. The clauses became controversial, since they further restricted subscribers' ability to switch to another CRS. Because of the controversy, vendors agreed not to enforce the clauses, although they apparently remain in many subscriber contracts. Marketing Report at 86, 88; ASTA Comments at 5.

In the NPRM we proposed to proscribe rollover clauses. 56 FR 12624. Our proposed rule received the support of Worldspan (Comments at 31), Woodside (Comments at 8), and ASTA (Comments at 5). They agree that rollover clauses serve no legitimate purpose and should be prohibited. No one has tried to defend rollover clauses.

We will adopt our proposal. The use of rollover clauses nullifies the Board's determination that subscriber contracts should not have a term longer than five years, and the clauses are not needed to protect a vendor's legitimate interests. If an agency opens a new location or adds CRS equipment, the vendor can refuse to provide the new services and equipment desired by the agency unless the agency agrees to pay the vendor enough for the added equipment and services.

7. Minimum Use Clauses

Soon after the Board adopted the current rules, the three largest vendors began requiring subscribers to accept minimum use clauses in their contracts. Minimum use clauses make an agency's failure to meet certain minimum booking levels a breach of contract, thereby obligating the agency to pay damages calculated according to the liquidated damages provisions. Because the liquidated damages include lost booking fees, a breach will make the subscriber liable for a larger amount of damages. Minimum use clauses accordingly discourage agencies from making significant use of more than one system. The clauses, moreover, seem designed to protect the vendor's subscriber base from competition rather than to ensure that the vendor receives adequate compensation for the services and equipment provided the subscriber. 1988 CRS Study at 124–126; Marketing Report at 87–88.

We accordingly proposed to prohibit minimum use clauses. 56 FR 12624. We also doubted at that time the value of allowing vendors to increase the fees due from subscribers when the latter did not meet specified minimum booking levels (such pricing is called productivity pricing). The draft rule would have prohibited productivity pricing as well. *Ibid.*

While most commenters supported our proposal to eliminate minimum use clauses, almost all parties commenting on the issue defended productivity pricing and asserted that it should be allowed. Consequently, while we will adopt the proposal on minimum use clauses, the comments have persuaded us that productivity pricing is economically efficient and should be allowed to continue. In this section we will discuss our decision to finalize the proposed ban on minimum use clauses and in the next section our changed decision on productivity pricing.

While productivity pricing encourages efficiency, minimum use clauses are not reasonably tailored to encourage productive usage of a system. Instead, in view of the severe damages a subscriber will incur if it breaches the clause (and thus breaches its contract), these clauses operate as a penalty giving the agency little ability to limit its usage of a system. Worldspan, Delta, System One, ASTA, ARTA, Woodside, and Hewins support the proposed proscription of minimum use clauses. The American Automobile Association states that prohibiting minimum use clauses would be acceptable, and American does not oppose the proposal. Covia, on the other hand, defends them.

We cannot agree with Covia's defense of the clauses. First, Covia plainly errs in saying that its clause cannot operate as a deterrent to use of a second system. Covia bases this assertion on the form of its minimum use clause, which requires an agency to continue using Apollo at half the rate of the agency's level of usage during the first six months of the contract term. In Covia's view, the agency itself determines the minimum usage level under the contract. Covia Comments at 29. However, an agency using Apollo as its only system during that six month term has no control over its usage level, since all of its bookings will be made through Apollo. Worldspan Reply at 29; see also System One Comments, Lenza Affidavit at 19. Furthermore, Covia has never explained why its alleged need for assurance of booking fee revenues requires it to treat the agency's failure to meet the minimum use requirement as a beach of the contract. If, as Covia asserts, it must ensure that it receives adequate revenues from each subscriber, it can adopt contract terms requiring the subscriber to pay additional fees if certain booking levels are not maintained, as is done by other systems. Finally, as we noted in the NPRM, booking fees represent in part monopoly rents, and we do not see a public interest in guaranteeing a vendor's ability to obtain monopoly rents. 56 FR 12624.[4] Given the lack of any necessary economic value to minimum use clauses (and the vendor's ability to protect their legitimate interests through productivity pricing), as well as the clauses' effect in discouraging an agency from making substantial use of a second system, we will prohibit minimum use clauses. In doing so we are acting consistently with the general provision in the current rules which prohibits vendors from directly or indirectly prohibiting subscribers from using other systems. Section 255.6(b).

We also proposed to ban the parity clauses that require an agency to use a number of terminals from the vendor that are proportional to the number used on other systems. This kind of clause also restricts agencies from making effective use of more than one system. 56 FR 12624. No party has attempted to justify parity clauses, and several support our proposal. We will therefore adopt the proposed rule.

8. Productivity Pricing

Productivity pricing differs from minimum use clauses because a subscriber's failure to meet the minimum booking requirement does not constitute a breach of the agreement making the agency liable for substantial damages. Instead, the agency must pay a higher rate for having access to the system. Apollo, for example, typically gives a subscriber a discount of 60 to 100 percent from the standard "rack" rates, depending on the number of bookings per terminal in the previous year. 15 Agencies Comment at 8–9.

Thus this type of pricing encourages the agency to make efficient use of its CRS equipment (and to avoid obtaining more equipment than reasonably needed for its business). Even the parties otherwise urging us to eliminate restrictive contract provisions—the

[4] As Covia notes, our enforcement staff dismissed a complaint by System One against Covia based in part on claims that Covia's minimum use clauses violated the current rules and section 411 of the Act. Order 90–1–32 (January 17, 1990) at 17–18. However, the enforcement staff's decision not to institute an enforcement proceeding on the basis of the record there cannot preclude us from determining on the record here that minimum use clauses should be prohibited, as was noted in that order.

smaller vendors, the travel agency trade associations, and agencies like Hewins—represent that productivity pricing serves legitimate goals and does not make it impracticable for agencies to choose to switch many or most of their bookings to a second CRS. Since productivity pricing often promotes economic efficiency and received the overwhelming support from the commenters, we will not prohibit its use.

We recognize that several smaller agencies complain that productivity pricing can have irrational results and result in heavy charges. Stowe Travel Comments; Parker Comments; Travel Consultants Comments. In some cases, productivity pricing apparently can force an agency to stop using CRS terminals that it had previously bought. Without knowing the details of these agencies' CRS charges and usage, we cannot judge whether the implementation of the clauses in those cases was irrational.

Southwest, on the other hand, urges us to prohibit productivity pricing since vendors can use it to discourage agencies from using other systems or databases (or direct links to a carrier's internal reservations system). While productivity pricing may deter agencies from making full use of their opportunity to use other sources of travel information and other means of booking airline services, the advantages of productivity pricing outweigh that threat. We note again that a number of parties supporting rules to ensure more competition for subscribers support productivity pricing.

In line with our goal of encouraging economic efficiency, we also wish to reaffirm the reasonableness of subscriber price structures that include charges based on usage. A vendor may rationally determine to charge subscribers more as they make more use of the system. Worldspan Comments at 32; American Comments at 35. Such pricing schemes can benefit participating airlines as well. Alaska Comments at 31–33. Some parties misconstrued our proposals as an indication that we wished to discourage transaction charges. However, we recognize that pricing structures that base charges on the number of transactions may promote efficiency by encouraging agencies to use a system more efficiently and by causing the heaviest users to pay more. We do not intend to bar such pricing structures.

9. Liquidated Damages

To deter subscribers from breaching their CRS contracts by switching to another system before the end of the contract term, vendors impose contract provisions requiring agencies to pay heavy damages upon a breach of the contract. The contracts typically provide for the payment of liquidated damages, that is, damages calculated according to a fixed formula rather than on the basis of a calculation of the actual damages suffered by the vendor from the breach. Liquidated damages themselves are not controversial and are used in many contracts outside the CRS business. The vendors' liquidated damages provisions, however, are controversial because they require the subscriber to pay the amount of booking fees that the vendor would have received had the agency kept using its system for its airline bookings. The inclusion of lost booking fees in the calculation of damages greatly increases the amount owed by an agency on its breach of the contract—and thus greatly increases the agency's desire to avoid a breach. 56 FR 12625.

However, as an agency nears the end of its contract, the amount of liquidated damages due upon a breach shrinks, because the amount of booking fees lost by the vendor will decline. Some vendors have adopted a pricing structure that results in an increase in the amounts owed by an agency on its breach as the number of years left in the contract declines. These contracts treat the discounts given a subscriber from the standard CRS charges as a credit which must be repaid if the agency terminates the contract before the end of its term. 56 FR 12621. For example, Pegasus Travel submitted a copy of System One's claim for damages if Pegasus quit using System One 13 months before the agency's subscription contract would expire; of the $34,000 demanded by System One, $18,000 consisted of a refund of various subsidies including the credits allegedly paid the agency by the vendor during the first 47 months of the contract. Pegasus Comments, Encl. 2.

In the NPRM we tentatively found no need to specifically limit the vendors' ability to obtain liquidated damages. 56 FR 12625. We pointed out that vendors were entitled to recover damages if a subscriber breached a contract and that a better cure for complaints about liquidated damages would be a shortening of the maximum contract term. Insofar as the inclusion of lost booking fees was concerned, we reasoned that our proposed rules banning minimum use and parity clauses would deny a vendor any reasonable expectation that the agency would have used its system for all or most of the agency's bookings had the agency not terminated the contract before the end of its term. Without such an expectation, the vendor could not under contract law recover lost booking fees as an element of its liquidated damages, because liquidated damages cannot operate as a penalty and must reflect a reasonable estimate of what the injured party's actual damages would be. 56 FR 12625.

We also declined to propose rules banning such practices as the treatment of discounts as credits that must be repaid if the agency breaches its subscriber agreement before the end of its term. 56 FR 12625.

ASTA supports a ban on liquidated damages including lost booking fees, ASTA Comments at 17, while Worldspan and Delta would also ban the recovery of amounts like discounts and promotional support. Worldspan Comments at 31; Delta Comments at 30. American Express suggests that the liquidated damages clauses are the main reason why agencies do not switch systems. Am. Express Comments at 6, fn.

We are not convinced that adopting a rule in this area is necessary or wise. The vendors' use of contracts enabling them to demand the repayment of "credits" on an agency's breach indicates the difficulty of attempts to regulate contract terms in detail. Presumably the vendors devised such contract terms either to avoid the controversy over liquidated damages or to supplement liquidated damage claims when a contract is breached near the end of its term. In either event, this experience supports Justice's contention that efforts to regulate contract terms are likely to be ineffective. Justice has pointed out that vendors can adopt contract pricing terms that will deter early contract terminations as effectively or almost as effectively as the damages clauses that some parties ask us to outlaw.

However, while we are not adopting a rule, we repeat that our rules are designed to ensure that vendors will not have a legitimate expectation of obtaining all or most of an agency's CRS bookings. Our prohibition of minimum use clauses and our rules allowing agencies to use third-party hardware should ensure that agencies have the ability to use different systems, not just the system offered by their current vendor. As a result, a vendor may not legitimately include an element for lost booking fees in its liquidated damages formula, since the vendor cannot reasonably count on an agency using its system for its bookings. Since we are permitting productivity pricing, vendors have the ability to obtain adequate compensation for providing CRS services and equipment to their

subscribers and to obtain adequate damages in the event of a breach, even if they cannot recover lost booking fees.

10. Exemption for Large Agencies

The rules proposed by the NPRM, like the current rules, would apply to all subscribers. American Express and the Fifteen Major Agencies ask us to allow large agencies (or any interested agencies) the right to waive various parts of the rules on subscriber contracts. The Fifteen Major Agencies recognize the value of our proposals for small and medium-sized agencies but assert that agencies as large as themselves do not need the protection of the contract rules and so should be able to waive them. American Express advances similar arguments. System One and ASTA oppose the creation of any waiver for large agencies.

We will not create a special exemption for large agencies. As System One points out, we are not adopting the subscriber rules in order to give travel agencies more bargaining power in negotiating with vendors. System One Reply at 8–9. The rules instead are designed to keep vendors from using contract restrictions that impair CRS and airline competition. Moreover, we have abandoned the proposal that the larger agencies mainly dislike—the suggested ban on productivity pricing—and we are giving agencies the ability to accept five-year contracts if they wish. No one has shown that either the existing subscriber contract rules or the rules we are adopting will significantly interfere with the operations of any agency, so we see no need to create an exemption for any class of agencies.

11. Tying Practices

Under the current rules a vendor may not condition an agency's receipt of commissions on the agency's use of that vendor's CRS. However, despite the rule, a number of parties have alleged that some vendors tell agencies that they cannot obtain favorable commissions (*e.g.*, override commissions) without subscribing to the vendor's CRS. In addition, parties complain that some vendors tell agencies that they cannot obtain airline marketing benefits (*e.g.*, the ability to waive restrictions on discount fares or to book important customers on oversold flights) without choosing the vendor's CRS. Since the success of many agencies depends on override commissions and airline marketing benefits, a vendor's threat to deny such benefits to an agency can effectively coerce the agency into subscribing to the vendor's system if that vendor is a major carrier in the agency's city. 56 FR 12625.

Since the tying of airline commissions and marketing benefits to an agency's CRS subscription distorts competition in both the airline and CRS industries, Justice and other parties asked us to consider adopting a rule prohibiting such practices. We agreed that such tying practices represented a competitive abuse, but we agreed also with Justice that a rule barring the tying of marketing benefits and CRS choices appeared at best difficult to enforce. The enforcement difficulty stems from the unlikelihood that either the vendor or the agency would tell anyone about an unlawful tying arrangement. 56 FR 12625–12626. While we did not propose to ban the practice, we asked parties to suggest methods for making such a rule enforceable. We also proposed to clarify the existing rule on the tying of commissions so that it expressly covered both CRS usage and subscriptions. *Ibid.*

Several parties—American, Covia, System One, Delta, Alaska, Southwest, Woodside, and Hewins—urge us to broaden the prohibition against tying so that it prohibits the tying of airline marketing benefits. Moreover, American goes on to argue that we should repeal the current rule if we do not extend its coverage to airline marketing benefits. The only party opposing a wider rule is ASTA, which claims that no limits should be placed on an agency's ability to negotiate for benefits.

While we continue to believe that the tying of airline marketing benefits to the agency's CRS subscription is a competitive abuse, we have determined not to widen the current rule to cover marketing benefits. None of the parties advocating a stronger rule proposed an effective method for its enforcement. Moreover, the arrangements tying airline marketing benefits and CRS subscription are likely to be so informal and open-ended that it could be difficult to say whether a particular situation violated the rules. A vendor's threat to reduce or eliminate an agency's commission seems more likely to coerce the agency's choice of a system than would promises of marketing benefits. Thus, despite American's request to the contrary, we will maintain the current ban against the tying of commissions to CRS usage and subscriptions, with the clarification proposed by the NPRM. We will clarify the rule, moreover, as proposed in the NPRM, so that there will be no ambiguity in its language discouraging enforcement action.

12. Other Subscriber Contract Issues

On the ground that the vendors' discriminatory pricing of CRS services injures the ability of smaller agencies to compete with large agencies, ARTA asks that we require each vendor to charge the same amount to all its subscribers. We will not grant this request. ARTA has not shown that CRS pricing differences have any impact on airline competition or otherwise raise issues within our jurisdiction under section 411. ARTA's request could also interfere with the vendors' competition for subscribers; for example, a vendor may be able to compete for subscribers in markets where it has a relatively small airline presence only by offering discounted CRS prices.

ASTA proposes an analogous rule that would require the filing of all subscriber contracts (but with price terms omitted). Overland also suggests that all subscriber contracts should be public. We are not convinced that such rules would be beneficial, especially without the inclusion of price terms, while such requirements would impose a substantial paperwork burden on the vendors.

ASTA urges us to prohibit various other subscriber contract provisions, such as the vendors' denial of all warranties and requirements that any suits on the contract must be heard in the vendor's home state, that are assertedly unfair to travel agencies. Whether or not the terms are unfair, our authority under section 411 focuses on unfair methods of competition and deceptive practices, not on eliminating inequitable practices. See, *e.g.*, Order 92–5–60 (May 29, 1992) at 13–14.

KLM asks that we prevent vendors from providing CRS equipment to subscribers at less than cost. Here again there has been no adequate showing of harmful effects on airline competition—and no analysis of how such a rule would affect the economics of travel agency operations or CRS competition.

13. Grandfathering of Existing Contracts

A number of parties commented on whether the proposed new rules should apply to existing contracts. On the assumption that we would make final our proposal to bar productivity pricing, several parties argued that any such rule should not apply to existing contracts, because the subscribers had agreed to other terms in the contract in the belief that productivity pricing would be allowed. The major vendors argued, on the other hand, that we should not apply the new rules to current contracts, since each vendor had offered agencies various forms of bonuses and credits in the belief that it would obtain other benefits from the contract.

As discussed above, we are adopting only some of the subscriber contract

rules proposed in the NPRM. We are barring rollover clauses, minimum use clauses, and parity clauses, but we are not blocking subscribers from having productivity pricing clauses and the option of accepting a five-year contract.

We have determined to make the prohibition of rollover clauses, minimum use clauses, and parity clauses effective on the effective date of these rules. Those clauses do not serve legitimate purposes, and the vendors claim that they have not been enforcing rollover clauses anyway. Moreover, since we issued the NPRM well over a year ago, the parties have had substantial time to become ready to adjust their contract practices to the possibility that we would make our proposals final. On the other hand, we are allowing vendors to offer agencies a five-year contract as long as they also offer a contract with a term not longer than three years. Given our conclusion that five-year contracts may be beneficial in some respects, we have determined to apply the new rule on contract length only to contracts signed after the effective date of these rules.

N. CRS Contracts

We proposed in the NPRM to require contracts between vendors, on the one hand, and participating carriers and subscribers, on the other hand, to incorporate certain provisions of our rules that affect the parties' contractual obligations and expectations. If such provisions of the rules were incorporated in contracts, a party could obtain a judicial resolution of its rights and obligations, for example, if a dispute arose over the accuracy of a vendor's bill for booking fees. As we noted, these kinds of disputes involve issues typically resolved by the courts in contract cases and would neither require our expertise for decision nor raise significant policy issues. 56 FR 12626.

American, System One, Worldspan, Delta, Northwest, TWA, America West, Aer Lingus, Air France (albeit with qualifications), KLM, LTU, the Orient airlines, ASTA, and ARTA support the proposal. American represents that it already includes a similar provision in its contracts as a vendor. The only opponent is Covia, which argues that we do not have the authority to adopt the proposal.

We have decided not to make our proposal final, since it involves significant drawbacks. Contract suits can be expensive and time-consuming for all parties, so it is not clear that the proposal would provide an effective means for parties to enforce their rights. Furthermore, although many contract cases would not present policy questions requiring our expertise or judgment, some would. Finally, allowing the courts to interpret the rules could lead to inconsistent decisions.

O. Enforcement of the Rules

Under the current rules a vendor, participating carrier, or travel agency may obtain enforcement of the rules only if its filing of a third-party complaint under 14 CFR 302.200 *et seq.* causes us to institute an enforcement proceeding. In view of complaints that we have not adequately enforced the rules, we proposed to create an additional avenue of enforcement, an arbitration procedure subject to our supervision. We tentatively found that the creation of such a procedure would be within our statutory authority, as the Board had found when it was contemplating an arbitration procedure for resolving certain CRS issues. 56 FR 12626–12627.

The major vendors contend that the Department has no authority to require arbitration (American also claims that the availability of arbitration will lead to a lot of litigation). On the other hand, Worldspan, Northwest, Delta, TWA, System One, Alaska, America West, Southwest, ASTA, ARTA, and several foreign carriers urge us to adopt the arbitration proposal.

We have decided not to adopt the proposal. Despite the complaints about our failure to enforce the rules in the past, relatively few complaints about CRS violations were filed. In several cases civil penalties were assessed and cease and desist orders were issued. In several others, corrective action was taken by one or more vendors at the Department's request and enforcement action proved unnecessary. Still others were dismissed because the complaints did not show that an enforcement proceeding was warranted or because this rulemaking would be examining the issues raised by the complaints (*e.g.*, whether minimum use clauses should be prohibited). As a result, we have decided at this time not to adopt the arbitration proposal, which would be a significant departure from our past enforcement practices, albeit within our statutory authority.

We appreciate the importance of these rules for promotion competition in the airline and CRS businesses and the concern expressed by many parties that a failure to enforce the rules will frustrate their intent. If complaints alleging violations of the rules are filed, we will give them careful consideration and institute enforcement proceedings when appropriate.

P. International Issues

The current rules create an exception from the vendor's duty to comply with the rules because some foreign systems in the past have discriminated against U.S. carriers. Section 255.9(b) accordingly excuses a vendor from compliance insofar as a foreign carrier is concerned if that carrier or an affiliate operates a CRS that does not display the flights of all U.S. carriers equally with the foreign vendor's flights. We proposed to readopt this rule with two changes, one requiring the U.S. vendor to give 14 days notice to us and the foreign carrier before it could retaliate against that foreign carrier under this section, the other authorizing retaliation if a foreign carrier's system imposed discriminatory terms on U.S. carrier participation in its system. 56 FR 12627.

SAS, the only commentor on this proposal, asks that we allow retaliation only if the foreign system discriminates against U.S. carriers who have signed a participation agreement with the foreign system. We decline to make that change, since the U.S. carrier may choose not to sign an agreement because of the discriminatory terms for participation. As a result, we will adopt the rule as proposed.

Q. Effective Date

We have determined to make these rules effective 75 days after publication. As discussed above, several provisions in the new rules shall go into effect at a later date. For example, the rule requiring the elimination of default features favoring the vendor will not take effect for one year.

Covia argues that the new rules should not take effect for 120 days, but it provides no evidence supporting that claim. Covia Comments at 95. We doubt that so must time would be needed. After all, the Board made its rules effective 90 days after publication, and those rules required extensive changes in the CRS displays and contracts with participating carriers and travel agency subscribers. However, if a vendor or other party would be unable to comply with a provision in the new rules, they can request an exemption from the requirement at issue in order to have time to comply.

R. Sunset Date

When the Board adopted the existing rules, it included a sunset date (originally December 31, 1990) for the rules, so the need for the rules and their effectiveness would be reviewed after several years' experience. In the NPRM we proposed to establish a new sunset date for the new rules, a date

approximately five years after the adoption of the new rules. As we noted, however, the sunset date would not keep us from reviewing and modifying the rules at an earlier time if that appeared desirable. 56 FR. 12627.

Of the parties commenting on this proposal, none objected to a sunset date, although several argued that we should monitor CFR developments on a continuing basis during the term of the rules and that we should not wait until the sunset date to adopt additional rules that became necessary.

Since we believe that establishing a sunset date is wise, we will finalize our proposal, although we will have the rules terminate on December 31, 1977, rather than the earlier date proposed in the NPRM. Scheduling the next full-scale review of the rules for a date five years from now will not, of course, keep us from examining the impact of the new rules on a continuing basis after their adoption or from considering changes to the rules if experience suggests that they are necessary. In particular, the rule on third-party hardware and software may affect the CRS and airline businesses in ways that suggest that the rules should be modified.

Some parties asked that we formally designate staff members to monitor experience under the new rules. While we will not formally name someone, we suggest that anyone with comments on the new rules contact the two staff members most familiar with these rules and our past CRS studies, Laurence T. Phillips, Chief of the Industry Economics and Finance Division, Office of the Assistant Secretary for Policy and International Affairs, and Thomas L. Ray, Senior Trial Attorney, Office of the General Counsel.

S. Preemption

The group of sixteen states and one territory asks us to declare that our rules are not intended to preempt the states from enforcing their deceptive practices laws against travel agents. States Comments, p.9,n.8. ASTA, on the other hand, urges us to rule that the states are prohibited from enforcing their laws in areas where we have adopted regulations or determined not to adopt regulations. ASTA Reply at 18–20.

We are unwilling to issue any rules on preemption in this proceeding. We did not propose any rule on preemption. Without detailed comments on the issue, we could not develop an adequate standard for preemption, given the limited scope of our regulation of the travel agency business. We regulate travel agency operations only insofar as they involve the sale of air transportation; we do not license travel agencies or regulate their sale of other travel services, such as hotels, rental cars, and cruises.

However, the Act and established preemption principles limit the states' ability to regulate travel agencies. Under section 105 of the Act, 49 U.S.C. 1305, the states may not enforce any law relating to the rates, routes, or services of air carriers holding authority under the Act. *See Morales* v. *Trans World Airlines*, 112 S.CT 2031 (1992). The states also may not enforce laws conflicting with regulations adopted by us. *Cf. Fidelity Federal Savings & Loan Ass'n* v. *De La Cuesta*, 485 U.S. 141, 153–154 (1982). Given these principles, we see no immediate need to adopt a rule on preemption. The states, moreover, are not threatening to begin regulating CRS sales of airline services, so ASTA's members do not have an immediate need for a ruling on the exact scope of preemption.

T. Divestiture

Alaska and America West contend that the best solution for CRS problems would be divestiture, a prohibition against CRS being owned by airlines or airlines affiliates. ARTA also recommends taking a look at this remedy.

We are unwilling to consider divestiture in this proceeding. As we pointed out in the NPRM, no one had suggested in their comments on the ANPRM that we should propose a divestiture rule. While Alaska, America West, and Midway then considered divestiture a possible remedy for CRS problems, they considered divestiture desirable only if accompanied by a ban against the new owners' sale of bias and discriminatory treatment and doubted that we had the authority to adopt such rules. In the NPRM we specifically stated that we would not propose a divestiture rule. 56 FR 12627. Since we never proposed such a regulation or asked for further comment on the issue, we can not now adopt a rule requiring divestiture. In addition, the affiliation between airlines and CRSs may provide important efficiency benefits.

U. Notice of Override Commissions

Finally, some parties urge us to adopt rules preventing travel agencies from giving biased advice to their customers in the hope of increasing their override commissions. Travel agencies participating in override commission programs receive higher commission rates when they book more customers on the airlines offering them such incentive commissions. See Marketing Report at 26–30. ASTA, ARTA, and Woodside deny that travel agencies give biased advice, since they contend that an agency will lose too many customers if it provides poor advice in order to obtain more commissions. Other parties disagree and urge us to adopt a rule such as a requirement that travel agencies tell customers which carriers are offering them override commissions.

The effect of override commissions on airline competition and agency operations is outside the scope of this proceeding, which has not focused on the competitive and consumer deception issues raised by incentive commission programs. Furthermore, the record does not show that override commissions distort the advice provided customers by travel agencies. As we discussed above in connection with proposals to regulate CRS displays created by travel agencies, we are not convinced that agencies engage in a significant amount of deception. Thus there is no basis in this proceeding to adopt a rule on the subject of override commissions.

Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires every executive agency to prepare a regulatory impact analysis for each major rule. In the Order a major rule is defined as one that is likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulatory impact analysis seeks to assess the economic and competitive consequences of our final rules on the computer reservations system, airline, and travel agency industries. Under the terms specified in the Executive Order, our regulations constitute a major rule, since they could conceivably have an annual impact on the economy of $100 million or more.

The Civil Aeronautics Board adopted rules to govern airline-owned CRSs that became effective on November 14, 1984. The Board decided the rules were necessary to preserve airline competition. In brief, the Board concluded that the CRS industry was characterized by high national and regional levels of market concentration; barriers to entry into the CRS business were high; CRSs are the travel agents' primary source of information on airline

services, so every major airline had to participate in each system; and several of the vendors' marketing and business practices demonstrated their market power and incentives to use this power to disadvantage their airline competitors. The structural and competitive conditions that compelled the Board to adopt rules remain largely in place today.

We are adopting additional rules. By encouraging competition among vendors and by reducing their ability to use their market power to impede airline competition, these rules will foster airline competition. Our rules will make it easier for smaller vendors to gain market share and for non-airline firms to enter the CRS industry or to provide products and services to travel agents. The rules will reduce the advantage enjoyed by CRS-owning airlines in securing bookings from subscribers, diminish the magnitude of the incremental airline revenues now being earned by vendor airlines, and make it easier for other airlines to enter air travel markets or to expand their market shares. The rules will encourage competition among vendors for travel agent subscribers, which will benefit the travelling public.

Unfortunately, we do not have information of the type and detail that would allow us to quantify with accuracy the benefits to air travellers or to estimate the costs to the CRS vendors of complying with our rules, although our proposed regulatory impact statement specifically asked the parties to provide such information. Thus, of necessity our analysis will rely on a qualitative assessment of the costs and benefits of the rules. We are also not able to estimate the long-term consequences of our rules on CRS competition, including incentives for technological innovation and improved productivity. The overriding benefit of greater competition and higher productivity in the air travel industry is, of course, its downward pressure on air fares and the benefits consumers enjoy as a result.

B. The CRS Industry: Sources of Market Power

Because airlines rely on travel agents to sell the majority of their tickets and because almost all travel agents rely on CRSs to sell airline services, CRSs have become essential to the marketing of virtually every airline's services.

Although there are four major CRSs operating in the United States, each CRS vendor has the power to impair airline competition. Practically every travel agency relies on a CRS, but there are costs associated with installing and operating more than one CRS in an agency, and these costs are augmented by restrictive contract terms and non-contractual means of influencing subscribers. Thus each CRS vendor has a large measure of control over the marketing of air transportation by its subscribers.

There are four financial benefits of owning a CRS for an airline: the booking fees received from other airlines, the fees received from travel agents and other subscribers, the value of the reservations services provided to the airline owner, and the increase in airline bookings, revenues, and profits generated because CRS subscribers book more passengers on the owning airlines.

The booking fees charged by the major vendors have been found to be substantially above their costs. Over time booking fees have averaged about two percent of the average airline fare per segment travelled.

Two factors provide the vendors with the ability to exercise market power in setting booking fees. First, because each agent relies almost exclusively on a single CRS to make airline bookings, airline managers doubt that agents subscribing to a CRS in which they refused to participate would be willing to book their flights. Threatened with the loss of substantial airline revenues, almost all airlines consider it necessary to participate in any CRS that is used by a large number of travel agents.

Second, the airlines' ability to influence fee levels indirectly by guiding bookings on their flights through CRSs that impose lower fees is very limited. Airlines have no way of inducing potential passengers to patronize travel agents who use CRSs that charge lower booking fees or of persuading agents to equip themselves with such systems. Thus while airlines pay booking fees, travel agents choose their CRS and the service features they will use to make a reservation.

Long ago the vendors recognized that by automating travel agents, they could gain additional airline bookings and revenues. Travel agent recommendations are often decisive in persuading travellers to choose an airline; some agents claim they can influence one-fourth of all business travellers and one-half of all leisure travellers.

Airlines that receive substantial incremental revenues should have higher average passenger loads on their flights and earn greater profits than air carriers that do not receive such revenues (all other factors remaining constant). Because an airline's profit margin is small in relation to its total revenues, and because its costs are not changed significantly by the gain or loss of a few passengers on each flight, a small diversion of traffic to a competitor is often sufficient to render service unprofitable. Moreover, since less frequent service will alienate even more passengers, attempting to raise load factors by reducing the number of flights may be self-defeating. Incremental revenues also enable CRS-owning airlines to offer additional financial incentives to agents that non-owner airlines cannot match, further increasing the vendors' shares of agency bookings.

It is extremely difficult to measure incremental revenues. Nevertheless, some internal vendor studies indicate that vendors believe that they earn substantial incremental revenues.

While one cause of incremental revenues is the friendly relationship that often develops between the subscriber and the vendor airline, another cause is architectural bias. Architectural bias denotes faster and more reliable computer procedures and communications links that result in agents obtaining more accurate information on vendor airline services or recording bookings on vendors with greater speed and certainty.

Through the display of flight information, CRSs can have a profound effect on airline competition. Travel agents often book passengers on the first flights shown on the computer display. The Vendors' conduct and their internal studies demonstrate that a flight's position on the CRS display continues to affect how often a system's subscribers will book it. Indeed, the vendors estimate that changes in CRS display algorithms can increase or decrease an air carrier's bookings by millions of dollars annually.

We cannot determine whether the decisive factor giving CRS vendors a competitive advantage in airline markets is greater ease of booking, better information, more prominent display, or their relationship with subscribers. Nevertheless, the ability of vendors to obtain a disproportionate share of their subscribers' bookings—a share that is unrelated to traveler preferences—has an adverse effect on airline competition. The size of this effect is not solely dependent on the amount of incremental revenues obtained by vendor airlines. The most harmful consequence of the vendors' power to influence travel agent booking patterns is that the potential substitutability of the services of different carriers is concealed from the typical airline traveler. As a result, the ability of airlines to capture traffic

through lower fares or better service is diminished.

C. Final Rules

The ultimate objective of our regulatory policy is to promote consumer welfare by reducing the cost of airline transportation. While our rules will result in more efficient and competitive airline, CRS, and travel agency industries, they will impose few, if any, additional costs on those industries. Several of our rules sanction existing industry practices. In some instances, moreover, we allow vendors to charge for additional services; accordingly, these market transactions will be entered into only if they benefit both parties. Finally, if our rules raise the vendors' cost slightly, we are convinced that they offer substantial benefits to the travelling public.

Display Bias

Prohibiting display bias will promote airline competition, since all air carriers will have to compete for passengers on the basis of fares and service. The final rules maintain the previous prohibition against using factors related to airline identity for editing and ranking flights and extends it to cover all integrated displays. The new rules make some other changes (for example, requiring notification when a flight involves a change in aircraft). Compared with either the original rules or an unregulated industry, the provisions are essentially costless, although the vendors may bear some slight additional programming costs.

Construction of Connections

The new rules increase the number of connecting points that must be used in each display of connecting service, subject to each vendor's ability to use fewer points when fewer satisfy its editing criteria. This rule should not impose additional costs on the vendors, since all CRSs (except Sabre) have adequate computer capacity and are programmed to accommodate our requirements; we are deferring the rule's effective date for one year to give Sabre time for reprogramming. This rule will promote airline competition by ensuring that passengers obtain information on more service options and by preventing the strategic manipulation of flight information.

Publication of Editing and Ranking Criteria

Our rules make specific the previous requirement that vendors supply on request detailed information on the criteria used for ranking and editing flight displays, including displays of connecting services. This may impose some slight costs on vendors but will give participating airlines an enhanced ability to monitor the vendors' compliance with our rules and to understand how their services are displayed.

Equal Functionality

Several of our rules will reduce the advantages vendor airlines have over their airline rivals because it is easier and more reliable to book flights on vendor airlines.

To eliminate some of the vendors' advantages, the rules prohibit procedures that default to entries favoring the vendor.

It is also frequently alleged that vendors introduce service enhancements that can only be used for making bookings on their airlines. Under the new rules, vendors must offer enhancements to all participating airlines. No party opposed this rule or suggested that it would impose significant costs on the vendors or retard technical innovation. Vendors, of course, are free to charge for participation in an enhancement, and participating airlines are free to forgo participation if it is judged too costly. Participating air carriers, travel agents, and air travellers should all benefit from access to enhancements that make the booking process more efficient.

A new rule requires vendors to make available to participating carriers the same method of loading schedule and fare information that they use for their own flights. This rule may impose some additional costs for vendors, although it should reduce expenses for participating carriers, as well as promote airline competition. This rule will ensure that CRSs have timely information on all airline services.

Vendor Contracts With Participating Air Carriers

The new rules readopt the current rules prohibiting vendors from charging discriminatory fees to participating carriers and from conditioning participation on the sale or purchase of other goods and services. Despite the arguments made by some, without these rules vendors would impose fees to weaken airline competition and punish other carriers for entering their markets.

Billing Information

A new rule requires vendors to provide enough information in their bills for booking fees to enable participating carriers to audit them for accuracy. This rule will not impose significant costs on vendors. They can charge reasonable fees for providing billing information on magnetic media. The associated benefits of the rule lie in preventing violation of the rule against discriminatory fees and eliminating "hidden" fee increases through the creation of false booking records.

Vendor Participation in Other CRSs

The new rules require CRS-owning airlines to participate in each feature offered by any other CRS unless they have valid commercial reasons for not doing so. The purpose of this rule is to prevent vendor airlines from using their dominance in a local airline market to handicap rival CRSs and to compel agents to subscribe to their own system. Since most vendor airlines already comply with this requirement and since additional participation must be undertaken only on mutually advantageous terms, the rule's cost should be negligible.

Vendor-Subscriber Contracts

The record demonstrates that vendors have imposed certain restrictions in their subscriber contracts in order to protect their subscriber base, not to promote economic efficiency. As a result, most travel agencies have a limited ability to switch CRSs or use more than one CRS. Given the economies of scope and scale in the CRS business, a vendor cannot compete effectively without a substantial number of subscribers. In addition, a CRS-owning airline that wishes to expand service at a city where another CRS-owning airline has a high CRS market share cannot easily obtain a significant number of subscribers for its own system due to the restrictive contracts. Airline competition has suffered. Making it easier for travel agents to switch systems or use multiple systems will promote technological innovation by forcing vendors to upgrade their systems to make them more attractive to subscribers.

A new rule requires vendors to offer travel agents a subscription contract with a term no longer than three years, although they can continue to offer as an alternative contracts with terms up to five years. We believe the costs of this proposal will be quite low, partly because few contracts seem to last as long as five years anyway and because vendor competition for agents should keep subscription fees from rising.

Another new rule says that vendors may not adopt contract provisions that automatically extend the term of a contract upon the happening of some stated event. This rule formalizes current industry practice. Since it should make it easier for agents to switch

systems, it should improve productivity in the travel agency industry and enhance airline competition.

Minimum use clauses require subscribers to use their CRSs for a minimum number of bookings each month; a subscriber who fails to meet the requirement will breach the agreement and be liable for damages including "lost" booking fees. Because the damages can be substantial, agents are reluctant to make extensive use of more than one CRS. A review of the permissibility of minimum use clauses is appropriate because new technology can make it easier for agents to switch between systems without incurring other costs and because the reduced competition for subscribers calls for restraining certain business practices that might have been considered justifiable or transitory before. We will prohibit minimum use clauses, which will carry out the Board's original intention that agents have the freedom to use multiple systems rather that be bound to a single system. We will continue, however, to allow so-called productivity pricing.

We intend to adopt a rule prohibiting vendors from requiring a travel agent to use or subscribe to its CRS as a condition for receipt of any commission. This rule eliminates the uncertainty on the meaning of the previous rule. This rule is intended to promote CRS and airline competition by barring a locally-dominant CRS-owning airline from compelling agencies in the region to use its CRS as a condition for receiving override commissions or other financial inducements.

Marketing Information

The new rules maintain the previous requirement that vendors make available to all U.S. carriers all marketing data generated from their CRSs on domestic travel and extends this provision to data on international travel and to foreign carriers that provide reciprocal access to their data. Any costs imposed on the vendors as a result of this rule may be recouped by charging air carriers an appropriate fee. This rule will promote competition by making more information available to all parties.

Third-Party Hardware and Software

Most travel agents today use personal computers to make airline reservations. Personal computers and software are provided by vendors for a fee, although large agencies pay little or nothing for computer hardware and software. Vendors restrict their subscribers' ability to use third-party hardware and software. Each vendor also prohibits its subscribers from using CRS terminals to access another system or database.

We are adopting a rule that gives subscribers greater access to travel information and computer technology. This rule prohibits vendors from unreasonably denying subscriber requests to use third-party hardware and software in conjunction with their CRSs. While nothing would prevent a vendor from offering subscribers hardware and software on attractive terms, subscribers would be free, for the first time, to purchase or lease third-party, CRS-compatible hardware and software.

We believe this rule will be particularly beneficial to smaller travel agencies, since they often do not have the in-house computer programming capability or the bargaining power to obtain their vendors' consent to use third-party products. Smaller travel agencies will be more productive.

Some airlines may welcome the opportunity to make their internal reservations systems available to important agents in key markets, since it would allow them to forgo paying booking fees. This could put downward pressure on booking fees.

Our rules would neither require vendors to provide CRS services to agencies nor restrict the pricing of vendors' services. The rule would not require vendors to modify their CRSs, to provide technical support for third-party hardware and software, or to limit technological improvements so as to maintain the value of third-party hardware and software being used by agencies. We do, however, plan to adopt rules that would prevent vendors from taking unreasonable actions to prevent subscribers from using third-party products.

D. Summary of the Rules' Costs and Benefits

Our rules will make the CRS and airline industries more competitive. Many of our rules, for example, will foster competition among vendors for subscribers. At the same time, participating airlines will find that travel agents have more accurate information about their flights and more confidence in making a booking on them. In this environment, all air carriers—vendors and nonvendors alike—will have to compete for customers in terms of the price, convenience, and reliability of their services. In sum, the travelling public will be the ultimate beneficiary of our rules.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Public Law 96-354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, would have a significant economic impact on a substantial number of small business entities.

The analysis is required to describe the need, objective, legal basis for, and flexible alternatives to the agency's action. These requirements have been met through the NPRM, this rule, and the initial and final regulatory impact analysis. In addition, an analysis must describe the small business entities to which the proposed rules would apply, the proposed rules' reporting, recordkeeping, or other compliance requirements, and any other federal rules that may duplicate, overlap, or conflict with the proposed rules.

Our rules will have a significant economic impact on a substantial number of small business entities. In particular, the rules will affect travel agencies and air carriers, including regional air carriers. The rule giving travel agencies the ability to use third-party hardware and software and to use a CRS terminal to access other databases will benefit small business entities.

The travel agency industry is relatively unconcentrated, although the larger agencies have been increasing their market share. The larger agency locations, those with annual revenues of at least $5 million, accounted for 33 percent of the industry's revenues in 1987. The industry, however, remains very competitive.

Our rules should increase the efficiency of the travel agency industry. For example, agencies will have a greater ability to use third-party hardware and software. Travel agencies can if they wish modify the display of CRS information to give them a better ability to find the best airline services for their customers. Agencies will be able to acquire equipment that may be more efficient and productive than the equipment supplied by vendors. Each vendor now prohibits its subscribers from using a CRS terminal to access any other system or database. If agencies can use their CRS terminals to access other systems and databases, they may be able to obtain better information and booking capabilities on carriers than is possible using a single system. New firms may enter the business of providing information and transaction capabilities on airline services.

Our rules will require vendors in certain respects to provide better information on participating carrier

services on a more timely basis. This will help agencies operate more efficiently.

Our rules eliminating certain restrictive subscriber contract provisions—rollover clauses and minimum use clauses—will benefit agencies by giving them more flexibility in switching systems and in using multiple systems. As a result, there should be increased competition among the vendors for agency subscribers. Since the travel agency industry is so competitive, most of the benefit of improved CRS pricing and services will be passed on to agency customers.

While an agency will incur additional expenses if it uses third-party hardware and software (for example, it must purchase any new software programs and bear the expense of subscribing to additional databases), agencies will make these expenditures only if doing so will improve the overall efficiency of their operations.

We have not adopted several proposals that could raise travel agency costs. If we had adopted a rule limiting the booking fees paid by airlines, the vendors would have increased subscriber charges in order to offset the lower revenues from air carriers. We are not limiting the level of booking fees, however. While we have barred certain subscriber contract provisions that would unduly restrict agency ability to switch or add systems, we also determined that agencies could benefit if we adopted a rule requiring vendors to offer subscribers a contract not longer than three years in length and a contract of up to five years in length.

Our rules should benefit most air carriers, especially non-vendor air carriers. Our rules barring defaults favoring vendor carriers, requiring vendors to make available to other carriers equally timely methods of loading fare and schedule changes, and requiring vendors to make all enhancements available to other carriers will make it easier for travel agents to book non-vendor carriers and should increase those carriers' CRS bookings. Non-vendor carriers will incur lower costs due to the rule barring vendors from imposing burdensome procedures on non-vendor carriers for the submission of fare and schedule changes. Our rule giving travel agencies the right to access other databases from agency-owned CRS terminals will enable carriers to establish direct links between their internal systems and agencies, thereby making it possible for them to obtain some bookings from agencies without paying booking fees.

Another group of beneficiaries of our rules will be firms producing hardware and software for use in conjunction with CRS services. Most such firms are small business entities. The vendors now limit their subscribers' ability to use software and hardware acquired from independent firms. Our rules will allow subscribers to use such products in connection with CRS equipment and services, thereby creating a bigger market for the firms that develop such products. In addition, our rule allowing subscribers to use their own equipment to access other databases will enable firms providing such information and transaction capabilities a much greater opportunity to market their services.

Our rules do not contain any direct reporting, recordkeeping, or other compliance requirements that would affect small business entities. There are no other federal rules that duplicate, overlap, or conflict with our rules.

Paperwork Reduction Act

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96-511, 44 U.S.C. chapter 35.

Federalism Implications

The rules we are adopting here will not have substantial direct effect 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 12812, we have determined that these rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR part 255

Air carriers, Antitrust, Reporting, and recordkeeping requirements.

Accordingly, the Department of Transportation is revising 14 CFR part 255 to read as follows:

PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Defaults and service enhancements.
255.6 Contracts with participating carriers.
255.7 System owner participation in other systems.
255.8 Contracts with subscribers.
255.9 Use of third-party hardware, software and databases.
255.10 Marketing and booking information.
255.11 Exceptions.
255.12 Termination.

Authority: 49 U.S.C. 1302, 1324, 1381, 1502.

§ 255.1 Purpose.

(a) The purpose of this part is to set forth requirements for the operation by air carriers and their affiliates of computer reservations systems used by travel agents so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that themselves or through an affiliate own, control, operate, or market computerized reservations systems for travel agents in the United States, and to the sale in the United States of interstate, overseas, and foreign air transportation and of other airline services through such systems. Each carrier that owns, controls, operates, or markets a system shall ensure that the system's operations comply with the requirements of this part.

§ 255.3 Definitions.

Affiliate means any person controlling, owned by, controlled by, or under common control with a carrier.

Availability means information provided in displays with respect to the seats carrier holds out as available for sale on a particular flight.

Carrier means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(3), 49 U.S.C. 1301(22), and 14 CFR 298.2(f), respectively, that is engaged directly in the operation of aircraft in passenger air transportation.

Discriminate, discrimination, and *discriminatory* mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

Display means that system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

Integrated display means any display that includes the schedules, fares, rules, or availability of all or a significant proportion of the system's participating carriers.

On-time performance code means a single-character code supplied by a carrier to the vendor in accordance with the provisions of 14 CFR part 234 that reflects the monthly on-time performance history of a nonstop flight or one-stop or multi-stop single plane

operation held out by the carrier in a CRS.

Participating carrier means a carrier, including a system owner, that has an agreement with a system for display of its schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

Service enhancement means any product or service offered to subscribers or participating carriers in conjunction with a system other than the basic display of information on schedules, fares, rules, and availability, and the basic ability to make reservations or issue tickets for air transportation.

Subscriber means a ticket agent, as defined in 49 U.S.C. 1301(40), that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system.

System means a computerized reservations system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and provides subscribers with the ability to make reservations and to issue tickets, if it charges any other carrier a fee for system services.

System owner means a carrier that holds five percent or more of the equity of a system, that has one or more affiliates that hold such an equity interest, or that together with affiliates holds such an interest.

§ 255.4 Display of information.

(a) All systems shall provide an integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(b) In ordering the information contained in an integrated display, systems shall not use any factors directly or indirectly relating to carrier identity.

(1) Systems may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including each system owner, and to all markets.

(2) When a flight involves a change of aircraft at a point before the final destination, the display shall indicate that passengers on the flight will change from one aircraft to another.

(3) Each system shall provide to any person upon request the current criteria used in editing and ordering flights for the integrated displays and the weight given to each criterion and the specifications used by the system's programmers in constructing the algorithm.

(c) Systems shall not use any factors directly or indirectly relating to carrier identity in constructing the display of connecting flights in an integrated display.

(1) Systems shall select the connecting points (and double connect points) to be used in the construction of connecting flights for each city pair on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including each system owner, and to all markets.

(2) Systems shall select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including each system owner.

(3) Systems shall provide to any person upon request current information on:

(i) All connecting points and double connect points used for each market;

(ii) All criteria used to select connecting points and double connect points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion on paragraphs (c)(3) (ii) and (iii) of this section.

(4) Participating carriers shall be entitled to request that a system use up to five connect points (and double connect points) in constructing connecting flights for the display of service in a market. The system may require participating carriers to use specified procedures for such requests, but no such procedures may be unreasonably burdensome, and any procedures required of participating carriers also must be used by any system owner when it requests or causes its system to use specific points as connect points (or double connect points).

(5) When a system selects connecting points and double connect points for use in constructing connecting flights it shall use at least fifteen points and, after September 15, 1993, six double connect points, for each city-pair, except that a system may select fewer such connect or double connect points for a city-pair where:

(i) Fewer than fifteen connecting points and six double connect points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria, along with all additional connecting points and double connect points requested by participating carriers.

(6) If a system selects connecting points and double connect points for use in constructing connecting flights it shall use every point requested by itself or a participating carrier up to the maximum number of points that the system can use. The system may use fewer than all the connect points requested by itself and participating carriers to the extent that:

(i) Points requested by the system and participating carriers do not meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria.

(d) Each system shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information or the information of a system owner. No system owner may use procedures for providing information on its own services to its system that are not available to participating carriers. Each system shall provide to any person upon request all current data base update procedures and data formats.

(e) Systems shall use or display information concerning on-time performance of flights as follows.

(1) Within 10 days after receiving the information from participating carriers or third parties, each system shall include in all integrated schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system shall not use on-time flight performance as a ranking factor in ordering information contained in an integrated display.

(f) Each participating carrier shall ensure that complete and accurate information is provided each system in a form such that the system is able to display its flights in accordance with this section.

(g) A system may make available to subscribers the internal reservations system display of a system owner or other participating carrier, provided that all participating carriers are offered the ability to make their internal reservations displays available to subscribers, and provided further that a

subscriber and its employees may see any such display only by requesting it for a specific transaction.

§ 255.5 Defaults and service enhancements.

(a) In the event that a system offers a service enhancement to a system owner or other participating carrier, it shall offer the enhancement to all participating carriers on nondiscriminatory terms, except to the extent that such service enhancement is still in the development stage or that participation is not immediately feasible for technical reasons, in which event the system shall make it available to all participating carriers as soon as possible.

(b) After October 1, 1993, no system may create or maintain a default in any system feature that automatically prefers one or more system owners over other participating carriers.

§ 255.6 Contracts with participating carriers.

(a) No system may discriminate among participating carriers in the fees for participation in its system, or for system-related services. Differing fees to participating carriers for the same or similar levels of service shall be presumed to be discriminatory.

(b) No system may condition participation in its system on the purchase or sale of any other goods or services.

(c) Notwithstanding paragraph (b) of this section, a system may condition participation in its system in the United States on a participating carrier's agreement to participate in the system or affiliated systems in other countries, if the system and such affiliates agree that:

(1) The display of services in such system and its affiliates will not use any factors related to carrier identity and

(2) Any fees charged the carrier shall not be discriminatory.

(d) A system shall provide upon request to carriers current information on its fee levels and fee arrangements with other participating carriers. A system's bill to a participating carrier for any fee must contain adequate information and be on magnetic media so that the participating carrier can determine whether the bill is accurate. At a minimum, booking fee bills must include the following information for each segment: PNR record locator number, passenger name, booking status, agency ARC number, pseudo-city code, CRS transaction date, city-pair information, flight number, flight date, class of service, and type of CRS booking.

§ 255.7 System owner participation in other systems.

(a) Each system owner shall participate in each other system and each of its enhancements (to the extent that such owner participates in such an enhancement in its own system) if the other system offers commercially reasonable terms for such participation. Fees shall be presumed commercially reasonable if:

(1) They do not exceed the fees charged by the system of such system owner in the United States or

(2) They do not exceed the fees being paid by such system owner to another system in the United States.

(b) Each system owner shall provide complete, timely, and accurate information on its airline schedules, fares, and seat availability to each other system in which it participates on the same basis and at the same time that it provides such information to the system that it owns, controls, markets, or is affiliated with. If a system owner offers a fare or service that is commonly available to subscribers to its own system, it must make that fare or service equally available for sale through each other system in which it participates.

§ 255.8 Contracts with subscribers.

(a) No subscriber contract may have a term in excess of five years. No system may offer a subscriber or potential subscriber a subscriber contract with a term in excess of three years unless the system simultaneously offers such subscriber or potential subscriber a subscriber contract with a term no longer than three years. No contract may contain any provision that automatically extends the contract beyond its stated date of termination, whether because of the addition or deletion of equipment or because of some other event.

(b) No system may directly or indirectly impede a subscriber from obtaining or using any other system. Among other things, no subscriber contract or contract offer may require the subscriber to use a system for a minimum volume of transactions, and no subscriber contract or contract offer may require the subscriber to lease a minimum number or ratio of system components based upon or related to:

(1) The number of system components leased from another system vendor or

(2) The volume of transactions conducted on any other system.

(c) No system owner may require use of its system by the subscriber in any sale of its air transportation services.

(d) No system owner may require that a travel agent use or subscribe to its system as a condition for the receipt of any commission for the sale of its air transportation services.

(e) No system may charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.9 Use of third-party hardware, software and databases.

(a) No system may prohibit or restrict, directly or indirectly, the use of:

(1) Third-party computer hardware or software in conjunction with CRS services, except as necessary to protect the integrity of the system, or

(2) A CRS terminal to access directly any other system or database providing information on airline services, unless the terminal is owned by the system.

(b) This section prohibits, among other things, a system's:

(1) Imposition of fees in excess of commercially reasonable levels to certify third-party equipment;

(2) Undue delays or redundant or unnecessary testing before certifying such equipment;

(3) Refusal to provide any services normally provided subscribers because of a subscriber's use of third-party equipment or because of the subscriber's using the same equipment (unless owned by the system) for access to both the system and to another system or database; and

(4) Termination of a subscriber contract because of the subscriber's use of third-party equipment or use of the same equipment for access to the system and to another system or database.

(c) A system shall make available to developers of third-party hardware and software on commercially reasonable terms the nonproprietary system architecture specifications and other nonproprietary technical information needed to enable such developers to create products that will be compatible with the system.

(d) Nothing in this section shall be construed to require any system or system owner to:

(1) Develop or supply any particular product, device, hardware or software to enable a subscriber to use another system, or

(2) Provide service or support with respect to any product, device, hardware, software, or service not provided to a subscriber by the system or system owner.

§ 255.10 Marketing and booking information.

(a) Each system shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing,

booking, and sales data relating to carriers that it elects to generate from its system. The data made available shall be as complete and accurate as the data provided a system owner.

(b) Each system shall make available to all foreign participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to bookings on international services that it elects to generate from its system, provided that no system may provide such data to a foreign carrier if the foreign carrier or an affiliate owns, operates, or controls a system in a foreign country, unless such carrier or system provides comparable data to all U.S. carriers on nondiscriminatory terms. Before a system provides such data to a foreign carrier, it shall give written notice to each of the U.S. participating carriers in its system that it will provide such data to such foreign carrier. The data made available by a system shall be as complete and accurate as the data provided a system owner.

(c) Any U.S. or foreign carrier receiving data on international bookings from a system must ensure that no one has access to the data except its own personnel and the personnel of any outside firm used for processing the data on its behalf, except to the extent that the system or a system owner provides such access to other persons.

§ 255.11 Exceptions.

(a) The obligations of a system under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a nondiscriminatory fee. A system shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system under this part shall not apply to any foreign carrier that operates or whose affiliate operates an airline computer reservations system for travel agents outside the United States, if that system discriminates against the display of flights of any United States carrier or imposes discriminatory terms for participation by any United States carrier in its computer reservations system, provided that a system must continue complying with its obligations under this part until 14 days after it has given the Department and such foreign carrier written notice of its intent to deny such foreign carrier any or all of the protections of this part.

§ 255.12 Termination.

Unless extended by a document published in the **Federal Register**, these rules shall terminate on December 31, 1997.

Issued in Washington, DC on September 15 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 92–22773 Filed 9–16–92; 4:03 pm]

BILLING CODE 4910–62–M

federal register

Tuesday
September 22, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public Housing Drug Elimination Technical Assistance Program; Funding Availability (NOFA) for Fiscal Year 1992; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3448; FR-3200-N-01]

Public Housing Drug Elimination Technical Assistance Program; Funding Availability, FY 1992

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1992.

SUMMARY: This NOFA announces the availability of approximately $600,000 in funds to provide short-term technical assistance to public housing agencies (PHAs), Indian housing authorities (IHAs), resident management corporations (RMCs), and incorporated resident councils (RCs) that are combating abuse of controlled substances in public housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, selection criteria, eligible and ineligible activities, application processing, consultant eligibility, and consultant application processing.

DATES: This NOFA is effective upon publication. Technical assistance applications and consultant application kits may be immediately submitted to the address specified in the Application Kit. There is no application submission deadline for short-term technical assistance funds available under this NOFA. Technical assistance applications will be reviewed on a continuing basis, until funds available under this NOFA are expended.

ADDRESSES: (a) An application kit may be obtained from the local HUD Field Office with jurisdiction or by calling HUD's Resident Initiative Clearinghouse on 800-955-2232. The application kit contains information on all exhibits and requirements of this NOFA.

(b) An applicant must submit the application to the address specified in the application kit.

(c) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Indian Programs (OIP) with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Division of Public Housing or Office of Indian Programs.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke or David Tyus, Drug Free Neighborhoods Division (DFND), Department of Housing and Urban Development, 451 Seventh Street, SW., room 4118, Washington, DC 20410, telephone (202) 708-1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The collection of information requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0133.

I. Purpose and Substantive Description

(a) Authority

Funds for both training and this technical assistance (TA) program have been appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1991 (Pub. L. 101-507, approved November 5, 1990) (91 App. Act), and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992, (Pub. L. 102-139, approved October 28, 1991) (92 App. Act).

The TA program is intended to provide immediate, short-term (90 days for completion) training, recommendations and assistance to assess needs, train staff and residents, identify and design appropriate anti-drug strategies, and generally prepare and educate public housing and resident organization staff and residents to address problems related to the abuse of controlled substances in public housing communities. Housing authorities and eligible resident organizations with or without a drug elimination grant in their communities are encouraged to use this resource. Technical assistance is not intended for program implementation or the financial support of existing programs.

(b) Allocation Amounts

The FY 1991 Appropriations Act made $575,000 available for TA in a NOFA (FY91 NOFA) published on April 11, 1991 (56 FR 14828). It is estimated that a sufficient number of applications have been received to obligate and expend all funds announced in the FY91 NOFA. Any unfunded applications received under the previous NOFA which also meet the requirements of the FY92 NOFA will be considered for funding under the FY92 NOFA. If instead there are any remaining FY91 funds they will be added to the $600,000 being announced under this NOFA.

(c) Eligibility

The following is a listing of eligible applicants, eligible consultants, eligible activities, ineligible activities, and general program requirements under this NOFA.

(1) Eligible Applicants

(i) Public housing authorities (PHAs), Indian housing authorities (IHAs), incorporated resident councils (RCs), resident organizations (ROs) in the case of IHAs, and resident management corporations (RMCs) are eligible to receive short-term technical assistance services under this NOFA.

(ii) An eligible RC or RO must be an incorporated nonprofit organization or association that meets each of the following requirements:

(A) It must be representative of the residents it purports to represent.

(B) It may represent residents in more than one development or in all of the developments of a PHA or IHA, but it must fairly represent residents from each development that it represents.

(C) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(D) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represent.

(iii) An eligible RMC must be an entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964, or a management contract with an IHA. An RMC must have each of the following characteristics:

(A) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(B) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(1) Approves the establishment of the corporation; and

(2) Has representation on the Board of Directors of the corporation.

(C) It must have an elected Board of Directors.

(D) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(E) Its voting members must be residents of the development or developments it manages.

(F) It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.

(G) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR part 964 for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RO, so long as the corporation meets the requirements of this NOFA for a resident organization.)

(iv) Applicants are eligible to apply to receive technical assistance if they are already receiving technical assistance under this program, as long as the request creates no scheduling conflict with other TA requests from the same applicant.

(v) Applicants are eligible to apply to receive technical assistance whether or not they are already receiving drug elimination funds under the Public Housing Drug Elimination Program.

(vi) In circumstances determined by HUD to be drug-related and to require emergency attention, eligible parties may receive technical assistance initiated and approved by HUD. These circumstances may include riots, disputes among tenants, and disputes between tenants and management. HUD will use the procedures of this NOFA to select a consultant in these cases.

(2) Eligible Consultants

Consultants who want to provide short-term technical assistance services under this NOFA must be listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND). To be included in that database, consultants must complete, in accordance with the requirements of section I.(c)(2)(ii), below, of this NOFA, a consultant application packet available from the Resident Initiatives Clearinghouse at 1–800–955–2232, and submit the packet to the address specified in the application kit. (This is a toll-free number.)

(i) Consultant eligibility. HUD is seeking individuals or entities who have experience working with public or Indian housing, or other low-income populations to provide short-term technical assistance under this NOFA. Consultants who have previously been deemed eligible and are part of the TA Consultant Database need not reapply. To qualify as eligible consultants, individuals or entities should have experience in one or more of the following general areas:

(A) PHA/IHA-related experience: Agency organization and management; facility operations; program development; experience working with residents and community organizations.

(B) Drug-related experience: Prevention/intervention programs; enforcement strategies; alternative programs.

(C) HUD especially encourages PHAs, IHAs, PHA/IHA employees, RMCs, incorporated resident councils and resident organizations, and public and Indian housing residents, with experience in the above areas, to submit a consultant application for eligibility under this NOFA. Eligible consultants will be entered into the Consultant Database for possible recommendation to Technical Assistant applicants.

(ii) Applying to be a consultant. Individuals or entities interested in being listed in the TA Consultant Database should prepare their applications and send them to the address specified in the application kit. Before they can be entered into the Consultant Database, consultants must submit an application that includes the following information:

(A) The Consultant Resource Inventory Questionnaire, including three references;

(B) A resume;

(C) A narrative statement regarding the consultant's experience in the specific skills identified on the Resource Inventory Questionnaire, and outlining the consultant's overall approach;

(D) Evidence submitted by the consultant to HUD that documents the standard daily fee previously paid to the consultant for technical assistance services similar to those requested under this NOFA. This evidence can include an accountant's statement, W–2 Wage Statements, or invoices, and should be supplemented with a statement or other evidence of days worked in the course of the particular project (for an invoice) or for a tax year in the case of a W–2 Statement.

(iii) Consultant payment. HUD will determine a specific fee to pay a consultant under this NOFA, subject to a maximum cap of the daily equivalent of the maximum rate paid for ES–IV of the Executive Schedule for Federal White-Collar Workers, based upon the evidence submitted in section I.(c)(2)(D), above, of this NOFA.

(3) Eligible Activities

To assist the eligible applicants identified in section I.(c)(1), above, of this NOFA, in responding immediately to drug-related problems in public and Indian housing developments, the U.S. Department of Housing and Urban Development (HUD) has supplemented the Public Housing Drug Elimination Program (PHDEP) and Youth Sports Program (YSP) with funds for short-term technical assistance (TA). Short-term technical assistance means that consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in less than 90 days from the date of the approved statement of work. The TA program is intended to provide short-term, immediate assistance to PHAs, IHAs, RMCs, RCs and ROs developing and/or implementing their drug elimination strategies. The program will fund the use of consultants who can provide the necessary consultation and/or training for the types of activities outlined below, or to fund the use of consultants who will assist the applicant in undertaking a task such as program planning and development for future drug elimination strategies, or conducting a needs assessment or survey. To assist housing authorities and resident councils, the TA program funds efforts in:

(i) Assessing drug problems in public or Indian housing development(s) and surrounding community(ies);

(ii) Designing and identifying appropriate anti-drug-related practices and programs in the following areas:

(A) Law enforcement strategies, including resident security patrols;

(B) Management techniques;

(C) Youth initiatives;

(D) Family management/parenting;

(E) Resident intervention and assistance programs;

(F) Community organization and leadership development; and

(G) Other areas that meet the drug elimination purposes of this NOFA, as determined by HUD.

(iii) Training for housing authority staff and residents in anti-drug practices, programs and management;

(iv) Improving overall agency management, operations and programming so that the applicant can more effectively respond to drug problems in the targeted public housing development(s).

(4) Ineligible Activities

(i) Funding is not permitted for any type of monetary compensation for residents unless they are listed in the TA Consultant Database and are working as consultants.

(ii) Funding is not permitted for any activity that is funded under any other HUD program.

(iii) Funding is not permitted for salary or fees to staff of the applicant, or former staff of the applicant within a year of his or her leaving the housing authority or resident organization.

(iv) Funding is not permitted for underwriting conferences.

(v) Funding is not permitted for conference speakers unless the speaker will also be providing additional TA as outlined in the eligible activities in sections (c)(3)(i–ii) of this NOFA.

(vi) Funding is not permitted for program implementation, proposal writing, the purchase of hardware or equipment, or any activities deemed ineligible in the Drug Elimination Program, excluding consultant's fees.

(5) General Program Requirements

(i) Applications for short-term technical assistance may be funded up to $10,000 per request, with HUD providing payment directly to the authorized consultant for the consultant's fee, travel, room and board, and other approved costs.

(ii) Applicants that have not previously received technical assistance under this program may submit only one application initially. After the applicant's initial technical assistance report has been received and reviewed by HUD or the contractor administering the program, as appropriate, the applicant may submit multiple applications.

(d) Selection Criteria/Ranking Factors

An application must include the minimum required elements listed at section III.(a) of this NOFA, and cannot request assistance for ineligible activities as listed in I.(c)(4)(iv), and will be scored according to the criteria outlined below:

(1) The extent to which the applicant needs short-term technical assistance. This will be measured by the applicant's discussion of the problems that triggered the request for assistance under this NOFA. (Maximum points: 10)

(2) The extent to which the applicant clearly describes the kind of technical assistance and skills needed to address the problems, and how well the technical assistance requested will address the problems. (Maximum points: 10)

(3) The likelihood that the requested technical assistance will assist the applicant's current drug elimination strategy, as described in the application; or, if the applicant does not currently have a strategy, the extent to which the technical assistance will help them develop a drug elimination strategy. (Maximum points: 10)

(e) Application Review, Awards, and Payment

(1) Application Review. Applications will be reviewed as they are received, and will be time- and date-stamped to determine their order of receipt. An application must include both the descriptive letter (or form provided in the application kit) and certification statement (or form provided in the application kit) to be eligible for funding. All applications that qualify on the basis of the minimum required elements will be scored on the basis of the selection criteria in section I.(d) of this NOFA. Applications that receive a total of 15 or more points, with no less than 3 points in any of the three selection criteria in section I.(d) of this NOFA will be eligible for funding. Eligible applications will be funded in the order in which negotiations for a statement of work are completed between the consultant and the program administrator until all funds are expended. The basis for each funding decision under this section will be documented.

(2) Application Awards.

(i) If the application includes the descriptive letter (or forms) requesting eligible activities, the certification statement (or form), and at least 15 points as described in section I.(e)(1) of this NOFA, it is eligible for funding. If sufficient funds are available to fund the technical assistance request, staff will confer with the applicant to confirm the work requirements. The TA Consultant Database will be searched to choose at least three consultants who (1) have a principal place of business or residence located within a reasonable distance from the applicant, as determined by HUD or its agent, or (2) appear to have the requisite knowledge and skills to assist the applicant in addressing its needs. The applicant's preference for a consultant will be taken into account. An HA employee may not serve as a consultant to his or her employer. An HA employee who serves as a consultant must be on annual leave to receive the consultant fee. A list of the suggested consultants will be forwarded to the applicant. From this list, the applicant will recommend the consultant to provide the requested TA. Instructions for consultants to be included in the TA Consultant Database are outlined above in section I.(b)(2) of this NOFA.

(ii) The applicant must contact each TA consultant from the list provided. After making contact with each consultant, the applicant must list the consultants in order of preference, indicating any that are unacceptable, and state the reasons for its preference. There is no guarantee that the applicant's first preference will be approved. Consultants will only be approved for the TA if the request is not in conflict with other requests for the consultant's services.

(iii) Staff designated by HUD will work with the consultant and applicant to develop a statement of work that includes a timeline and estimated budget. The statement of work should also include a discussion of the kind of technical assistance and skills needed to address the problem, and how the technical assistance requested will address these needs; a description of the current drug elimination strategy, and a discussion of how the requested technical assistance will assist that strategy. If the applicant does not currently have a strategy, there should be a statement of how the technical assistance will help them develop a drug elimination strategy. When the statement of work is approved, the consultant will be authorized to start work. The consultant must receive written authorization from HUD or its authorized agent before he or she can begin to provide technical assistance under this NOFA. The applicant and the relevant Field Office or OIP will also be notified. Because this program is for short-term technical assistance, consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in fewer than 90 days from the date of the approved statement of work.

(3) Payment for TA consultants. The consultant must submit a report of its activities, findings and recommendations, a fee invoice, and its expenses and receipts to the address specified in the application kit. A copy of the report must also be submitted to the applicant. Required elements of these reports are outlined in the application kit. After the report and expenses have been approved, and a verbal or written evaluation is received from the applicant, payment will be issued to the consultant. Evaluation forms are then sent to the applicant, to be completed and returned.

II. Application Process

(a) Application Kit. An application kit may be obtained from the local HUD FO

or OIP, or by calling HUD's Resident Initiatives Clearinghouse on 1–800–955–2232. The application kit contains information on all exhibits and requirements of this NOFA.

(b) Application Submission. This NOFA is effective upon publication. Short-term (90 days for completion) technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. There is no application submission deadline for the short-term technical assistance grants available under this NOFA. Technical assistance applications will be reviewed on a continuing first-come, first-serve basis, until funds under this NOFA are no longer available.

(1) An applicant must submit the application and the necessary assurances to the address specified in the Application Kit.

(2) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Indian Programs with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Division of Public Housing or Office of Indian Programs, as appropriate.

III. Checklist of Application Submission Requirements

Each application for a grant under this program must include the following:

(a) An application will not be considered for funding unless it includes, at a minimum, the following elements:

(1) An application letter, of no more than two pages, which responds to each of the selection criteria in section I.(d) of this NOFA, or the completed application forms available in the application kit, signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC or RO, and;

(2) A certification statement, or the form provided in the application kit, signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC or RO, certifying that any technical assistance received will be used in compliance with all requirements in the NOFA.

(b) HUD Form 2880 (Lobbying Disclosure Form).

(c) If the applicant has a particular consultant to recommend to provide the technical assistance, the response should identify the consultant and the basis for the recommendation. A consultant recommended by an applicant is not guaranteed to be approved to provide the requested technical assistance. If the consultant recommended by an applicant is not listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND), the consultant must apply as outlined in section I.(c)(2), above, of this NOFA. These consultant applications to be included in the TA Consultant Database will be given expedited review by the Department. However, a consultant must be listed to be eligible for funding under this NOFA.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, or by telephone, of any curable technical deficiencies, such as a missing signature in the application. A log of telephone notifications will be maintained. The applicant must correct the deficiency in accordance with the information specified in HUD's notification. The application will not be given further consideration until the deficiency is corrected.

(b) Curable technical deficiencies relate to items that are not necessary to make a determination of an applicant's eligibility. The items necessary for this determination are listed at section III.(a) of this NOFA, although missing signatures on the application letter, certification or forms are curable.

V. Other Matters

(a) Nondiscrimination and equal opportunity. The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The Indian Civil Rights Act (ICRA) (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(5) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(6) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Use of debarred, suspended or ineligible contractors. Applicants for short-term technical assistance under this NOFA are subject to the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(c) Conflicts of interest. In addition to the conflict of interest requirements in 24 CFR part 85, no person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decision making process or gain inside information with regard to such activities; may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

(d) Drug-Free Workplace Act of 1988. The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F.

(e) Environmental Impact. In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

(f) Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA is designed to assist housing authorities and resident organizations in their public housing anti-drug-related efforts by providing short-term technical assistance. HUD expects that the provision of such assistance will better prepare and educate housing authority and resident organization officials to confront the widespread abuse of controlled substances in public housing communities. This, in turn, would, indirectly affect the quality of life for public housing residents.

(g) Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA provides short-term technical assistance to housing authorities and resident organizations to assist them in their anti-drug efforts in public housing communities. The involvement of resident organizations should greatly increase the success of the anti-drug efforts under this technical assistance program and, therefore, should have positive effects on the target population. As such, the program helps housing authorities to combat serious drug problems in their communities.

(h) Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(i) Section 112 HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1991 (Pub. L. 101–507, approved November 5, 1990), and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1992, (Pub. L. 102–139, approved October 28, 1991).

Dated: September 15, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–22861 Filed 9–21–92; 8:45 am]

BILLING CODE 4210–33–M

federal register

Tuesday
September 22, 1992

Part IV

Environmental Protection Agency

40 CFR Part 81

Designation of Areas for Air Quality Planning Purposes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-4139-2]

Designation of Areas for Air Quality Planning Purposes

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act as amended (Act), EPA is authorized to redesignate areas (or portions thereof) as nonattainment for the PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) and sulfur dioxide (SO_2) national ambient air quality standards (NAAQS).

In this action, EPA is proposing to revise the PM–10 and SO_2 designations for certain areas. Previously, consistent with section 107(d)(3)(A) of the Act, EPA has notified the Governors of those States containing the PM–10 and SO_2 areas addressed in this proposal that, based on available information, EPA believes the areas should be redesignated from unclassifiable or attainment to nonattainment. For PM–10, the redesignation is based upon recorded violations of the PM–10 NAAQS which occurred on or after January 1, 1989. For SO_2, the redesignation is based upon violations of the SO_2 NAAQS which were monitored, modeled, or determined from a combination of the two.

DATES: All written comments should be submitted by November 23, 1992.

ADDRESSES: Information supporting today's action can be found in Public Docket No. A–92–22. The docket is located at the U.S. EPA Air Docket, room M–1500, Waterside Mall, LE–131, 401 M Street, SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. on weekdays, except for legal holidays. A reasonable fee may be charged for copying. In addition, the public may inspect that information pertaining to a particular area at the respective EPA Regional Office which serves the State where the affected area is located. A list of Regional Offices is in Supplementary Information.

Send comment to:

Larry Wallace (PM–10), SO_2/Particulate Matter Programs Branch, Air Quality Management Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

Andrew M. Smith, SO_2, SO_2/Particulate Matter Programs Branch, Air Quality Management Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711

FOR FURTHER INFORMATION CONTACT: Larry Wallace (PM–10), (919) 541–09067 Andrew M. Smith (SO_2), (919) 541–5398.

SUPPLEMENTARY INFORMATION:

The contacts and addresses of the Regional Offices are:

Regional offices	States
● William S. Baker, Chief, Air Program Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264–2517.	New York.
● Marcia Spink, Chief, Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–9075.	District of Columbia, Pennsylvania and West Virginia.
● Stephen H. Rothblatt, Chief, Air and Radiation Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2211.	Illinois.
● Gerald Fontenot, Chief, Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 655–7204.	New Mexico, Oklahoma, Texas.
● Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—Suite 500, Denver, CO 80202–2405, (303) 293–1750.	Colorado, Montana.
● David L. Calkins, Chief, Air Programs Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1219.	Arizona, California.
● George Abel, Chief, Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442–1275.	Idaho, Oregon, and Washington.

I. General

The EPA is authorized to redesignate areas (or portions thereof) as nonattainment for PM–10 and SO_2 pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), in January and February of 1991, EPA notified the Governors of the affected States that EPA believed certain areas should be redesignated as nonattainment for PM–10 and SO_2. The EPA identified those areas in a **Federal Register** notice published on April 22, 1991 (56 FR 16274). Under section 107(d)(3)(B) of the Act, the Governor of each affected State was required to submit to EPA the designation he or she considered appropriate for each area in question no later than 120 days after notification. However, for reasons of administrative efficiency, the EPA requested the States to submit the designations by March 15, 1991, (the date the lists of designations for all ozone and carbon monoxide areas were due from the Governor of each State pursuant to section 107(d)(4)(A) of the Act). The EPA received responses from the affected States for all of the areas addressed in today's proposal. Section 107(d)(3)(C) of the Act provides that EPA must promulgate the redesignation submitted by the State unless EPA determines that a modification is necessary. The EPA has reviewed the State submittals for the areas addressed in today's notice, and EPA is proposing redesignations which are consistent with those submitted by the affected States. However, EPA is requesting comments on today's proposal and will consider any relevant comments in taking final action on today's proposal. Section 107(d)(1)(A) of the Act sets out definitions of nonattainment, attainment, and unclassifiable. These definitions provide the controlling legal standard for any designations or redesignations to the relevant attainment status. The EPA is proposing that all of the SO_2 and PM–10 areas addressed in today's notice be redesignated nonattainment. A nonattainment area is defined as any area that does not meet, or that significantly contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant [1] (see section 107(d)(1)(A)(i)). Thus, in determining the appropriate boundaries for the nonattainment areas proposed today, EPA has considered not only areas where violations of the relevant NAAQS have been monitored and/or modeled, but nearby areas which significantly contribute to such violations.

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

The tables provided at the end of today's notice specify the complete boundaries and associated designation status that EPA is proposing for the areas addressed in today's action. Thus, the "designated area" and "designation type" identified in the tables indicate how EPA is proposing to amend the pertinent portions of 40 CFR part 81. Because of the significant cost involved, EPA has not put the designated areas and corresponding designation type in the identical format in which, if finalized, they will appear in EPA's final action modifying 40 CFR part 81. The final format will be consistent with the style of the revisions to 40 CFR part 81 made in the **Federal Register** notice published on November 6, 1991 at 56 FR 56694 and is intended simply to improve the readability of the tables in 40 CFR part 81 and to account for the pollutant classifications required by the 1990 Amendments to the Act.

Note also that in the November 6, 1991 **Federal Register** notice, EPA deferred reformatting the SO_2 tables in 40 CFR part 81 because no SO_2 designations were being revised in that action. The EPA indicated that it would reformat the SO_2 tables in the future as appropriate. The EPA anticipates that when it takes final action on the SO_2 redesignations proposed to today's action, it will revise the SO_2 tables generally consistent with the new format.

II. PM–10

A. Background for PM–10

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM–10 that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM–10 control strategies necessary to assure attainment and maintenance of the PM–10 NAAQS (see generally 52 FR 24672). The EPA adopted a PM–10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM–10 NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas that might well have been attaining the PM–10 NAAQS and whose existing SIP's most likely needed less adjustment were placed in Group II; (3) areas with a strong likelihood of attaining the PM–10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679–24682).

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as Group I and other areas which had monitored violations of the PM–10 NAAQS prior to January 1, 1989 were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment for PM–10. After EPA revised the PM–10 NAAQS, EPA identified and listed the Group I and Group II areas in a **Federal Register** notice published on August 7, 1987 (52 FR 29383). In that notice, EPA indicated that Group III areas consisted of that portion of a State not placed in Group I or II. Descriptions of the areas identified as Group I and II areas were later clarified in a **Federal Register** notice dated October 31, 1990 (55 FR 45799). That notice also identified Group II areas which violated the standards prior to January 1, 1989. The EPA announced all areas which were designated nonattainment by operation of law for PM–10 upon enactment of the 1990 Amendments in a **Federal Register** notice dated March 15, 1991 (56 FR 11101). In addition, EPA has published a follow-up notice correcting the boundaries and designations of some of the areas in light of comments received addressing the March 1991 notice (see 56 FR 37654 (August 8, 1991)). Formal codification in 40 CFR part 81 of those areas designated nonattainment for PM–10 by operation of law upon enactment was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694).

B. Today's Action for PM–10

Those areas not designated nonattainment for PM–10 by operation of law upon enactment of the 1990 Amendments were designated unclassifiable (see section 107(d)(4)(B)(iii) of the Act). The EPA is authorized to redesignate these areas as nonattainment for PM–10 pursuant to section 107(d)(3) of the Act on the basis of air quality data, planning and control considerations, or any other air quality-related consideration that the Administrator deems appropriate (see also section 107(d)(1)(A)(i)).

There are two groups of PM–10 areas addressed in today's action. The first group consists of those areas listed in the **Federal Register** notice dated April 22, 1991 (56 FR 16274) which recorded violations of the PM–10 standard on or after January 1, 1989. In January and February of 1991, EPA notified the Governors of those States with areas which recorded violations of the PM–10 standards on or after January 1, 1989 and indicated that EPA believed those areas should be redesignated from unclassifiable to nonattainment for PM–10 based upon available information.[2] The Governor of each affected State was required to submit to EPA the designation which he or she considered to be appropriate for each area in question within 120 days after receiving notification (see section 107(d)(3)(B) of the Act). As noted, for reasons of administrative efficiency, the EPA requested the States to submit the designations by March 15, 1991. Section 107(d)(3)(C) of the Act provides that EPA must promulgate the redesignations submitted by the States unless EPA determines that a modification is necessary.

The second group of areas being addressed in today's proposal were submitted as unsolicited requests for redesignation by the Governors of the affected States. These unsolicited requests were submitted to EPA as comments to letters EPA sent to the Governors in January and February 1991 in which they were notified of PM–10 violations in their States. The EPA explained the manner in which it intended to address these requests in the corrections notice published on August 8, 1991 (56 FR 37654). The EPA is proposing these areas for redesignation to nonattainment, pursuant to section 107(d)(3)(D) of the Act. Section 107(d)(3)(D) provides that a Governor of a State may, on his or her own initiative, submit to the Administrator a revised designation of an area within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny the redesignation. The boundaries for the proposed nonattainment areas are provided in the revisions to 40 CFR part 81 at the end of this notice.

The following table lists in a general fashion the additional nonattainment designations for PM–10 that are being proposed in this notice.

State	PM–10 area description [3]
Arizona	Part of Gila County, Part of Mohave County.
California	Sacramento County, Part of San Bernardino County.
Colorado	Part of Routt County.
Idaho	Part of Kootenai County, Part of Shoshone County.[4]
Montana	Part of Sanders County.

[2] As noted, in a **Federal Register** notice published on April 22, 1991 (56 FR 16274), EPA identified those areas for which EPA had notified the Governors that an area's designation should be revised.

State	PM–10 area description [3]
New Mexico	Bernalillo County.
New York	New York County.
Oregon	Part of Lane County.
Washington [5]	Part of Benton, Franklin, and Walla Walla Counties.
West Virginia	Part of Hancock County.

[3] The more detailed boundaries being proposed today are provided in the proposed revisions to 40 CFR part 81 at the conclusion of this notice.

[4] This is an unsolicited PM–10 nonattainment area.

[5] In response to a submittal by Washington, EPA is proposing an increase in size of the area to be redesignated nonattainment. The area identified in the April 22, 1991 **Federal Register** notice was Benton County. The proposed area does not include the City of Wallula which has already been promulgated as a nonattainment area (see, e.g., 56 FR 56848, November 6, 1991).

As noted, EPA has reviewed the State submittals for all of these areas, and EPA is proposing PM–10 redesignations which are consistent with those submitted by the affected States.

1. The PM–10 areas listed in the April 22, 1991 **Federal Register** notice.

a. *The PM–10 areas EPA is proposing for redesignation.* As noted above, the EPA is authorized to initiate redesignation of additional areas as nonattainment for PM–10 pursuant to section 107(d)(3) of the Act on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that the Administrator deems appropriate. Further, section 107(d)(1)(A)(i) provides that a nonattainment area shall consist of that area violating the PM–10 NAAQS or contributing significantly to violations in a nearby area. Generally, the PM–10 nonattainment area boundaries are presumed to be, as appropriate, the county, township, or other municipal subdivision in which the ambient particulate matter monitor recording the PM–10 violation(s) is located. The EPA has presumed that this would include both the area violating the PM–10 NAAQS and any area significantly contributing to the violations. However, a boundary other than the county perimeter or municipal boundary may be more appropriate. Affected States may submit information indicating that, consistent with section 107(d)(1)(A)(i), a boundary should be alternatively defined. Some guidance on this issue is provided in the PM–10 SIP Development Guideline (EPA–450/2–86–001). The EPA has received information on alternative boundaries from States in response to the notification provided under section 107(d)(3)(A). Thus, for many of the PM–10 areas addressed in today's proposal, EPA is proposing nonattainment boundaries which reflect the alternative boundaries suggested by the affected States. Copies of the technical information supporting the basis for the redesignation of these areas are available for review at the addresses indicated above. The EPA requests comments on today's proposal addressing the appropriateness of the proposed boundaries in light of the statutory definition for nonattainment area set out at section 107(d)(1)(A)(i) of the Act.

The EPA has received information indicating that Mohave County, Arizona, has petitioned the Nevada State Environmental Commission to delete the Nevada Administrative Code 445.724. As currently written, this code is a waiver for the Southern California Edison Mohave Generating Station, located in Laughlin, Nevada, of the requirement to meet a 20 percent opacity limit measured at 6-minute intervals at the stack. Mohave County has claimed, among other things, that emissions from the facility significantly contribute to elevated levels of PM–10 in Mohave County that adversely affect public health and contribute to its nonattainment problems. The State of Nevada held a public hearing on December 5, 1991. As an outcome, a study has been authorized to assess the impact of PM–10 emissions from the Mohave Power Plant on surrounding areas. The EPA requests public comment on this issue. For example, EPA requests any information indicating whether and to what extent the Mohave Power Plant contributes to the nonattainment problem in Mohave County. Further, EPA requests comments on the appropriateness of the nonattainment boundaries for Mohave County in light of any such information.

The EPA notified the Governor of New Mexico on January 23, 1991 that Bernalillo County (City of Albuquerque) violated the annual and 24-hour PM–10 NAAQS during 1989. The City of Albuquerque has provided additional information regarding those violations. With respect to the 24-hour standard, the city has provided information which suggests that the two exceedances measured in 1989 at monitoring site 35–001–1013 were the result of exceptional events, i.e., below normal rainfall and high winds in the Albuquerque area. In a similar manner, the city has suggested that additional exceedances at this site (one in 1990 and one in 1991) were also the result of exceptional events, i.e., high winds in the Albuquerque area. While EPA has not taken a final position regarding the City of Albuquerque submittals in light of the requirements of section 2.4 of 40 CFR part 50, appendix K, the influence of below normal rainfall and high winds makes it difficult to determine the associated frequency and nature of these exceedances. This results in uncertainty in how to treat these exceedance events and in determining whether the area is or is not meeting the 24-hour NAAQS (see section 107(d)(1)(a)(iii) of the Act). Because of the uncertainty, EPA feels that a determination that the City of Albuquerque has violated the 24-hour PM–10 NAAQS and should be redesignated nonattainment on that basis is inappropriate until additional data are collected. The City of Albuquerque is currently collecting every-other-day PM–10 samples at monitoring site 35–001–1013 and is planning to collect hourly PM–10 data. The EPA will continue to track the 24-hour PM–10 values in Albuquerque and take appropriate action should additional air quality data indicate that the area is not meeting the 24-hour NAAQS.[6]

With respect to the annual standard, the City of Albuquerque has provided information which demonstrates that the annual violation of 63 μg^{m3} (micrograms per cubic meter) in 1989 (arithmetic mean) was reduced to 37 μg^{m3} (arithmetic mean) in 1990 and 39 μg^{m3} in 1991 (arithmetic mean). This reduction in the annual average was attributed to a number of actions or control measures which were taken in Albuquerque following this annual violation. The regulatory bases for these actions, however, are not included in the current federally-approved SIP for the City of Albuquerque and, thus, as a matter of Federal law, the reductions in emissions of PM–10 are not permanent or enforceable. Therefore, EPA is proposing to redesignate Bernalillo County (City of Albuquerque) as nonattainment for PM–10 on the basis of the violation of the annual standard in 1989. If the City of Albuquerque submits the rules requiring the subsequent reduction in PM–10 levels to EPA as part of the Albuquerque SIP before EPA takes final action on this redesignation, the Agency will further consider the appropriateness of taking final action on this proposal.

[6] As indicated in the discussion below, in today's notice, EPA is proposing to designate Albuquerque nonattainment based on a violation of the annual NAAQS. The EPA also notes that it is possible that Albuquerque has taken measures to address this air quality problem and that EPA would consider withdrawing the proposed redesignation if EPA has reason to believe that continued attainment and maintenance of the annual standard is assured. Neither the pending redesignation proposal based on the violation of the annual standard nor any conclusion EPA makes about the annual standard would in any manner preclude a future nonattainment determination by EPA if future air quality data indicate the area is not meeting the 24-hour standard.

b. *The PM–10 areas EPA has decided not to redesignate at this time.*

The EPA has determined that redesignation of four of the areas previously listed in the April 22, 1991 **Federal Register** notice is inappropriate at this time. The areas are a portion of LaSalle County, Illinois; a portion of Edgar County, Illinois; Bay County; Michigan; and St. Louis County, Missouri. The rationale for not redesignating these areas is as follows:

Illinois

LaSalle County: The Governor of Illinois requested that the portion of LaSalle County identified as an area EPA believed should be redesignated as nonattainment (see 56 FR 16274, April 22, 1991) be added to the initial nonattainment area of Oglesby, Illinois. In a corrections notice (56 FR 37654, August 8, 1991) to EPA's announcement of the initial nonattainment areas for PM–10 (those areas designated nonattainment by operation of law upon the enactment of the 1990 Amendments), EPA announced that the section in LaSalle identified by the Governor was added to the Oglesby PM–10 nonattainment area (see 56 FR 37662 (August 8, 1991)). Accordingly, the need to redesignate this area as a separate nonattainment area was rendered moot by that action.

Edgar County: The EPA has reviewed records pertaining to the Edgar County, Illinois, area and has determined that redesignation of the area is not appropriate. Air quality data associated with an existing coal mine in Indiana, which is in close proximity to the Edgar County mine, showed violations which were attributed to the surface coal mine operation. The EPA initially determined that violations were likely at the Illinois mine, due to the close proximity of the two mines. The operation in Edgar County has since been closed and the company has moved operations. Available air quality data have not showed any violations of the PM–10 standards.

Michigan

Bay County: Based upon further review of the air quality data for Bay County, Michigan, EPA has determined that redesignation of this area to nonattainment is not appropriate at his time. The EPA is uncertain, based on available information, whether the area meets or does not meet the PM–10 NAAQS. Therefore, EPA believes it is presently more appropriate to leave the area designated as unclassifiable and to collect additional air quality monitoring data for the area before deciding whether the area should be redesignated. The EPA plans to review the designation status of the area when the additional data are available.

Missouri

St. Louis County: Based upon further review of the air quality data for St. Louis County, Missouri, EPA has determined that redesignation of this area as nonattainment is not appropriate at this time. Similar to Bay County, Michigan, EPA is uncertain, on the basis of currently available information, whether St. Louis County meets or does not meet the PM–10 NAAQS. Therefore, EPA believes it is presently more appropriate to leave the area designated as unclassifiable and to perform additional air quality monitoring in this area before deciding whether the area should be redesignated.

2. Unsolicited PM–10 Areas

There are two areas for which EPA has received unsolicited designations (see section 107(d)(3)(D)). They were not listed in the April 22, 1991 **Federal Register** notice. Both of these involve an existing PM–10 nonattainment area for which the State has requested an expansion of the boundary. They are the cities of Butte (Silver Bow County), Montana, and Pinehurst (Shoshone County), Idaho (see 56 FR 37658 (Pinehurst discussion) and 56 FR 37659 (Butte discussion), August 8, 1991). In the August 1991 **Federal Register** notice referenced, the States were informed that the expanded areas would be treated as separate areas with statutory deadlines (e.g., SIP submittal and attainment dates) different from the existing nonattainment areas. However, EPA also noted that nothing in the Act prohibited the State from submitting an initial nonattainment area SIP covering both the initial and the proposed expansion area, i.e., to accelerate the SIP adoption, submittal and implementation schedule for the expansion area to match that of the initial nonattainment area.

The State of Montana has since rescinded its request for expanding the boundaries of Butte in a letter from the Governor to EPA dated October 2, 1991. Thus, this unsolicited redesignated request is no longer pending before EPA. The State of Idaho has not informed the EPA that they wish to rescind their request for designating part of Shoshone County as nonattainment. Accordingly, EPA is proposing in today's notice to redesignate this area as nonattainment.

C. Significance of Today's Action for PM–10

For those PM–10 areas redesignated nonattainment in the final action on today's proposal, States must submit implementation plans to EPA within 18 months after promulgation of the nonattainment redesignation (see section 189(a)(2)(B)), meeting the requirements of, among other things, section 189(a)(1) of the Act. For example, provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of an area being redesignated nonattainment and classified as moderate must be submitted within 18 months after redesignation (see section 189(a)(1)(C)). A program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM–10 is required within 18 months (see section 189(a)(1)(A)). Further, the State's implementation plans must contain a demonstration (including air quality modeling) that the plan will provide for attainment of the PM–10 NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable (see sections 188(c)(1) and 189(a)(1)(B) of the Act).

III. SO_2

A. Background for SO_2

Following the Clean Air Act Amendments of 1977, EPA published areas identified by the States as nonattainment, attainment, or unclassifiable for SO_2. The Clean Air Act, as amended by the 1990 Amendments, provided designations for SO_2 areas based on their status immediately before enactment of the 1990 Amendments. For example, any area designated as not attaining the primary or secondary SO_2 NAAQS as of the date of enactment of the 1990 Amendments was designated nonattainment for SO_2 by operation of law upon enactment, pursuant to section 107(d)(1)(C)(i) of the Act. In addition, any area designated as attainment or unclassifiable (or "cannot be classified") immediately before the enactment of the 1990 Amendments was also designated as such upon the enactment of the Amendments pursuant to section 107(d)(1)(C) (ii) and (iii) of the Act. For the current status of SO_2 areas, readers should refer to the codification tables currently set forth in 40 CFR part 81 (1991) and to any subsequent

modifications to these SO_2 tables that have been published in the **Federal Register** (see also 56 FR 56706 (November 6, 1991)).

As described above, EPA is authorized to initiate the redesignation of additional areas (or portions thereof) as nonattainment for SO_2, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate. The EPA believes that monitoring and/or modeling information should be used in determining the attainment status of an area and in establishing SO_2 nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act.[7] As indicated previously, nonattainment areas consist of any area that does not meet the relevant NAAQS and that significantly contributes to a violation of the relevant NAAQS in a nearby area. In January and February of 1991, EPA notified the Governors of the affected States that EPA believed that certain areas should be redesignated as nonattainment for SO_2. In a **Federal Register** notice published on April 22, 1991 (56 FR 16274), EPA identified those SO_2 areas for which EPA had notified the Governors of affected States that an area's SO_2 designation should be revised to nonattainment. After notification, the Governor of each affected State was required to submit to EPA the redesignation he or she considered appropriate for each area in question within 120 days. For reasons of administrative efficiency described above, the EPA requested the States to submit the designations by March 15, 1991 although EPA indicated that the States had up to 120 days. The EPA has reviewed the State submittals for SO_2 and, as with the PM–10 redesignations proposed in today's notice, EPA is proposing redesignations which are consistent with those submitted by the affected States. Section 107(d)(3)(c) provides that EPA must promulgate the redesignation submitted by the State unless EPA determines that a modification is necessary.

B. Today's Action for SO_2

In today's action, EPA is proposing to redesignate certain areas for SO_2 in accordance with the section 107(d)(3) redesignation process, described above. The EPA announced in a notice published on April 22, 1991 (see 56 FR 16274) that it believed that certain areas listed in that notice should be redesignated as nonattainment for SO_2. The EPA also announced in the April notice that it had notified the Governors of the affected States that certain SO_2 area designations should be revised. Where a change has been made, relative to the April 22, 1991 notice (56 FR 16274), the rationale for the proposed redesignation, including any changes, has been briefly stated below. Technical information supporting the redesignation for each area proposed for redesignation is available at the addresses indicated above.

District of Columbia

GSA Central: The EPA is proposing to redesignate an area within a 1 kilometer (km) radius of the General Services Administration's (GSA's) Central Heating Plant as nonattainment for SO_2. This boundary is based upon the results of EPA air quality modeling which revealed violations of the SO_2 NAAQS in the area.

GSA West: The EPA also is proposing to redesignate the area within a 1.5 km radius of the GSA's West Heating Plant as nonattainment for SO_2. This boundary is based upon the results of EPA air quality modeling which, similar to the area noted above, modeled violations of the SO_2 NAAQS in the area.

The District of Columbia, GSA, and EPA have entered into an enforceable compliance agreement. The District of Columbia intends to submit this agreement and technical analyses demonstrating that the emissions from GSA's two heating plants no longer cause violations of the NAAQS as a formal SIP revision to EPA. Because the SIP revision for the two areas in the District of Columbia have not yet been submitted and approved, EPA is proposing to redesignate these area as nonattainment for SO_2.

Illinois

Madison County: The EPA is proposing that the nonattainment area for this county consists of the townships of Alton, Granite City, and Nameoki. The size of the Madison County nonattainment area was reduced based upon air quality modeling information which was submitted by the State and reviewed by EPA. Major source areas and their impact areas are included in the proposed nonattainment area.

St. Clair County: The EPA is proposing that the nonattainment area for this county consists of the townships of Centreville and East St. Louis. The size of the St. Clair nonattainment area was reduced based upon air quality modeling which was submitted by the State and reviewed by EPA. Major source area and their impact areas are included in the proposed nonattainment area.

Iowa

Clinton County: The EPA does not intend to propose the redesignation of Clinton County at this time. The State has submitted a finally-adopted plan for Clinton County which contains provisions that are expected to assure attainment and maintenance of the SO_2 NAAQS. The EPA proposed to approve this plan on July 1, 1991 (56 FR 29918) and on November 1, 1991, EPA finally approved it (56 FR 56158). The SIP revisions became effective on December 2, 1991.

Oklahoma

Kay County: At this time, EPA will not propose redesignation as nonattainment for Kay County based upon EPA's evaluation of additional information submitted by the State. This information consisted of air modeling data which indicated no violations of the NAAQS, and a federally-enforceable construction permit which significantly reduces allowable and actual SO_2 emissions from a source in the area. In addition, the State has provided the EPA with 2 years of monitoring data (1989–1990) which indicate no violations of the NAAQS in Kay County.

Pennsylvania

Allegheny County: The EPA is proposing to redesignate part of Allegheny County as nonattainment for SO_2. Specifically, the proposed nonattainment area includes Lincoln, Liberty, Glassport, and Port Vue Boroughs and the City of Clairton. The basis of the redesignation is monitored violations of the 24-hour standard.

Warren County: The EPA is proposing to redesignate part of Warren County as nonattainment for SO_2. Specifically, the proposed nonattainment area includes Glade and Pleasant Townships and the City of Warren. The basis of the redesignation is modeling analyses predicting violations of the 3-hour and 24-hour standards.

Texas

Jefferson County: The EPA does not intend to propose the redesignation of Jefferson County based upon a review of the circumstances surrounding the monitored SO_2 violations near the site. Based upon this review, EPA and the State of Texas agree that the violations were produced by an exceptional event

[7] The EPA believes that those tools which are reasonably reliable can be used in determining, under section 107(d)(1)(A)(i) of the Act, whether an area "does not meet" or "contributes to ambient air quality in a nearby area that does not meet" the relevant NAAQS (see also 57 FR 13545 April 16, 1992).

which occurred in the area during the time in question (see, e.g., "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events" (EPA–450/4–86–007) July 1986). An accidental fire occurred in the sulfur recovery unit at a petrochemical facility. Meteorological data clearly indicate a correlation between the fire, which lasted for 3 days, and the monitored SO_2 NAAQS exceedances in the area.

West Virginia

Hancock County: The EPA is proposing to redesignate the City of Weirton including the Butler and Clay Magisterial Districts as nonattainment for SO_2. This area was not listed in the April 22, 1991 **Federal Register** notice (56 FR 16274). However, by letter dated March 6, 1991, the Governor on his own initiative requested that the area be redesignated nonattainment based on historical monitored exceedances. This request was clarified by letter dated May 1, 1991 from the West Virginia Air Pollution Control Commission to EPA Region III. The EPA believes that sufficient evidence exists to propose the area as nonattainment for SO_2. The EPA is thus proposing to approve the Governor's request and is proposing to redesignate this area as nonattainment pursuant to section 107(d)(3)(D) of the Act. Additional parts of Hancock County were designated nonattainment on the date of enactment of the 1990 Amendments, pursuant to section 107(d)(1)(C)(i) of the Act.

The following is a summary of the revised nonattainment designations being proposed in today's action:

State	SO_2 area description
Illinois	Part of Madison County, Part of St. Clair County.
Pennsylvania	Part of Allegheny County, Part of Warren County.
West Virginia	Part of Hancock County.
District of Columbia	Part of the Dist. of Columbia (2 areas).

C. Significance of Today's Action for SO_2

For those SO_2 areas redesignated nonattainment in the final action on today's proposal, States must submit implementation plans to EPA within 18 months after promulgation of the nonattainment redesignation, meeting the requirements of Part D, Title I of the Act (see section 191(a) of the Act). The implementation plans must provide for attainment of the SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the date of the final nonattainment designation (see section 192(a) of the Act).

IV. Tables

The tables provided at the end of this section specify the complete boundaries and associated designation status that EPA is proposing for the areas addressed in today's action. Thus, the "designated area" and "designation type" identified in the tables indicate how EPA is proposing to amend the pertinent portions of 40 CFR part 81. Because of the significant cost involved, EPA has not put the designated areas and corresponding designation type in the identical format in which, if finalized, they will appear in EPA's final action modifying 40 CFR part 81. The final format will be consistent with the style of the revisions to 40 CFR part 81 made in the **Federal Register** notice published on November 6, 1991 at 56 FR 56694 and is intended simply to improve the readability of the tables in 40 CFR part 81 and to account for the pollutant classifications required by the 1990 Amendments to the Act. Note also that in the November 6, 1991 **Federal Register** notice, EPA deferred reformatting the SO_2 tables in 40 CFR part 81 because no SO_2 designations were being revised in that action. The EPA indicated that it would reformat the SO_2 tables in the future as appropriate. The EPA anticipates that when it takes final action on the SO_2 redesignations proposed in today's action, it will revise the SO_2 tables generally consistent with the new format.

PART 81—PM–10

Designated area	Designation date	Type
Arizona:		
Gila County (part)—Payson: T10N, Sections 1–3, 10–15, 22–27 and 34–36 of R9E; T11N, Sections 1–3, 10–15, 22–27 and 34–36 of R9E; T10–11N, R10E; T10N, Sections 4–9, 16–21, and 28–33 of R11E; T11N, Sections 4–9, 16–21, and 28–33 of R11E.	Proposing	Nonattainment.
Mohave County (part)—Bullhead City: T21N, R20–21W, excluding Lake Mead National Recreation Area; T20N, R20–22W; T19N, R21–22W excluding Fort Mohave Indian Reservation.	Proposing	Nonattainment.
California:		
Sacramento County	Proposing	Nonattainment.
San Bernardino County (part): Excluding that portion located in the Searles Valley planning area, and excluding that area in the South Coast Air Basin.	Proposing	Nonattainment.
Colorado: Routt County (part)—The City of Steamboat Springs	Proposing	Nonattainment.

PART 81—SO_2

Designated area	Designation date	Type
District of Columbia:		
Washington (part)—The area within a 1 km radius of the General Services Administration's Central Heating Plant.	Proposing	Nonattainment.
Washington (part)—The area within a 1.5 km radius of the General Services Administration's West Heating Plant.	Proposing	Nonattainment.

PART 81—PM–10

Designated area	Designation date	Type
Idaho:		
Kootenai County (part)—The City of Coeur d'Alene	Proposing	Nonattainment.
Shoshone County (part)—That portion of Shoshone County excluding the initial PM–10 nonattainment area of the City of Pinehurst in the Silver Valley area: Sections 22–27 and 34–36 of range 1 east and township 49 north; Sections 1–3 and 10–15 of range 1 east and township 48 north; Sections 13–36 of range 2 east and township 49 north; Sections 1–18 of range 2 east and township 48 north; Sections 19, 20, and 25–36 of range 3 east and township 49 north; Sections 1–25, and 36 of range 3 east and township 48 north; Section 1 of range 3 east and township 47 north; Section 31 of range 4 east and township 49 north; Sections 1–36 of range 4 east and township 48 north; Sections 1–6, and 8–15 of range 4 east and township 47 north.		

PART 81—SO_2

Designated area	Designation date	Type
Illinois:		
Madison County (part)—Alton, Granite City, and Nameoki Townships	Proposing	Nonattainment.
St. Clair County (part)—Centreville and East St. Louis Townships	Proposing	Nonattainment.

PART 81—PM–10

Designated area	Designation date	Type
Montana: Sanders County (part)—Thompson Falls and vicinity: Including the following Sections: R29W, T21N, Sections: 5, 6, 7, 8, 9, 10, 15, and 16.	Proposing	Nonattainment.
New Mexico: Bernalillo County	Proposing	Nonattainment.
New York: New York County	Proposing	Nonattainment.
Oregon: Lane County (part)—Oakridge: The Urban Growth boundary area	Proposing	Nonattainment.

PART 81—SO_2

Designated area	Designation date	Type
Pennsylvania:		
Allegheny County (part)—Liberty, Lincoln, Glassport, and Port Vue Boroughs, and the City of Clairton.	Proposing	Nonattainment.
Warren County (part)—Warren Borough, Pleasant and Glade Townships	Proposing	Nonattainment.

PART 81—PM–10

Designated area	Designation date	Type
Washington:		
Benton, Franklin, and Walla Walla/Tri Counties excluding the initial PM–10 nonattainment area of the City of Wallula (part): Beginning at the point on the Oregon/Washington border UTM zone 11, 370000mE heading north following UTM 370000mE to the intersection with UTM 5,135,000mN. The boundary then follows UTM 5,135,000mN in a Westerly direction to the southern border of the Hanford Works. The boundary then follows the southern Hanford Works boundary in a westerly direction to R27E. The boundary then follows the Yakima River (up-stream) in a southwesterly direction to the intersection with longitude 119 30'. The boundary follows south along 119 30' to the ridge which forms the northern geographic feature of the Horse Heaven Hills (approximately the 500-foot contour). The nonattainment boundary then follows in a westerly direction along the ridge crest to the Benton/Yakima County line. The boundary then follows a southerly direction on the Benton County line to the Oregon/Washington state line. The boundary then follows an easterly direction along the Oregon/Washington state line to the beginning.	Proposing	Nonattainment.
West Virginia: Hancock and Brooke Counties (part)—City of Weirton	Proposing	Nonattainment.

PART 81—SO_2

Designated area	Designation date	Type
West Virginia: City of Weirton, including Butler and Clay Magisterial Districts	Proposing	Nonattainment.

V. Request for Public Comments

The EPA is, by this notice, proposing that the PM–10 and SO_2 designations for certain areas be revised. The EPA is requesting public comments on all aspects of this proposal including the appropriateness of the proposed designations and the scope of the proposed boundaries. Public comments should be submitted to EPA at the addresses identified above by November 23, 1992.

VI. Other Regulatory Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, EPA must prepare for proposed rules subject to notice-and-comment rulemaking an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities. The requirement of preparing such analysis is inapplicable, however, if the Administrator certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 605(b)).

The redesignations proposed for PM–10 and SO_2 will not alone directly impact or impose any significant requirements on a substantial number of small entities. Accordingly, I hereby certify that the actions proposed today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: September 8, 1992.

F. Henry Habicht II,

Acting Administrator.

[FR Doc. 92–22785 Filed 9–21–92; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
September 22, 1992

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1992–93 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1992. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of 50 CFR part 20.

EFFECTIVE DATE: September 22, 1992.

ADDRESSES: Season selections from States are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1992

On May 8, 1992, the Fish and Wildlife Service (hereinafter Service) published for public comment in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending July 20, 1992, for early-season proposals and August 31, 1992, for late-season proposals. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service published in the **Federal Register** (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992–93 season. On August 6, 1992, a public hearing was held in Washington, DC, as announced in the **Federal Registers** of May 8, June 19, and July 10, 1992, to review the status of waterfowl and discuss proposed hunting regulations for late seasons. On August 21, 1992, the Service published a fourth document (57 FR 38202) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1992–93. The fifth document in the series, published August 21, 1992 (57 FR 38215), dealt specifically with proposed frameworks for the 1992–93 late-season migratory bird hunting regulations. On August 27, 1992, the Service published in the **Federal Register** (57 FR 39072) a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1992–93 season, is the seventh in the series.

Special Assessment: Use of Framework Dates as a Regulatory Tool

Since 1947, framework dates (i.e., the earliest opening and latest closing dates that a State may select for duck hunting) have been part of the Federal annual regulations set for each flyway and they have been used in concert with season length, bag limits, and other regulations to manage the harvests of ducks. In 1990, the Central and Mississippi Flyway Councils recommended that the Service forego annual adjustments of framework dates for purposes of managing duck harvest. Based on these recommendations, the Service elected to review the role of framework dates as a management tool.

The Service recently completed a report on duck-hunting framework dates that has been reviewed by the Flyway Councils. The independent effects of framework-date changes on the harvest rates of ducks were impossible to isolate due to the confounding effects of changes in season length, bag limits, and other regulations. However, circumstantial evidence suggested that framework opening dates could be manipulated to affect the age, sex, and species composition of the harvest and that framework closing dates could be used to affect the age composition of the harvest. Adjustments to framework opening dates also could be used to manage the proportion of local and migrant ducks harvested. Therefore, the Service believes that the ability to manipulate framework dates annually is potentially useful for managing duck harvests.

Council Recommendations: In March, the Atlantic Flyway Council noted that framework opening dates may be useful for managing harvests of certain duck populations in the Atlantic Flyway. Under normal circumstances, the opening date in the Atlantic Flyway should be October 1. Framework closing dates should not be used as a tool for managing duck harvest and should be fixed indefinitely at no earlier than January 15 for the Atlantic Flyway.

In August, the Atlantic Flyway Council stated that they were opposed to the use of framework dates to regulate total duck harvest. They also believed that restrictions on framework dates that have been used in the Atlantic Flyway since 1988 may have benefited some eastern populations of waterfowl, but the need to further protect these populations has not been documented. They also noted that liberalizing framework dates while holding other regulations stable could increase our understanding of the effects of opening and closing dates.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service not use framework dates to adjust harvest, but if framework dates are used, the Service should develop a well-designed study to clarify the various impacts of framework dates. The Committee had previously recommended that framework dates should be the Saturday nearest October 1 through the Sunday nearest January 20. They stated that impacts of framework-date manipulations cannot be separated from other past regulatory changes and that the current framework application may not provide regulatory fairness throughout their flyway.

In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates be fixed dates not subject to annual fluctuations and that these dates should be the Saturday nearest October 1

through January 20. They reaffirmed this position during their July meeting.

In March, the Central Flyway Council noted that the Service's review of framework dates had failed to provide evidence of measurable benefits from past use of framework dates to regulate harvests. The Council stated that the use of framework dates for harvest management is selective in its impact on northern and southern States. The Council believes that harvest management should focus on more equitable regulations, such as season length and daily bag limits. Framework dates should not be used to regulate annual harvests, but should be used to establish an appropriate biological framework for duck hunting.

In August, the Central Flyway Council stated that season length and bag limits should be the principal means of adjusting harvest and that framework dates should be used only under extraordinary circumstances. They disagreed with using fixed calendar dates for opening and closing duck seasons and recommended framework dates identical to those used during 1980–84. They also believe that framework dates need not necessarily be the same in all flyways and that opening and closing dates can be manipulated independently.

In March, the Pacific Flyway Council recommended that manipulation of framework dates should continue to be an option for regulating duck harvest. The Service should not eliminate any duck-harvest-management options, although the evaluation conducted by the Service to assess the impact of utilizing framework dates to regulate harvest was inconclusive.

In August, the Pacific Flyway Council recommended using the first Saturday in October through the second Sunday in January during periods of restrictive regulations. In periods of more liberal regulations, they recommended using the Saturday nearest October 1 through the Sunday nearest January 20. They preferred floating rather than fixed framework dates. They supported further evaluations of the effectiveness of framework dates as a regulatory tool.

Written Comments: The States of Arkansas, Colorado, Florida, Minnesota, Mississippi, North Carolina, North Dakota, South Dakota, and Texas opposed the use of framework dates as a tool to regulate total duck harvest. Colorado, Minnesota, Mississippi, North Carolina, North Dakota, and South Dakota believed that management of duck harvest rates should be accomplished principally by adjustments in season length and bag limits. South Dakota believed that framework dates should be standardized, while Arkansas, Florida, Massachusetts, and North Carolina believed that dates should generally be standardized, except that they may be manipulated to meet specific objectives or when populations are critically low. Florida, Maryland, and North Carolina believed that opening and closing dates should be treated as independent regulatory tools. Florida and Mississippi desired fixed calendar opening dates; while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota desired floating opening dates. Fixed calendar closing dates were preferred by Arkansas, Florida, Minnesota, and Mississippi, while floating closing dates were preferred by Colorado.

Massachusetts, Mississippi, and North Carolina preferred that the framework open on October 1, while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota preferred the Saturday nearest October 1. Massachusetts and Florida preferred that the framework close on January 15; North Carolina desired a closing date no earlier than January 15; Colorado preferred that the framework close on the Sunday nearest January 20; and Arkansas, Minnesota, Mississippi, the Mississippi Legislature, a U.S. Senator from Mississippi, a U.S. Congressman from Mississippi, and a Mississippi State Senator preferred that the framework close on January 20.

Texas, Minnesota, North Dakota, and Colorado noted that using framework dates to manage harvest can be unfair to northern and southern States. Colorado believed that framework dates can be a useful tool for managing the species composition of the harvest. Colorado and Maryland thought that delays in opening dates can result in greater harvest on certain species because of the loss of a buffering effect from early-migrating species. Massachusetts and Minnesota believed that delayed opening dates can reduce the harvest of some local populations of ducks, while Nebraska questioned this interpretation. Florida, Massachusetts, Maryland, and Nebraska thought that framework-date adjustments may geographically displace, but not reduce harvest.

Final Service Policy: The Service will retain the option of using framework dates as a regulatory tool. Guidelines for the use of framework dates will be considered, in cooperation with all flyways and other interested parties, during the development of stabilized regulations. Consideration will be given to: (1) the relative importance of framework dates, bag limits, season lengths, and other regulations for managing duck harvests; (2) the advantages and disadvantages of using fixed calendar dates versus floating dates; (3) allowing inter-flyway differences in framework dates for meeting specific harvest objectives; and (4) independently manipulating opening and closing dates to achieve specific harvest objectives.

Rationale: In the past, framework dates, bag limits, and season lengths have been adjusted concurrently, and these "packages" of regulations have been effective in managing the total harvest of ducks. Since framework dates have not been adjusted independently, their contribution to the effectiveness of a regulatory package is unknown. However, the degree to which the exclusion of framework dates would reduce the effectiveness of regulations in controlling duck harvests likewise is unknown. Thus, the Service believes that framework dates should continue as one of several regulations considered annually in managing duck harvests.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 2, 1992, relating to proposed late-season frameworks are discussed and addressed here. Fourteen individuals presented statements at the August 6, 1992, public hearing. Organizations that they represented were: Mr. Paul Accomundo, a Massachusetts sportsmen's organization; Mr. Frank Anderson, Concerned Coastal Sportsmen's Association, and several Massachusetts sportsmen's organizations; Mr. John M. Anderson, National Audubon Society; Mr. Brad Bales, Pacific Flyway Council; Mr. Richard Bishop, Mississippi Flyway Council; Mr. Richard Elden, Michigan Department of Natural Resources; Ms. Susan Hagood, The Humane Society of the United States; Mr. Tom Hauge, Wisconsin Department of Natural Resources; Mr. Roger Holmes, Minnesota Department of Natural Resources; Mr. Lloyd A. Jones, Central Flyway Council and the North Dakota Game and Fish Department; Mr. Wayne Pacelle, The Fund for Animals; Mr. Jim Phillips, a writer residing in Maryland; Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee, several Massachusetts sportsmen's organizations. The Service received 259 written comments that specifically addressed late-season issues. These late-season comments are summarized and discussed in the order used in the May 8, 1992, **Federal Register**. Only the numbered items pertaining to late seasons for which comments were received are included.

General

Council Recommendations: The Pacific Flyway Council, Central Flyway Council, and the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council concurred with the proposed regulations for waterfowl except where otherwise noted below.

Public-Hearing Comments: Mr. Roger Holmes commended the Service for the 1992 regulations overall. Mr. Wayne Pacelle claimed that decisions to allow hunting were not made on a biological basis, but simply to permit killing for sport. Consequently, many animals are crippled and suffer. He expressed his view that hunting seasons are too liberal and that the Service goes out of its way to exploit many populations of birds. He opposed presunrise hunting. Ms. Susan Hagood believed that seasons should open Wednesday at noon to reduce the high harvests typically associated with Saturday openings. Mr. Gerald Woodmansee requested shooting hours of from one-half hour before sunrise to sunset.

Written Comments: Waterfowl hunting regulations were endorsed by 24 individuals and the National Wildlife Federation. The Delta Waterfowl Foundation requested that shooting hours for ducks open at sunrise. The Humane Society requested that shooting hours begin one-half hour after sunrise and that all seasons should open at noon during mid-week. A local organization in Massachusetts requested a continuation of shooting hours from one-half hour before sunrise to sunset, while an individual in Georgia requested that shooting hours end at noon. The Wisconsin Department of Natural Resources requested an extension of the comment period.

Service Response: The Service recognizes the support for the proposed frameworks, including the proposed shooting hours. The Service believes that there is sufficient evidence to demonstrate that, for most seasons, shooting hours beginning at one-half hour before sunrise do not contribute significantly to the harvest of nontarget species or illegal kill. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, Federal Register (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

The long-term objectives of the Service include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvest to levels compatible with each population's ability to maintain itself or recover from depressed levels. Annually, the status of populations are evaluated and the potential impacts of hunting are considered. The Service believes that hunting seasons are consistent with the current status of waterfowl populations and long-term population goals.

The late-season comment period (May 8 - August 31) provided ample time for comment. Constraints to the length of the comment period were discussed in the final early-season frameworks published in the August 21, 1992, Federal Register.

1. Ducks

A. Harvest Strategy

Public-Hearing Comments: Mr. John M. Anderson recommended continued use of conservative bag limits, season lengths, and other frameworks because duck populations remain at severely depressed levels and there was essentially no change in the fall flight forecast. He supported current harvest restrictions on black ducks and redheads. He stated that recruitment for duck populations is the single most important determinant of population levels. Tinkering with annual hunting regulations will result in a minimal amount of recovery of North American duck populations. Full recovery will not occur until wetlands receive adequate protection, the North American Waterfowl Management Plan is fully funded, the U.S. Department of Agriculture's Conservation Reserve Program and Swampbuster Program are renewed, and normal precipitation patterns return to the prairies.

Mr. Jim Phillips discussed what he perceived to be failure in managing waterfowl by the "establishment." He said that nobody cares anymore about either the status or management of ducks. He said that his efforts to analyze banding data had been thwarted by the Service but that he and an associate would soon publish evidence that would contradict certain assumptions regarding harvest and survival rates of ducks.

Written Comments: Five individuals from Minnesota and another from Iowa requested that the Service provide equitable frameworks in the North and the South. Similar feelings were expressed by the majority of comments received from Michigan requesting a bonus bag limit for teal.

Service Response: The Service concurs with the recommendations to continue the restrictive harvest strategies used in recent years. Because most duck populations remain at levels below both long-term averages and the population objectives in the North American Waterfowl Management Plan, the Service believes that restrictive regulations should be continued until a strong recovery is evident. Therefore, the frameworks contained herein do not differ substantially from those in effect during 1991-92.

The Service recognizes the importance of wetland and other habitats to waterfowl populations and encourages all efforts to protect these habitats.

A continuing concern for North American duck populations is demonstrated annually by the activities of over 1 million duck hunters; all State and Territorial conservation agencies; several Federal agencies in the U.S., Canada, and Mexico; various private organizations; and others. The Service has provided the requested information to Mr. Jim Phillips and regrets that he feels that the Service has hampered his efforts.

The Service sets flyway-wide frameworks for regular duck seasons. Differences in opportunity occur due to the distribution of habitat, patterns of migration, weather, and other natural and man-made factors. The Service considers special seasons to be an acceptable harvest-management strategy, if the seasons have been carefully designed, evaluated, and refined. The Service has also concluded that certain populations, or segments of populations, can provide additional harvest opportunities because of their unique biological circumstances, temporal or spatial distributions, and population status. The Service notes that although some special seasons are offered to southern States and not to some northern States, other special seasons (i.e., special Canada goose seasons) are offered to many of these northern States. The Service believes that additional opportunity should be provided only when and where it is appropriate and that the Service is not responsible for providing equity between diverse areas.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council opposed continuation of restrictive framework dates for regular duck seasons in the Atlantic Flyway. They recommended that framework dates for 1992–93 be October 1 through January 20. The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of the Saturday nearest October 1 through January 20. The Central Flyway Council

recommended floating framework dates of the Saturday nearest October 1 through the Sunday nearest January 20. The Pacific Flyway Council recommended using the Saturday nearest October 1 through the second Sunday in January.

Public-Hearing Comments: Mr. John M. Anderson supported the use of restrictive framework dates when adjustments in season length and bag limits are unable to produce the desired effect in harvest, and a complete season closure is undesirable. However, whenever possible, framework dates should allow equitable harvest opportunity at the northern and southern extremes of the flyways. Mr. Richard Bishop requested that framework dates for duck hunting be set for multiple years. He recommended that framework dates not be used as a regulatory tool in duck harvest management and that framework dates be the Saturday nearest October 1 through January 20. Mr. Roger Holmes opposed the use of framework dates in duck harvest management and requested that framework dates be stabilized at the Saturday nearest October 1 through the Sunday nearest January 20. Harvests should be managed by the use of season length and bag limit only, with other special regulations employed when needed. Mr. Tom Hauge stated that the proposed framework dates for duck seasons are satisfactory, but requested that consideration be given to changing to floating dates of the Saturday nearest October 1 through the Sunday nearest January 20. Mr. Richard Elden requested floating framework opening and closing dates for duck seasons in the Mississippi Flyway. Mr. Lloyd A. Jones indicated that the Central Flyway Council preferred the use of floating dates instead of the proposed fixed dates for framework opening and closing dates.

Written Comments: A U.S. Senator from Mississippi requested a closing date of January 20. A U.S. Congressman from Minnesota suggested that the duck season should begin as early as possible, while another U.S. Congressman from that State suggested that the season should not be delayed beyond October 3 and that the Service should consider other methods of managing the harvest.

The Mississippi Department of Wildlife, Fisheries, and Parks requested that framework dates be set at October 1 through January 20; the Rhode Island Division of Fish and Wildlife requested that framework dates be fixed at October 1 through January 20; the New York Department of Environmental Conservation requested framework dates of October 1 through January 20; the Florida Game and Fresh Water Fish Commission requested that framework dates remain fixed at October 1 through January 20 unless there is a compelling biological reason to change; the Minnesota Department of Natural Resources suggested that the season should begin on the Saturday nearest October 1; the Wisconsin Department of Natural Resources requested the Saturday nearest October 1 through January 20; the Alabama Department of Conservation and Natural Resources requested October 1 through the Sunday nearest January 20; and the Montana Department of Fish, Wildlife, and Parks requested an opening date no later than October 3, citing the increased likelihood that cold temperatures could shorten a delayed season.

The National Wildlife Federation requested that framework dates remain similar to last year's, October 5 through January 5. The Humane Society suggested that framework opening dates should be delayed by 2 weeks in breeding areas.

Requests for more liberal framework dates were also received from the Minnesota and Wisconsin Waterfowl Associations, a local sportsmen's association from Wisconsin, and 30 individuals. One of the individuals requesting an earlier opening date in the North opposed the January 20 closing date believing it is too late. A local organization in Massachusetts suggested that framework dates should be manipulated this year if necessary, rather than shortening the season length.

Service Response: Framework dates for the 1992–93 regular duck season are October 1 and January 20. Harvest from this season will be monitored to better understand the effects of liberalizing framework dates while maintaining restrictions on bag limits and season lengths. Regarding fixed versus floating dates, a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed.

C. Season Lengths

Council Recommendations: The Atlantic Flyway Council, the Central Flyway Council, and the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no change in season length.

The Pacific Flyway Council recommended extending the season length from 59 to 60 days to accommodate States with split seasons that traditionally have opened seasons on Saturdays and closed on Sundays.

Public-Hearing Comments: Mr. Frank Anderson, Mr. Lloyd H. Piasse, Jr., and Mr. Gerald Woodmansee each requested a 35-day duck season.

Written Comments: The Florida Game and Fresh Water Fish Commission endorsed the 30-day season. An individual in New York requested a 33-day season for ducks, a local organization in Massachusetts requested a 35-day season, and 5 individuals from Massachusetts requested a 40-day season.

The Wisconsin Waterfowl Association endorsed the 30-day duck season; an individual in Michigan stated that he was frustrated with the shorter, 30-day seasons; an individual in Illinois requested a 35-day season; and one individual in Minnesota requested a 40-day season while another suggested shortening the season length in the southern portions of the U.S.

An individual in Nebraska expressed displeasure with the 51-day season and requested a 72-day season. Two individuals from Texas requested a 55-day season.

Service Response: The Service believes that longer seasons are not warranted in any flyway during 1992–93, because many duck populations remain below long-term averages. The Service concurs with recommendations for no change in season length and denies the Pacific Flyway Council's request for an increase in season length from 59 to 60 days to allow seasons to open on a Saturday and close on a Sunday. The Service notes that the additional day would allow Saturday openings and Sunday closings only in zones with two-way split seasons. In those zones having either continuous or 3-way split seasons there would still be mid-week openings or closures. Thus, the final frameworks provide for season lengths which remain unchanged from those of 1991–92.

D. Closed Season

Public-Hearing Comments: Ms. Susan Hagood was opposed to duck hunting. Mr. Wayne Pacelle called for a closed season on black ducks, in order to allow populations to recover to their former status. Mr. Jim Phillips suggested that the Service close the season on all ducks for 2 years and, after population recovery, resuming hunting seasons with the annual harvest per hunter being limited through a tag system.

Written Comments: The Humane Society requested closed seasons for mallards, black ducks, pintails, redheads, and canvasback. Two duck hunters from California indicated that

they would not be opposed to closing the waterfowl seasons for a few years in order to restore healthy waterfowl populations.

Service Response: The option of closing the duck season was considered at several points in the regulations-development process. One of the regulatory options in the Environmental Assessment, "Waterfowl Hunting Regulations for 1992," was a closed season on all duck hunting.

Due to any compensatory mortality that might occur and the extremely small proportion of the total mortality that occurred from hunting in 1991 and will likely occur from hunting in 1992, it is unlikely that further reductions in the harvest would measurably improve survival or lead to increased duck populations.

One of the Service's goals is to establish regulations that protect the breeding stock and yet provide recreational hunting opportunity to the hunting community, whose support for habitat conservation and other management efforts benefits a wide variety of wildlife species. A closed season would eliminate most of this support and significantly diminish cooperative management efforts. The Service will continue the restrictive regulations of recent years and believes that hunting seasons are consistent with the current status of waterfowl populations and long-term population goals. As further protection, the Service may institute specific closures if needed.

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council recommended a 3-duck daily bag limit.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that States not offered a September teal season be offered a bag limit that includes a provision for 2 additional teal during the first 9 days of the regular duck season.

The Central Flyway Council recommended that the regular duck bag limit be increased from 3 to 4, that the mottled duck bag limit be increased from 1 to 3 in Texas, and that the bag limit for mallard drakes be increased from 2 to 3. The Council further recommended that a 25-point category be established in the point system for gadwall, green-winged teal, blue-winged teal, and northern shovelers.

The Pacific Flyway Council recommended no change in bag limits.

Public-Hearing Comments: Mr. Lloyd A. Jones requested that the bag limit for the Central Flyway be expanded to include an additional drake mallard. He cited data that indicated surplus drakes in the mallard population, differences in harvest between the Mississippi and Central Flyways, and disproportionate harvest restrictions for the Central Flyway since 1988.

Mr. John M. Anderson believed that the Central Flyway's request for an extra drake mallard appears unwarranted at this time. However, if mallard spring sex ratios highly favor males and if an additional drake mallard does not lead to increased hen mortality or increased mortality of other species, it could be justified.

Mr. Richard Bishop recommended that those States not eligible for a September teal season be allowed a 5-bird bag limit (2 of which must be teal) during the first 9 days of the regular duck season. Mr. Richard Elden and Mr. Tom Hauge also requested reinstatement of the teal bonus.

Written Comments: The Florida Game and Fresh Water Fish Commission and the Wisconsin Waterfowl Association endorsed the current 3-duck limit. Individuals from New York, Illinois, and Minnesota also supported the current bag limits. An individual in Michigan and another from Nebraska requested a larger bag limit. An individual in Montana requested a more liberal bag limit for the Central-Flyway portion of that State. The Governor of Wyoming, the Colorado Division of Wildlife, the Oklahoma Department of Wildlife Conservation, and an individual in Colorado requested that the daily bag limit be expanded to include an additional drake mallard in the Central Flyway. An individual in South Carolina requested a bag limit of 3 for wood ducks.

The Service received 132 comments regarding opportunity to harvest teal. The majority of these comments came from individuals in Michigan who were very concerned about the equity in regulations between the northern and southern States. Although many of these comments addressed the special season for which the comment period has been closed, these comments are included because they pertain to this late-season issue as well.

The Michigan Department of Natural Resources supported the recommendation of the Mississippi Flyway Council that production States, which are not being offered the September teal season, be permitted 2 extra teal in the bag limit during the first 9 days of the regular duck season. They also supported use of the September teal season in nonproduction States to obtain additional recreational benefits from the resource. They stated that it is important, however, that the 2 extra teal in the bag limit be permitted in production States to provide equitable opportunity for hunters.

The Wisconsin Department of Natural Resources remains concerned about reestablishment of the special teal seasons. Among their other concerns is the inequity of hunting opportunity between production and nonproduction States. They requested equality for the production States and asked that the Service consider making the special season part of the regular-season days. If not, they suggest offering production States additional days or 2 bonus teal for the first 9 days of the season.

The Wisconsin Waterfowl Association was also concerned about the inequity that would be perceived if production States were not offered a special teal season and asked that the Service consider the consequences of that action. The Michigan Duck Hunters Association, the Michigan United Conservation Clubs, the Drummond Island Chamber of Commerce, six local organizations from Michigan and one from Wisconsin, and 70 individuals requested 2 additional teal in the bag for the first 9 days of the season. One individual stated that if early teal seasons could not be offered, perhaps 2 extra teal could be allowed during the regular season.

The Izaak Walton League requested that the Service reconsider the bonus bag limit, but suggested that hunters are more informed today then when the experimental teal seasons were conducted in Michigan. Those experiments indicated that hunters could not distinguish teal from other species in production States.

Ten individuals requested special September seasons for production States. One of these commented that southern States received special seasons and bonus limits and suggested that restricting harvest in southern States made more sense than in northern States. Another of these individuals requested that the special September teal season could be held concurrently with the special September Canada goose season.

One individual supported the State of Wisconsin's position that production States should be given 9 more days of duck hunting or 9 days should be subtracted from seasons in nonproduction States. Another individual suggested that the Service offer all States without special seasons some opportunity equal to those States currently allowed a special season. Two individuals opposed special seasons suggesting that bonus bag limits should be used flyway-wide. One of these suggested allowing the bonus during the

entire regular season or allowing 2–4 bonus birds during the first 9 days. He also cited that southern States already harvest more teal than northern States.

Four individuals objected that Michigan is offered neither option. The use of bonus bag limits during a September season was requested by 15 individuals, while another individual wanted 2 bonus teal during the month of September because he believes teal are not being controlled adequately with present regulations. Four individuals requested both special seasons and bonus bag limits. Another individual requested that the current teal limits be increased from 2 to 4 per day during the regular season and that a special season be offered as well.

Two individuals expressed concern that the Service was withholding all opportunity to harvest teal in northern States. One individual believes bonus limits are offered to all other States except Michigan. One individual believes other States are offered both bonus limits and special seasons. Two individuals believed southern States received bonus bag limits and opposed this practice. An individual in Michigan opposed the use of bonus bag limits in the northern U.S. An individual in New York requested reinstatement of the bonus teal limits in that State.

The Wildlife Management Institute said that one of the problems with special seasons such as those for wood duck or blue-winged teal is that they will never be available to all States. If they are to work effectively and be defendable, "bonus birds" should not be added during other portions of the season.

A local organization and two individuals from Texas requested continuation of the point system, but with revised point values that would allow additional harvest on species which are abundant.

Service Response: The Service believes that because of the currently low population and recruitment levels of mallards and other prairie-nesting duck species, significant changes in bag limits that would increase harvests are not warranted at this time. Because the 1992 fall-flight index is similar to the 1991 index, the Service believes that continuation of the same bag limits as those in 1991 is appropriate.

With respect to the Central Flyway Council's recommendation to allow an additional drake mallard in the conventional and point-system bag limits, the Service believes that such an increase throughout the Flyway is not warranted. However, the Service will allow such an increase in the High Plains Mallard Management Unit this year, provided that the Central Flyway Council completes the requested review of the High Plains Mallard Management Unit for use during the 1993 regulations-development cycle. The Service believes that this report will provide an opportunity to cooperatively examine the recent biological information necessary to assess historical intra-flyway, bag-limit differences for drake mallards.

With respect to the Central Flyway Council's recommendation to increase the mottled duck limit from 1 to 3 in Texas, the Service believes that a cooperative harvest strategy should be developed for the Gulf Coast population shared by Texas and Louisiana. In the coming year, the Service proposes to work with these States to consider available biological information and cooperatively develop a harvest strategy for this population. For the 1992 seasons, the Service recommends no changes from the 1991 seasons.

Regarding wood ducks, because they do not lend themselves to be easily surveyed, the Service believes that it is prudent to maintain the restriction of 2 wood ducks per day until population monitoring and banding data can be used to demonstrate the effects of adding an additional bird in the daily bag limit.

With regard to requests for bonus teal, the Service published its strategy regarding bonus bag limits in the September 21, 1990, **Federal Register**. That strategy stated that the use of bonus bag limits would be discontinued. Bonus limits have not been adequately evaluated, offer limited potential for adequate evaluation, and can increase harvest of all species, not just the "bonus" species.

The Service notes that the current regular-season bag limit may include 3 teal. The Service further notes that even when bonus teal limits were used, States were not offered both special teal seasons and bonus teal limits. These options were mutually exclusive.

The Service considers special seasons to be an acceptable harvest-management strategy, if the seasons have been carefully designed, evaluated, and refined. The Service has also concluded that certain populations, or segments of populations, can provide additional harvest opportunities because of their unique biological circumstances, temporal or spatial distributions, and population status. Evaluations of experimental seasons conducted in the 1960's indicated that the proportion of nontarget duck species shot during September teal seasons in production States was excessive. The Service notes that although some special seasons (i.e., special teal seasons) are offered to southern States and not to some northern States, other special seasons (i.e., special Canada goose seasons) are offered to many of these northern States. The Service believes that additional opportunity should be provided only when and where it is appropriate and that the Service is not responsible for providing equity between diverse areas.

In the same document, the Service published a strategy for the use of the point system. That strategy stated that the point system would be continued as an optional bag-limit system; however, it must be at least as restrictive as the conventional bag-limit system in terms of total bag and species/sex restrictions. Use of the point system may allow States to direct additional protection to high-point birds beyond that afforded by species restrictions under the conventional bag-limit system.

F. Zones and Splits

Council Recommendations: The Pacific Flyway Council recommended that the Southern San Joaquin Valley Zone in California, established on an emergency basis in 1991 due to drought, be retained during the 1992–93 season.

Public-Hearing Comments: Ms. Susan Hagood thought that splits, zones, and other regulatory options that encourage hunting should not be used. Mr. Wayne Pacelle also opposed duck zones. Mr. Gerald Woodmansee urged retention of three duck zones in Massachusetts.

Written Comments: The Humane Society indicated that the Service should discontinue split seasons or, as an alternative, establish a 10-day penalty for use of split seasons. An individual in New Jersey requested that split seasons be discontinued in that State. A local organization in Massachusetts requested that the zoning concept should be continued as currently established. An individual in Pennsylvania opposed the use of zones.

The California Department of Fish and Game, the California Waterfowlers Association, two local organizations, and seven individuals from California requested continuation of the emergency zone for the southern San Joaquin Valley.

Service Response: The Service remains committed to its strategy on use of zones and splits published in the September 21, 1990, **Federal Register**. All States may consider zone changes, consistent with the Service criteria, during the next "open season" in 1996.

A temporary exception to the duck-zoning criteria was allowed last year in the southern San Joaquin Valley of

California. This exception was granted based on severe drought conditions that prevailed in this area. Because the drought has not abated and California has complied with the conditions listed in the September 26, 1991, **Federal Register** (at 56 FR 49107), the Service will allow this temporary exception to the duck-zoning criteria to continue during the 1992–93 season only. However, the Service notes that much of the water used for wetland management in this area is derived by pumping groundwater, and not from surface sources. Groundwater is costly to pump but is not in short supply. This exception does allow seasons to coincide with times that are more economical for flooding fields. In the September 26, 1991, document, the Service indicated its hope that the increase in pumping efficiency would be translated into more habitat that would be available for a longer time period. The temporary zone for duck hunting will be continued during the 1992–93 season subject to the following conditions:

1. The temporary zone would be justified solely in recognition of the severe drought that has markedly reduced the availability of fall and winter wetland habitat for waterfowl in this portion of California.

2. The temporary zone would be established for the 1992–93 season only.

3. The State would be responsible for demonstrating that more habitat became available for a longer period of time as a result of this temporary zone.

4. The State would estimate hunter activity and harvest in the temporary zone and report these results to the Service by July 1, 1993.

G. Special/Species Management

i. Canvasback Harvest Management

Council Recommendations: In March, the Atlantic Flyway Council recommended that the Service develop an interim strategy for canvasback harvest to be used until the establishment of stabilized-regulations guidelines. This interim strategy should be based on current biological data, including information that indicates the east/west delineation of the canvasback population is no longer warranted. The Council stated that this interim strategy should be equitable among the four flyways.

In August, the Atlantic Flyway Council recommended that the Atlantic Flyway be allowed to initiate a season on canvasbacks when the continental breeding population index exceeds 450,000 (3-year running average) and the breeding habitat in the prairie-pothole portion of the U.S. and Canada exceeds 3 million ponds. They further recommended that this season continue until the revised breeding population index falls below 400,000 (3-year running average). In the Atlantic Flyway, regulations under a limited season would allow one canvasback daily under the conventional bag-limit system. The Council also recommended that all four flyways be given the opportunity to open a season on canvasbacks during the 1992–93 season.

In August, the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no change for canvasbacks during the 1992–93 season.

In March, the Central Flyway Council recommended that a season be initiated when the continental breeding population index exceeds 450,000 (3-year average) and the pond index exceeds 3 million. This season would continue until the continental breeding population index falls below 400,000 (3-year average). The Council stated that banding data indicated that the canvasback population is not comprised of two distinct subpopulations and that all flyways should be given an opportunity to conduct a season. The Council recommended that this interim strategy should be used until stabilized regulations become operational.

In August, the Central Flyway Council recommended that a canvasback season for drakes be offered and that the season on female canvasback should remain closed.

In March, the Pacific Flyway Council recommended that the Service continue to manage canvasback by subunits. They strongly believe that management actions are most effective when they recognize biological differences among and within populations. Although western and eastern canvasback populations are not completely distinct, biological differences do exist that should be recognized in management design. The Council recommended that the quality of the midwinter survey be improved with respect to canvasbacks in the western U.S., that the aggregate canvasback/redhead bag limit should be maintained, that the Service evaluate the cost of trapping and banding required to better determine distribution and derivation of canvasback harvests, and that harvest strategies be developed that distinguish between western and eastern populations, but remain sensitive to population overlap.

In August, the Pacific Flyway Council recommended continuation of a 2-duck aggregate bag limit of canvasbacks and redheads for their flyway.

Public-Hearing Comments: Mr. John M. Anderson supported the season closure on canvasbacks in three flyways. If the Service, after further review, determines that the species should be managed as a single unit and not as discrete eastern and western subpopulations, then equitable harvest opportunity should be provided across all four flyways.

Written Comments: The National Wildlife Federation and the Delta Waterfowl Foundation suggested continuation of restrictive frameworks for canvasback. The New York Department of Environmental Conservation requested that the Service develop a new harvest-management strategy for canvasbacks, based on continental population levels, to be implemented in 1993. They suggested that canvasback hunting be a part of the regular duck-season framework and that it be limited, such as a daily bag limit of 1 canvasback. The Humane Society preferred a closed season for canvasback.

Service Response: The Service acknowledges input from the Flyway Councils on criteria for canvasback seasons and, consequently, has begun to consider revisions to the management of canvasback harvest. However, the Service believes that additional study is needed to identify an appropriate harvest strategy before considering nationwide open seasons, because of the canvasback's need for protection when populations reach low levels. The Service intends to prepare a review of canvasback biology and management and make the review available to the Flyway Councils during their 1993 winter meetings. Until the Service and Flyway Councils can resolve this issue, existing criteria stated in the 1983 environmental assessment on canvasback hunting, including eastern and western population thresholds, will be used to develop harvest regulations for canvasbacks. Proposals for seasons during 1992–93 in the Atlantic and Central Flyways do not meet the existing guidelines.

ii. Pintail Harvest Management

Council Recommendations: In March, the Central Flyway Council recommended that the Service maintain the current harvest regulations unless a significant decline occurs in the breeding population index. If such a decline should occur, coordination should be initiated between the Service and the flyways to develop options for conservation of the pintail. The Council recognized the low population status of the pintail but indicated that sport harvest was not the cause of the decline, there is no biological justification for

closing the pintail season, and a closed season for pintails would complicate regulations and hamper habitat-management efforts.

In March, the Pacific Flyway Council recommended that harvest-management options short of season closures should be pursued. Total season closure seems inappropriate because of the lack of evidence that population levels have been or are now being affected by harvest. Closure also may negatively-impact support for ongoing habitat-enhancement efforts.

In August, all Flyway Councils recommended that there be no change in regulations for pintails during the 1992–93 seasons.

Public-Hearing Comments: Mr. John M. Anderson supported current harvest restrictions on pintails. Ms. Susan Hagood supported a closed season on pintails and on all other ducks in areas where pintails are present and thus could be incidentally taken. Mr. Wayne Pacelle accused the Service of subverting the potential listing of the pintail as a candidate species under the Endangered Species Act because this might impact the hunting of other migratory game birds.

Written Comments: The Delta Waterfowl Foundation requested a closure of the pintail season with the exception of the State of California. The Humane Society requested a closed season for pintails and for all ducks in those areas where pintails concentrate. An individual in Michigan urged the Service to take serious action in light of the low population status of pintails.

The Wildlife Management Institute indicated that the status of pintails continues to be a reflection of major habitat changes, and there are no indications that hunting and harvest have any significant role under current conditions. The National Wildlife Federation supported restrictive frameworks for pintails. They also emphasized the importance of protecting the Nation's wetland resources.

Service Response: The Service concurs with recommendations for no changes in hunting regulations for pintails in the 1992–93 season. The Service recognizes that pintail numbers have been declining for most of the last two decades and that this population is at near-record-low levels. However, low recruitment rates likely have been the major factor contributing to this population decline. The number of duck broods (all species) have declined since surveys began in southern Alberta and since 1970 in southern Saskatchewan, historically the two survey areas with the highest densities of breeding pintails. These declines have continued regardless of pond counts in May, suggesting that agricultural practices, predators, and/or other factors are responsible. Banding information suggests that hunting is not limiting the recovery of the pintail population. Current harvest rates are less than 3% and current estimates of annual survival rates range from 60 to 81%, depending on area and age/sex class.

iii. Other Species/Special Seasons

Council Recommendations: The Pacific Flyway Council requested that the Service provide harvest-management guidelines for the 1993–94 season that would allow additional harvest opportunity on duck species that are near or above historic high levels (e.g., gadwall, shoveler, and green-winged teal).

Public-Hearing Comments: Mr. Frank Anderson requested that the Service evaluate the potential for a special scaup season. Mr. Gerald Woodmansee requested a special scaup season in Massachusetts.

Written Comments: The Humane Society opposed special seasons. A local organization in Massachusetts requested a special scaup season.

Service Response: With regard to the Pacific Flyway Council's request for harvest-management guidelines, the Service notes that strategies for use of bonus bag limits, special seasons, and the point system were summarized in the September 21, 1990, **Federal Register**. The Service would be willing to consider new approaches to harvest management but believes that any proposal for major changes in harvest management should be addressed as part of the development of stabilized regulations.

In the same document, the Service stated that special scaup seasons could not be evaluated with existing data. Any evaluation of these seasons should consider, among other factors, the species composition of the harvest. Until data-gathering abilities increase, an adequate evaluation plan is developed, and the status of target species improve, the season will remain suspended.

3. Mergansers

Council Recommendations: The Atlantic and Central Flyway Councils and both regulations committees of the Mississippi Flyway Council recommended that there be no change in regulations for mergansers during the 1992–93 season.

Public-Hearing Comments: Mr. Wayne Pacelle indicated that mergansers should not be hunted because he doubted that these species are consumed by hunters. Mr. Gerald Woodmansee urged changes in the Migratory Bird Treaty to allow the taking of mergansers, in part because of their impact on fisheries.

Written Comments: Many written comments addressing the length of duck seasons apply to mergansers because the seasons are concurrent.

Service Response: The Service is not aware of any documented problems with mergansers adversely impacting fisheries. If such problems exist, the problem areas should be delineated and the extent of the impacts determined before any corrective actions are considered. The Service doubts that liberalizing hunting regulations is likely to be a proper or effective means of addressing localized depredations on fisheries.

4. Canada Geese

Council Recommendations: In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for the impacts on the Southern James Bay Population (SJBP) of Canada geese. They further recommend that the Service fully analyze data from existing seasons before expanding seasons that might cause excessive cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

Service Response: The Service regularly monitors hunting seasons and analyzes data gathered during these seasons to assess impacts on SJBP Canada geese. All special Canada goose seasons are required to meet established criteria.

A. Special Seasons

Council Recommendations: As mentioned above, the Lower-Region Regulations Committee of the Mississippi Flyway Council emphasized that special seasons should adhere to the criteria established by the Service.

Written Comments: The Illinois Department of Conservation suggested that existing regulations do not fairly or adequately address the issue of impacts of special Canada goose seasons on nontarget populations exceeding population objectives. The North American Wildlife Foundation suggested that States experiencing nuisance goose problems, such as Illinois, should not be required to meet criteria for nonmigrant composition of the harvest. The Wisconsin Department of Natural Resources remained concerned about the special-season criteria and believe that some

modifications are appropriate. The Minnesota Department of Natural Resources requested that the Service provide assistance to States experiencing increasing problems with breeding Canada goose flocks. They noted that the Service obtains harvest and hunter-activity information for September teal seasons, yet States are required to obtain this information for seasons designed to control nuisance Canada geese.

Service Response: The Service regularly monitors hunting seasons and analyzes data gathered during these seasons to assess impacts on all Canada goose populations. All special Canada goose seasons are required to meet the established criteria.

The Service believes that goose harvests should be managed with existing regular-season mechanisms whenever possible; thus, in situations where harvests of both migrant and resident Canada geese can be increased, this should be accomplished by adjustments in regular seasons rather than using special seasons.

Presently, the only source of harvest and hunter-activity information for special Canada goose seasons is through data-gathering programs established by the States for these seasons. While it is true that estimates for September teal seasons are obtained through the existing Federal harvest survey, this survey cannot provide reliable data on the small scale required for the special Canada goose seasons. The Service hopes that the new Harvest Information Program will assist the States in conducting these monitoring programs. In the interim, however, the Service believes that the harvest and hunter-activity information should continue to be gathered by those States having the special seasons.

The Service is concerned about the protection of nontarget Canada goose populations during special seasons, and continues to believe that most Canada goose harvest-management objectives can be addressed through the regular Canada goose hunting-season frameworks in accordance with flyway management plans. However, the Service recognizes the need for special seasons in certain circumstances to control local breeding and/or nuisance populations of Canada geese. As indicated in the June 19, 1992, **Federal Register**, the Service became aware of the need to modify the special-season criteria previously published in the September 26, 1991, **Federal Register** (56 FR 49104). The modified guidelines are as follows:

Criteria for Special Canada Goose Seasons

1. States may hold special Canada goose seasons, in addition to their regular seasons, for the purpose of controlling local breeding populations or nuisance geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States and must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons must be held prior to the regular season. In the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese, seasons may not exceed 10 consecutive days and will generally be held between September 1 and September 10. In the Central and Pacific Flyways, seasons may not exceed 30 consecutive days, generally between September 1 and September 30, and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held after the regular season but no later than February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. Initially, all seasons will be considered experimental. The evaluation required of the State will be incorporated into the Memorandum of Agreement and will include at least the following:

A. Conduct neck-collar observations (where appropriate) and population surveys beginning at least 1 year prior to the requested season and continuing during the experiment. For early seasons to be held after September 10, data-gathering must begin at least 2 years prior to the requested season.

B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

C. Collect morphological information from harvested geese, where appropriate, to ascertain probable source population(s) of the harvest.

D. Analyze relevant band-recovery data.

E. Estimate hunter activity and harvest.

F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

For early seasons held after September 10, the Service emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria for special early Canada goose seasons.

i. Early Seasons

Comments and Service responses were included in the final early-season frameworks published in the **Federal Register** on August 21, 1992.

ii. Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the closing date for Connecticut's late resident Canada goose season in the South Zone be extended to February 14. They also recommended that Georgia be permitted to conduct an experimental late resident Canada goose season in the northern and southwestern portions of the State during the 1993–1995 seasons, and that Pennsylvania be permitted to initiate an experimental late resident Canada goose season between January 20 and February 5 along portions of the Susquehanna and Juniata Rivers during the 1993–95 seasons.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the late seasons in the Twin Cities Metropolitan Goose Zone and Olmsted County could be discontinued if the regular seasons in these areas were extended by 10 days. The Committee further recommended that the special late season in the Southern Michigan Goose Management Unit begin as early as January 2.

Written Comments: The South Carolina Wildlife and Marine Resources Department requested that the bag limit during their special late Canada goose season be increased from 1 per season to 1 per day. The Wisconsin Department of Natural Resources requested permission to continue the special late season in the Brown County Subzone on an experimental basis, with the monitoring required by the special-season criteria to begin prior to the

1993–94 hunting season. They did not request continuation of the special late season in the Rock Prairie Subzone. A local organization in Massachusetts requested continuation of the late seasons in that State.

Service Response: The frameworks contained in this document provide for a daily bag limit of 1 Canada goose during the special season in South Carolina, the extended closing date for the special season in Connecticut, an expansion of the open areas for the special season in Georgia, initiation of a new special season in Pennsylvania, continuation of the special season in Massachusetts, and discontinuation of the late special seasons in the Twin Cities Metropolitan Goose Zone and Olmsted County of Minnesota and the Rock Prairie Subzone of Wisconsin. The Service will allow Wisconsin to continue the experimental late season in Brown County during the 1992–93 season provided that the State initiates the monitoring program required by the special-season criteria prior to the 1993–94 hunting season.

The Service believes that Michigan's late season should begin later than January 2. Available information suggests that where migrant and resident Canada goose populations are mixed in northern regions, late special seasons should be held as late as possible to help ensure that special-season harvests do not exceed the special-season criteria regarding proportion of migrants in the harvest. The frameworks provide for the late season in Michigan to begin no earlier than January 9.

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the harvest of Atlantic Population Canada geese be reduced by 60 percent from 1985–87 levels to allow recovery of this population. The strategy to accomplish this reduction, which would begin in 1992 and continue for a minimum of 3 years, would be as follows:

In the Southern Region, the hunting of migrant geese would be suspended in North and South Carolina, Georgia, Florida, and the Back Bay area of Virginia whenever the estimate for this population falls below 30,000 geese. A limited harvest consistent with continued population growth would be considered when the population ranges between 30,000 and 60,000 birds.

In the Chesapeake Region (Maryland, Delaware, and most of Virginia), the Canada goose hunting season would be 60 days between November 16 and January 20. The bag limit would be 1 goose per day for at least the first 20 days, and no more than 2 geese per day thereafter.

In the Mid-Atlantic Region (New Jersey and the southern portions of New York and Pennsylvania), the Canada goose hunting season would be 70 days between October 15 and January 31, no more than 15 days of which could occur before November 16. The bag limit would be no more than 1 goose per day prior to November 16, 2 geese per day prior to January 1, and 3 geese per day from January 1 thereafter. Further, the bag limit would be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the New England Region (including northern portions of New York and Pennsylvania), the season would be 70 days between October 1 and January 31. The bag limit would be no more than 1 goose per day prior to October 16, no more than 2 geese per day prior to January 1, and no more than 3 geese per day from January 1 thereafter. Further, the bag limit would be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the Pennsylvania Counties of Erie, Mercer, and Butler, the season would be 70 days between October 1 and January 31. The bag limit would be no more than 1 goose per day prior to October 16, and 2 geese per day thereafter. Except that the bag limit would be no more than 1 goose per day for the first 8 days of the season, regardless of when the opening date occurs. In Crawford County, the season would be 70 days with a daily bag limit of 1 goose.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service establish a 3-year experimental season in Boone, Callaway, Cole, and Howard Counties of central Missouri. This season would be 9–15 days long and would be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate. The recommended season would be in addition to the regular Canada goose season.

The Committee also recommended that the Canada goose frameworks in Wisconsin be modified as follows: (1) eliminate the Pine Island and Theresa Zones and incorporate these areas into the Horicon Zone; (2) establish permit-issuance procedures for times when Wisconsin's Federally-assigned harvest quota for Canada geese exceeds 160,000; and (3) liberalize hunting authorizations for times when Wisconsin's harvest quota exceeds 200,000. When Wisconsin's quota exceeds 160,000 birds, tag-zone hunters will be authorized to harvest a limited number of birds (controlled by tags) in the Exterior Zone, and Exterior-Zone hunters will be allowed to harvest a limited number of birds (controlled by tags) in the Horicon Zone. When Wisconsin's quota exceeds 200,000 birds, all zone restrictions will be dropped and hunters will be permitted to hunt anywhere in the State if they first obtain a Canada goose hunting permit, as long as an acceptable harvest-monitoring system is in place.

In August, the Committee recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26, and that the restriction for Canada geese in the daily bag limit be changed from 3 to 2. They also recommended a number of changes in season length, bag limits, and/or harvest quotas in areas used by Mississippi Valley Population (MVP) Canada geese.

The Committee also recommended extending the season in 9 northeastern counties of Illinois by 9 days and by 10 days in those portions of the Southeast Goose Zone of Minnesota within the Twin Cities Metropolitan Zone and Olmsted County. The Committee recommended that management zones in Ohio be modified to better focus restrictions needed for SJBP Canada geese.

The Lower-Region Regulations Committee recommended that a new zone be created in northwest Arkansas, and that a 14-day season be offered. The Committee also recommended several restrictions in season length, bag limits, and/or harvest quotas in Kentucky, Tennessee, and portions of Mississippi in anticipation of low production and reduced fall flights of MVP Canada geese this year.

In March, the Central Flyway Council recommended that an interim harvest strategy be developed for dark geese in the Central Flyway. This strategy should endorse attempts to increase harvest of all dark geese in the Western Tier, and increase harvest on large Canada geese while maintaining harvest of small Canada geese and white-fronted geese in the Eastern Tier. During the interim period, management plans will be revised.

In August, the Central Flyway Council recommended that North Dakota's date for changing bag limits from 1 to 2 should be changed from a fixed date of October 19 to a floating date of the Saturday nearest October 20.

The Pacific Flyway Council recommended that in Idaho the Salmon River Valley no longer be the boundary between two areas, but that it be added to the Southeastern Area. They also recommended that in California the District 22 Canada goose harvest zone in the Southern Zone be eliminated, thereby allowing identical seasons and limits throughout the Southern Zone.

The Pacific Flyway Council also recommended adjustments to season length and bag limits in five Oregon counties. In Lake, Klamath, and Harney Counties; the season length would be increased from 93 days to 100 days, bag and possession limits for dark and white geese would be separate, and the daily bag limit for dark geese would be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). In Baker County, the daily bag limit would be increased from 2 to 3 geese and the closing date would be extended from the first Sunday in January to the Sunday closest to January 20. In Malheur County, the bag limit would be increased from 2 to 3 Canada geese during that portion of the season preceding November 16. The daily bag limit would be 2 Canada geese beginning November 16.

Public-Hearing Comments: Mr. Richard Elden requested, on behalf of the MVP Canada Goose Committee and the Upper-Region Regulations Committee of the Mississippi Flyway Council, that the framework opening date for goose seasons be September 26. He commended the Service for working with Michigan during the past year on Canada goose management problems in the State. Mr. Tom Hauge requested that the framework opening date for geese in all harvest areas for MVP Canada geese be in September.

Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee requested a 70-day, 3-bird goose season for Massachusetts. Mr. Lloyd Jones complimented the Service for accepting goose-season recommendations from the Central Flyway.

Written Comments: The Maryland Department of Natural Resources requested that the framework closing date be extended from January 20 to January 22 to accommodate their desire to split the season during their State's deer firearm season. A local organization in Massachusetts requested that their State be able to maintain a 70-day season with the same limits as last year. An individual in Delaware supported the restrictions on Canada geese in the Atlantic Flyway.

The Michigan Department of Natural Resources corrected an error in the Mississippi Flyway Council's recommendation which contained a 50-day season with 1 Canada goose per day for the Muskegon Wastewater Goose Management Unit. They indicated that the recommendation should have specified a 52-day season with 2 Canada geese per day. The Wisconsin Department of Natural Resources requested an opening framework date for all goose seasons of September 26. An individual in Minnesota requested that goose seasons open a week earlier than duck seasons, while another individual in Minnesota requested that a northern zone for geese be established with seasons that open earlier in September to allow greater harvest of migrant geese.

An individual in Nebraska requested a 90-day, 2-bird season for dark geese. An individual in California requested that the bag limit be expanded to include 3 Canada geese per day.

Service Response: The Service concurs with most of the Flyway Councils' recommendations for changes in zones, seasons, and limits on geese. In addition, the Service applauds the Atlantic Flyway Council's efforts to reduce Canada goose harvest.

The Service does not concur with the recommendation to endorse conditional modifications to Canada goose frameworks for Wisconsin. Regulations for Canada geese are developed annually based on current information about the status and trends of the various management populations in the respective flyways. Since the appropriateness of the proposed modifications, even in the situations described, cannot be predicted in advance, the Service will continue to consider framework proposals for Canada goose seasons on an annual basis.

The Service does not concur with requests for a September 26 framework opening date for all geese in the Mississippi Flyway. The two recent exceptions that allowed earlier opening dates for geese in portions of the Mississippi Flyway (Wisconsin and the northern zone of Michigan) are being continued this year. However, the Service views the request to establish earlier framework opening dates for all geese throughout the Flyway as having the potential to adversely impact some goose populations by increasing harvest on all or portions of specific populations. Evidence from the Atlantic Flyway has suggested that Canada geese wintering in southern areas of the Flyway are subjected to significant harvest in northern States, and the Atlantic-Flyway States have taken steps to reduce early-season harvests as a means of providing additional protection for those Canada geese that retain migratory traditions to winter in the more southerly portions of the Flyway. The Service believes that the potential for similar impacts exists in the Mississippi Flyway as well, and therefore believes that earlier framework opening dates flyway-wide for all geese are not warranted.

In regard to the request for an extension of the framework closing date in Maryland, the Service does not concur with this request because the proposal was not reviewed by the Atlantic Flyway Council, the framework closing date recommended by the Atlantic Flyway Council applies to more than one State, and the accommodation of season dates relative to resident-game seasons is a matter for State resolution.

5. White-fronted Geese

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves white-fronted geese. See item **4. Canada Geese.**

The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties of Oregon, the season length should be increased from 93 days to 100 days, bag and possession limits for dark and white geese should be separate, and the daily bag limit for dark geese should be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). The season on white-fronted geese should not open before October 24 (previously November 1). In Baker County, Oregon, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20. The Council further recommended that for the Northeastern Zone of California, the daily bag limit should be increased from 1 to 2 white-fronted geese per day, and the season length should remain at 24 days.

Written Comments: The Wisconsin Department of Natural Resources requested a framework opening date of September 26 for all goose seasons. They also believed that season lengths for all geese in a given State should be the same length, unless an individual State has the potential and opportunity to significantly affect a given goose

population. For example, the season length for all geese in Wisconsin should be 80 days, including the white-fronted goose season. An individual in Minnesota requested that goose seasons open a week earlier than duck seasons. An individual in Nebraska requested a 90-day goose season with 2 geese per day.

Service Response: The Service does not concur with the request for a fixed framework date of September 26 for the entire Mississippi Flyway. However, the earlier opening dates in Wisconsin and the northern zone of Michigan will be continued. See item 4. **Canada Geese**, Service Response. The Service does not believe longer seasons for white-fronted geese in the Mississippi Flyway are warranted at this time. The frameworks contained in this document provide for the changes recommended by the Pacific Flyway Council.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended no change from the 50-day season with a 2-brant daily bag limit. The Pacific Flyway Council recommended no change from the past frameworks which provided for 16-day seasons in Washington and Oregon and a 30-consecutive-day season in California. The daily bag limit is 2 brant per day.

Public-Hearing Comments: Mr. Frank Anderson requested a 50-day, 2-bird brant season. Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee requested a 50-day, 4-bird brant season.

Written Comments: A local organization in Massachusetts requested a 50-day season with a 4-bird limit.

Service Response: The Service does not believe a liberalization is warranted in the Atlantic Flyway, considering the likelihood of poor recruitment this year. The frameworks contained herein remain unchanged from those in effect during the 1991–92 season.

7. Snow and Ross's Geese

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommended that the season length and bag limit in the eastern-tier States should be expanded to 107 days with a bag limit of 10. In addition, the bag limit for the Middle Rio Grande Valley of New Mexico should be increased to 10 per day.

The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties of Oregon, the season length should be increased from 93 days to 100 days, and bag and possession limits for dark and white geese should be separate. In Baker County, Oregon, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20.

Written Comments: The Wisconsin Department of Natural Resources requested a framework opening date of September 26 for all goose seasons. An individual in Minnesota requested that goose seasons open a week earlier than duck seasons.

Service Response: The Service does not concur with the request for a fixed framework date of September 26 for the entire Mississippi Flyway. However, the earlier opening dates in Wisconsin and the northern zone of Michigan will be continued. See item 4. **Canada Geese**, Service Response.

The Service agrees with the Central Flyway Council's recommendation to allow a daily bag limit of 10 and a 107-day season for snow geese in the eastern-tier States and for the Middle Rio Grande Valley Zone of New Mexico. The Service acknowledges that currently the Mid-continent Population of Snow Geese is substantially above population objectives and that past efforts to increase harvest of light geese in the Middle Rio Grande Valley Zone of New Mexico in order to reduce depredations have been unsuccessful. However, the Service believes that the Central Flyway Council should investigate whether this change in bag limit is effective in increasing harvest levels. The frameworks contained in this document provide for the changes recommended by the Pacific Flyway Council.

8. Tundra Swans

Council Recommendations: The Central Flyway Council recommended that an additional 500 tundra swan hunting permits be allocated to South Dakota. This change would result in a total allocation of 1,500 permits for South Dakota.

Public-Hearing Comments: Mr. Lloyd Jones complimented the Service for accepting past swan-season recommendations from the Central Flyway Council. Mr. Wayne Pacelle thought the hunting of tundra swans for sport was repulsive and could not be defended with biological reasons.

Service Response: The Service agrees with the Central Flyway Council's recommendation to re-allocate an additional 500 tundra swan permits to South Dakota. However, the Service reminds North and South Dakota that the Hunt Plan for the Eastern Population of Tundra Swans requires an assessment of harvest and other survey information for the experimental 3-year periods that began in 1991 for North Dakota and will begin in 1992 for South Dakota.

The Service recognizes the importance of sound data to manage tundra swans. Presently, management plans provide population goals and establish criteria to guide harvest. Data from Midwinter Waterfowl Surveys suggest that both the eastern and western populations of Tundra Swans are stable or increasing. Current harvest estimates, including unretrieved losses, account for less than 5 percent of the preseason winter population index. The Service believes that these controlled hunts do not adversely affect swan populations and that they can be conducted while maintaining swan populations sufficiently large to satisfy the desires of hunters and nonhunters.

10. Coots

Public-Hearing Comments: Ms. Susan Hagood believed that limits on coots are excessive in view of the lack of data on coots. Mr. Wayne Pacelle indicated that coots should not be hunted because he doubted that these species are consumed by hunters.

Written Comments: Many written comments addressing the season length for duck seasons in the Atlantic, Mississippi, and Central Flyways apply to coots because the seasons are concurrent.

Service Response: The Service monitors population and harvest trends of coots and this information suggests that current harvest levels are appropriate.

23. Other

A. Compensatory Days

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow for compensatory days for days lost during the duck season (not to exceed 30 days), on a day-for-day basis, in Atlantic Flyway States where Sunday hunting is prohibited statewide by State law, on an experimental basis in 1992–93 and 1993–94. The Atlantic Flyway Council later requested compensatory days for years when duck seasons are less than 40 days long.

Public-Hearing Comments: Mr. Frank Anderson sought compensatory days for those lost because of State-dictated Sunday closures. He acknowledged that

this was a State problem, but noted that all four Flyway Councils supported compensation. He referred to a recently completed report that detailed the economic benefits that would accrue from additional days should they be granted. He proposed that the additional days be given on an experimental basis; hunting would be by special permit so that the resulting hunter participation and harvest could be evaluated. He contended that use of calendar days in determining a season's length is unfair; whereas, using the number of days open to hunting would be fair.

Mr. Paul Accomundo asked the Service to consider giving compensatory days to those States of the Atlantic Flyway which prohibit Sunday hunting. He claimed that the Service has not responded well to this request in the past. Mr. Lloyd H. Piasse, Jr. and Mr. Gerald Woodmansee also requested compensatory days for those days lost to Sunday closures.

Written comments: A U.S. Senator from North Carolina, a U.S. Congressman from New Jersey, and the State wildlife agencies of Connecticut, Massachusetts, and North Carolina supported the Atlantic Flyway Council recommendation for compensatory days. New York requested a 33-day duck season, New Jersey requested 4 compensatory days, and West Virginia requested compensatory days when migratory bird seasons are less than 40 days long. The New Jersey Waterfowlers Association also requested compensatory days. A local organization in Massachusetts requested a 35-day duck season plus compensatory days. Five individuals from Massachusetts requested 40-day duck seasons and 5 compensatory days. An individual in Virginia requested 7 compensatory days for those days lost due to Sunday-hunting prohibitions and supported the use of Sunday closures as rest days. He indicated that the average hunter would only get 1 more day to hunt because he works 5–6 days per week. A local organization in New Jersey requested that the Service establish a policy on this issue so New Jersey could have a true 30-day season. They indicated that some States permit hunting on Sunday and other States, not currently permitting Sunday hunting, are considering it. The Humane Society supported Sunday closures.

The Wildlife Management Institute said that Sunday hunting and compensatory days have been an issue for decades in the Atlantic Flyway. They urged that this problem continue to be left where it belongs, with the States, for resolution. Ohio was fairly recently able to overturn their blue laws for migratory bird hunting. The precedent of granting compensatory days in the Atlantic Flyway could extend to other seasons such as geese, sea ducks, coots, and others. They question where it would end. Compensatory days would upset the whole basic approach of setting frameworks within which the States select their seasons. Compensatory days would not help the common person who wants to hunt, because it would add extra days during the week when they are not able to use them. The Institute believes granting compensatory days would be a bad precedent and recommended against it.

Service Response: The Atlantic Flyway Council's initial proposal for compensatory days in those States prohibiting hunting on Sundays specifically requested that compensation be given only for duck-hunting days and only when seasons are restricted to 30 days. However, the Service continues to have concerns that the terms of this request could not be limited to exclude longer seasons and other species of migratory game birds.

Although this issue continues to surface in the Atlantic Flyway, the Service has long maintained that Federal regulations do not prohibit hunting on Sundays and that this prohibition is an option freely selected by certain States. The Service believes this problem is an individual State issue and can best be resolved by each State removing its self-imposed restrictions.

B. Captive-reared Mallards

Council Recommendations: The Atlantic Flyway Council complimented the Service for recognizing the potentially serious impacts of released captive-reared mallards on wild waterfowl populations due to possible spread of disease, the deterioration of data-collection for management programs, the compromise of genetic integrity, and law-enforcement conflicts. The Council extended its thanks to the Service for undertaking a review of this issue and urged the Service to develop a policy regarding these releases and their potential impacts.

The Mississippi Flyway Council recommended that the provisions of 50 CFR part 21.13 should only apply to restrictive situations (i.e., tower shoots). When mallards are free-flying, they would be afforded full protection under the Migratory Bird Treaty Act and count toward the daily bag limit. In order to minimize the harvest of wild birds during tower shoots, shooting should only be permitted between the tower and the feeding area. The Council also believes that shooting should not be allowed directly on the feeding area or within a minimum distance of 100 yards from the feeding area.

The Pacific Flyway Council requested its member States and the Service to adopt a moratorium against new captive-reared waterfowl release programs or the expansion of currently existing programs in the Pacific Flyway. This moratorium would remain in effect until the Service solicits public comment on all aspects of captive-reared waterfowl release programs and publishes a position paper, at which time the Council will again evaluate its position on this issue. The Council requested that the Service report progress on this issue prior to the Pacific Flyway Study Committee meeting in January 1993.

The Pacific Flyway Council is on record as discouraging captive-reared waterfowl programs. They indicated that there is serious concern about the biological impacts on wild populations of waterfowl. These concerns include disease outbreaks, genetic crossing, and the impacts on various biological surveys. There are also problems surrounding the interpretation of regulations pertaining to the use of live decoys and baiting when and wherever captive-reared mallards and wild ducks are in association. The Council believes that a complete review of this issue needs to be undertaken so that sound management decisions protecting wild populations of waterfowl can occur.

Public-Hearing Comments: Mr. Brad Bales reiterated the Pacific Flyway Council's recommendation reported above. He restated the Council's request that the Service initiate a prompt, all-encompassing review and publish a position paper on this issue prior to a meeting of its Pacific Flyway Study Committee in January 1993.

Mr. Richard Bishop reiterated the Mississippi Flyway Council's position opposing the release of captive-reared mallards and requested that released captive-reared mallards be considered the same as wild mallards in terms of regulations. He urged the Service to move forward with a review of the regulations governing the release and harvest of captive-reared mallards.

Service Response: The Service appreciates comments regarding releases of captive-reared mallards. The controversy that has surrounded this practice for several decades has intensified recently as this activity has expanded beyond tower shoots and field trials. The Service has initiated a review of the impacts of these releases on wild populations. The Service is concerned about the potential for

introduction of disease, alteration of wild-stock genetics, confounding management and data-collection efforts, and conflicts with current regulations prohibiting baiting and live decoys. The Service will continue to review the regulations governing the release and harvest of captive-reared mallards.

C. Public Participation

Public-Hearing Comments: Ms. Susan Hagood called for more opportunities for the non-hunting public to be involved in the regulatory process. Mr. Wayne Pacelle provided comment on the regulatory process and the lack of sufficient opportunity for public involvement. He suggested that the Service do a better job inviting public participation since many diverse views on the issue of hunting are not being considered.

Written Comments: The Humane Society indicated that the public cannot effectively participate because the Service excludes them from the regulations-development process. The Wildlife Management Institute said that accusations of restricted public involvement in the process are not credible, given the intensive series of multiple announcements and requests for public input, and public-comment periods which begin in February and end in September each year. The fact that only limited members of the public choose to participate is a matter of choice and capability to offer constructive information.

They further commented that the Service's presentations were good and the information presented was useful in providing an understanding to all outside the agency of the basis for proposed regulations. They also stated that the harvest-perspective presentations offered a positive set of statements about what the likely impact of current harvest rates are versus the overwhelming impact of drought and land-use modifications which are hampering recruitment for North American waterfowl. They encouraged the Service to continue to deal with such perspectives directly in these public forums. The material is technical enough that it frequently needs translation directly by the Service.

Service Response: The Service summarized opportunities for public involvement in the regulations-development process in the September 26, 1991, **Federal Register**. As stated there, the Service believes that the current process is open and receptive to all public comments. There is equal opportunity for the public to provide comments regarding the development of annual and basic regulations. However, the Service welcomes suggested improvements to the process.

D. Biological Data Collection

Public-Hearing Comments: Mr. Tom Hauge commended the Office of Migratory Bird Management and the Service for their annual efforts to compile waterfowl-status information. Ms. Susan Hagood admonished the Service for not collecting data on the status of ruddy ducks, buffleheads, goldeneyes, mergansers, and other duck species. Mr. Gerald Woodmansee urged the Service to conduct better surveys that would reflect the status of waterfowl in the Northeast and report those data as is now done for other parts of the continent. He also requested that population objectives be developed for all duck species.

Written Comments: The Humane Society suggested that the Service has failed to estimate populations of ruddy ducks, buffleheads, mergansers, goldeneyes, eiders, scoters, coots, and other species. They strongly recommended that the Service immediately undertake efforts to obtain population estimates for all hunted species.

Service Response: The Service annually monitors waterfowl populations, including those species identified by the Humane Society, and the impacts of hunting through several surveys. Aerial surveys of the major duck breeding areas of North America provide indices of breeding populations and production. This survey is currently being expanded to include previously unsurveyed areas in eastern North America. Some species, which nest primarily outside of the range of the breeding-grounds survey, are monitored through surveys of wintering areas. In addition, duck-stamp purchasers are surveyed to estimate the annual harvest of all species. The Service and the States are cooperatively developing a new Harvest Information Program which should improve the quality and extent of information on harvests of migratory birds. Finally, the Service coordinates a banding program that provides a variety of information on waterfowl populations.

E. Cormorants and Crows

Public-Hearing Comments: Mr. Gerald Woodmansee urged changes in the Migratory Bird Treaty to allow the taking of cormorants and crows, in part because of their adverse impact on fisheries.

Service Response: Cormorants are included among those birds covered under provisions of migratory bird treaties, but are not designated as game birds. Therefore, hunting seasons may not be established for this species. The Service believes that amending the treaties to add the cormorant to the list of game birds would not be appropriate. Provisions do exist, however, for the control of depredating migratory birds, including cormorants. The provisions and requirements for such control are contained in 50 CFR part 21, subpart D.

Crows are not protected by the treaty with Canada, but were included in a later treaty with Mexico. Federal regulations already allow States to set hunting seasons for crows and contain additional provisions for control of depredating crows.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1992." Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 **Federal Register**, the Service reported measures it had

undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 21, 1992 (57 FR 38202).

Authorship

The primary authors of this proposed rule are William O. Vogel and David F. Caithamer, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 703–712), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1992–93 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–712) and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a—d and e—j).

Dated: September 10, 1992.

James Spagnole,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1992–93 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots. Late-season frameworks are summarized below:

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Hunting Season: Not more than 30 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck.

Closures: The seasons on canvasbacks and harlequin ducks are closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise,

seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

Connecticut:

North Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special experimental season may be held between January 15 and February 15, with 5 geese per day.

Delaware: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

Florida: Closed season.

Georgia: In specific areas, an experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Maine: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Maryland: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days and 2 geese per day thereafter.

Massachusetts: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special 16-day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

New Hampshire: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

New Jersey: 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

New York:

Northeastern Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Remainder of State—70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

North Carolina:

East Zone—Suspended.

West Zone—Suspended.

Pennsylvania:

South Zone—70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental late resident Canada goose season may be held along portions of the Susquehanna and Juniata Rivers from January 20 to February 5 with 5 geese per day.

Erie, Mercer, and Butler Counties—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County—70 days between October 1 and January 20; with 1 goose per day.

Remainder of State—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Rhode Island: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Carolina: Suspended regular season. A special 4-day season for resident Canada geese may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15, with a daily bag limit of 1 Canada goose.

Vermont: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Virginia:

Back Bay—Suspended.

Remainder—60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Definition: For purpose of hunting regulations listed below, the collective term "light" geese includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1, 1992, and February 10, 1993, with 5 geese per day. States may split their seasons into two segments.

Atlantic Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1, 1992, and January 20, 1993, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Hunting Seasons: Not more than 30 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck Limits: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, black duck, redhead, hooded merganser.

50 points—male mallard, wood duck.

35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania.

Geese

Definition: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, and brant.

Light geese—lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 3, 1992) and January 31, 1993, and 80 days for light geese between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993. The daily bag limit is 7 geese, to include no more than 2 Canada and 2 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone. In the West Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 79,000 birds. In the:

(a) Southern Illinois Quota Zone—The season for Canada geese will close after 79 days or when 39,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. If any of the following conditions exist after December 20, 1992, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 500 birds per day for 10 consecutive days, or a total mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone—The season for Canada geese will close after 79 days or when 11,850 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession.

(c) Fulton-Knox Zone—The season for Canada geese may not exceed 79 days. Limits are 2 Canada geese daily and 4 in possession.

(d) Remainder of the State—The season for Canada geese may extend for 79 days in the respective duck-hunting zones, except in the Northeastern Zone, where the season may not exceed 88 days. Limits are 2 Canada geese daily and 4 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 19,000 birds. In:

(a) Posey County—The season for Canada geese will close after 70 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese, except in LaGrange and Steuben Counties and on the Kankakee and Jasper-Pulaski Fish and Wildlife Areas, where the daily bag limit is 1.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese. The season for geese in the Southwest Zone may be held at a different time than the season in the remainder of the State.

Kentucky: In the:

(a) Western Zone—The season for Canada geese may extend for 79 days, and the harvest will be limited to 22,400 birds. Of the 22,400-bird quota, 14,560 birds will be allocated to the Ballard Reporting Area and 4,260 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 79-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 79 days. The season in Fulton County may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993, in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, an experimental 9-day season for Canada geese may be held during January 22-30, 1993. During the experimental season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the experimental Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 54,600 birds. In the:

(a) North Zone:

(1) West of Forest Highway 13—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(2) Remainder of North Zone—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) South Zone:

(1) Allegan County GMU—The season for Canada geese will close after 50 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose through November 14 and 2 Canada geese thereafter.

(2) Muskegon Wastewater GMU—The season for Canada geese will close after 52 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU—The season for Canada geese will close after 40 days or when 4,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU—The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone:

(i) West of U.S. Highway 27/127—The season for Canada geese may extend for

45 days. The daily bag limit is 2 Canada geese.

(ii) East of U.S. Highway 27/127—The season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(d) Southern Michigan GMU—An experimental late special Canada goose season of up to 30 days may be held between January 9 and February 7, 1993. The daily bag limit is 2 Canada geese.

Minnesota: In the:

(a) West Central Zone—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Zone the season will close after 40 days or when a harvest of 6,000 birds has been achieved, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(b) Southeast Zone—The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Missouri: In the:

(a) Swan Lake Zone—The season for Canada geese closes after 50 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Central Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP and Northeast SJBP Zones, where the daily bag limit will be 1 Canada goose.

Tennessee: In the:

(a) Northwest Zone—The season for Canada geese may extend for 73 days, and the harvest will be limited to 8,900 birds. Of the 8,900-bird quota, 6,200 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 73-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 73 days. The season may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 58 days, and the harvest will be limited to 500 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The framework opening date for all geese is September 26. The total harvest of Canada geese in the State will be limited to 71,200 birds. In the:

(a) Horicon Zone—The harvest of Canada geese is limited to 45,000 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(b) Collins Zone—The harvest of Canada geese is limited to 1,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(c) Exterior Zone—The harvest of Canada geese is limited to 20,000 birds. The season may not exceed 80 days and the daily bag limit is 1 Canada goose, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 80 days in each duck zone. In the North-Duck-Zone portion of the Subzone, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter; in the South-Duck-Zone portion, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter. In the Brown County Subzone, an experimental late special season to control local populations of giant Canada geese may be held during December 1–31. The daily bag limit during this special season is 2. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to ensure that the harvest does not exceed the limit stated above. This closure will not apply to the late special season in the Brown County Subzone.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Illinois, Indiana, Kentucky, Missouri, and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Swan Lake Zone in Missouri, and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping restrictions: In Illinois and Missouri, and in the Kentucky Counties of Ballard, Hickman, Fulton, and Carlisle, geese may not be transported, shipped, or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Hunting Seasons: Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days start no earlier than the Saturday nearest December 10 (December 12,

1992). Seasons in the Low Plains Unit may include no more than 39 days.

Outside Dates: October 1, 1992, through January 20, 1993.

Duck Limits: The daily bag limit is 3, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks. The daily bag limit may include 3 drake mallards in the High Plains Mallard Management Unit.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck.

50 points—male mallard (Low Plains), wood duck.

35 points—male mallard (High Plains), all other ducks, and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant; "dark geese" includes Canada and white-fronted geese and black brant; and "light geese" includes all others.

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (October 3, 1992), through January 31, 1993, for dark geese and the Saturday nearest October 1 (October 3, 1992), through the Sunday nearest February 15 (February 14, 1993), except in New Mexico where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Kansas: For dark geese, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For Light Goose Units 1 and 2, no more than 107 days, with a daily bag limit of 10.

Montana: No more than 107 days, with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese in the North Unit, no more than 79 days, with daily bag limits of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1992), and no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for the remainder of the season.

For dark geese in the East and West Units, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

New Mexico: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10.

North Dakota: For dark geese, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose, or 2 white-fronted geese, until the Saturday nearest October 20 (October 17, 1992), and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 107 days, with a daily bag limit of 10.

Oklahoma: For dark geese, no more than 79 days, with a daily bag limit of 2 Canada geese, or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

South Dakota: For dark geese in the Missouri River Unit, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 7, 1992), and no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for the remainder of the season.

For dark geese in the remainder of the State, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

Texas: West of U.S. 81, no more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

For dark geese east of U.S. 81, no more than 79 days. The daily bag limit is 1 Canada goose and 1 white-fronted goose during the first 72 days; during the last 7 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese east of U.S. 81, no more than 107 days, with a daily bag limit of 10.

Wyoming: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons: Concurrent 59-day seasons may be selected except as subsequently noted. In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck and Merganser Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads, or 1 of each.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments either statewide or in each zone.

Colorado and Montana may split their duck seasons into three segments.

Colorado River Zone, California: Duck, coot, and common moorhen seasons and limits shall be the same as seasons and limits selected by Arizona.

Geese (including Brant)

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 93-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 3, 1992), and the Sunday nearest January 20 (January 17, 1993), and the basic daily bag and possession limits are 6 geese, provided that the daily bag limit includes no more than 3 light geese (including snow, blue, and Ross') and 3 dark geese (all other species of geese, including brant). In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway and no open season on cackling Canada geese in California, Oregon, and Washington; those three States must include a statement on the closure for both those subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese may not include more than 2 Canada geese.

California:

Northeastern Zone—White-fronted geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 Canada geese or 2 white-fronted geese.

Colorado River Zone—The seasons and limits must be the same as those selected by Arizona.

Southern Zone—The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

Balance-of-the-State Zone—A 79-day season may be selected, except that white-fronted geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before November 30, 1992, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese. In the Western Canada Goose Hunt Area, the take of Canada geese other than cackling and Aleutian Canada geese is allowed.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23, 1992.

Brant Season: A statewide, 30-consecutive-day season on brant may be selected.

Colorado: The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese.

Idaho:

Northern Unit—The daily bag limit may not include more than 3 geese.

Southwestern Unit—The season must end on or before the first Sunday in January (January 3, 1993) with a daily bag limit of 3 geese, that may not include more than 2 Canada geese.

Southeastern Unit—The season must end on or before the second Sunday in January (January 10, 1993); the daily bag limit is 3 geese.

Montana:

East of Divide Zone—The season must end on or before the second Sunday in January (January 10, 1993).

West of Divide Zone—The season must end on or before the first Sunday in January (January 3, 1993). The daily bag limit on dark geese may not include more than 2 Canada geese.

Nevada:

Clark County Zone—The daily bag limit of dark geese may not include more than 2 Canada geese.

New Mexico: The daily bag limit for dark geese may not include more than 2 Canada geese.

Oregon:

Eastern Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

Malheur County Zone—The season must end on or before the first Sunday in January (January 3, 1993). From November 16, 1992, through the remainder of the season, the daily bag limit of dark geese may not include more than 2 Canada geese.

Lake, Klamath, and Harney Counties Zone—The season length may be 100 days. The dark goose limits are 4 per day and 8 in possession, and may not include more than 2 white-fronted geese per day and 4 in possession. White-fronted geese may not be taken before October 24 during the regular goose season. Light goose limits are 3 per day and 6 in possession and additional to those for dark geese.

Western Zone—In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In those designated areas, seasons must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Utah:

Washington County Zone—The daily bag limit for dark geese may not include more than 2 Canada geese.

Remainder-of-the-State Zone—The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese. In Cache County, the combined special September Canada goose season and

the regular goose season shall not exceed 93 days.

Washington: The daily bag limit is 3 geese.

East Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

West Zone—In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. For designated areas, seasons on Canada geese must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 93 days. The season must end on or before the second Sunday in January (January 10, 1993).

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—In the Central-Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 2,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 1,500 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

In the Pacific Flyway

—A 93-day season may be selected between the Saturday nearest October 1 (October 3, 1992), and the Sunday nearest January 20 (January 17, 1993). Seasons may be split into 2 segments.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, and Pershing Counties

—In the Pacific-Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I-95.

South Zone: That portion of the State south of I-95.

Maine

North Zone: Game Management Zones 1 through 5.

South Zone: Game Management Zones 6 through 8.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I-95 (New Hampshire Turnpike) in Hampton, and south along I-95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150

yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I-80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I-80 to U.S. 220, Route 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I-64; I-64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I-79, I-79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, then east along I-70 to the Indiana border.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: That portion of the State west of a line extending north from the Tennessee border along Interstate Highway 65 to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U.S. Bypass 60 to U.S. Highway 231, then north along U.S. 231 to the Indiana border.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

South Zone: That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to Michigan Highway 20, east on Michigan 20 to U.S. Highway 10B.R. in the city of Midland, east on U.S. 10B.R. to U.S. 10, east on U.S. 10 and Michigan 25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn Power Plant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron.

Middle Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I-55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the

west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State 35 to State 25, north along State 25 to U.S. Highway 10, east along U.S. 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains: That area west of U.S. 283.

Low Plains: That area east of U.S. 283.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland, and Yellowstone.

Zone 2: The Counties of Big Horn, Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

Nebraska

High Plains: West of Highways U.S. 183 and U.S. 20 from the northern State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the southern State line.

Low Plains: East of the High Plains boundary.

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa border to U.S. 75, north on U.S. 75 to U.S. 20, west on U.S. 20 to NE 12; west on NE 12 to the Boyd County line; to include those portions of Cedar, Dakota, Dixon, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. Where the Niobrara River forms the southern boundary of Keya Paha and Boyd Counties, both banks of the river shall be included in Zone 1.

Zone 2: The area bounded by designated highways and political boundaries starting on NE 2 at the State line near Nebraska City; west to U.S. 75; north to U.S. 34; west to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I-80; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northwesterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County; west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler Counties; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to the State line; and south and west along the State line to the point of beginning.

Zone 3: The area, excluding Zone 1, north of Zone 2.

Zone 4: The area south of Zone 2.

New Mexico (Central Flyway Portion)

Zone 1: The Central-Flyway portion of New Mexico north of I-40 and U.S. 54.

Zone 2: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

High Plains: That portion of North Dakota west of a line extending north from the South Dakota border on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 8, north to U.S. 2, west to U.S. 85, north to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains: Beaver, Cimarron, and Texas Counties.

Low Plains:

Zone 1: That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Kansas border.

Zone 2: The remainder of the Low Plains portion of Oklahoma.

South Dakota

High Plains: West of highways and political boundaries starting at the State line north of Herreid; U.S. 83 and U.S. 14 to Blunt, Blunt-Canning Road to SD 34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I-90, and U.S. 183 to the southern State line.

Low Plains:

North Zone: That portion of northeastern South Dakota bounded by the following highways: starting at the North Dakota border, U.S. 83 south to U.S. 212, U.S. 212 east to I-29, I-29 north to SD 15, SD 15 east to Hartford Beach, due east of Hartford Beach to the Minnesota border.

South Zone: Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, East on Geddes Highway to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to the Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I-29.

Middle Zone: The remainder of the Low Plains portion of South Dakota.

Texas

High Plains: West of highways U.S. 183 from the northern State line to Vernon, U.S. 283 to Albany, TX 6 and TX 351 to Abilene, U.S. 277 to Del Rio, and the Del Rio International Toll Bridge access road.

Low Plains: The remainder of Texas.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 11, 12B, 13B, and 14-45.

North Zone: GMUs 1-5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 10, 12A, and 13A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the

Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1 (Ft. Hall-American Falls Zone): Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Ada includes the Counties of; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except that portion within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Clark County Zone: All of Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Statewide, except Deschutes, Klamath, and Lake Counties.

Columbia Basin Mallard Management Unit: Morrow and Umatilla Counties.

Zone 2: Deschutes, Klamath, and Lake Counties.

Utah

Zone 1: All of Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch, and Weber Counties and that part of Toole County north of I-80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Georgia

Special Area for Canada Geese: The Counties of Baldwin, Hancock, Harris, Jones, McDuffie, Meriwether, Monroe, Richmond, Upson, Warren, and all Counties north thereof; and Decatur and Seminole Counties and all of Lake Seminole within the State of Georgia.

Massachusetts

Same zones as for ducks.

New Hampshire

Same zones as for ducks.

New Jersey

Same zones as for ducks.

New York

Same zones as for ducks, but in addition:

St. Lawrence Early-Season Goose Area: All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

Erie Early-Season Goose Area: All of Erie, Cattaraugus, and Chautauqua Counties.

North Carolina

Canada Geese

East Zone: That portion of North Carolina east of I-95.

West Zone: That portion of North Carolina west of I-95.

Early-season Canada Goose Area—That portion of the State west of I-95; see State hunting regulations for area descriptions.

Pennsylvania

Crawford County: All of Crawford County.

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

North Zone: That portion of the State north of a line extending east from the Ohio border along I-80 to U.S. 220, U.S. 220 to I-180, I-180 to I-80, and I-80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Northwestern Early-Season Goose Area—Butler, Crawford, Erie, and Mercer Counties.

Southeastern Early-Season Goose Area—Bucks, Lehigh, and Montgomery Counties.

South Carolina

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units. These designated areas include: Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, McCormick, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York Counties.

Virginia

Back Bay Area:

Defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake east of U.S. 17 and I-64.

Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line

extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

Same zones as for ducks but in addition:

Central Zone:

Fulton-Knox Zone: Knox County and, in Fulton County, the Townships of Buckheart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, and Putnam, and that portion of Banner Township bounded on the north by Illinois Highway 9 and on the east by U.S. Highway 24.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Northeastern Zone: Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

Indiana

Same zones as for ducks, but in addition:

Early-season Canada Goose Area—Adams, Allen, DeKalb, Elkhart, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells, and Whitley Counties.

Iowa

Southwest Zone: That portion of the State lying south and west of a line extending north from the Missouri border along U.S. Highway 71 to Interstate Highway 80, west on I-80 to U.S. 59, north on U.S. 59 to State Highway 37, then northwest on State 37 to State 175, then west on State 175 to the Nebraska border.

Kentucky

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I-24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Louisiana

Southwest Zone: That portion of the State encompassed by a line extending east from the Texas border along Louisiana Highway 12 to Ragley, east along U.S. Highway 190 to Interstate Highway 49 near Opelousas, south along I-49 to U.S. 167 near Lafayette, south along U.S. 167 to Louisiana 82 at Abbeville, south and west along Louisiana 82 to the Intercoastal Waterway at Forked Island, westerly along the Intercoastal Waterway to the Calcasieu Ship Channel, south along the west side of the Calcasieu Ship Channel to Louisiana 82 at Cameron, westerly along Louisiana 82 to the Texas border. All open waters of Lake Arthur and the Mermentau River from the Louisiana 14 bridge southward are closed.

Michigan

Same zones as for ducks but in addition:

South Zone:

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I-196 in Casco Township, then northerly along I-196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I-69, westerly along I-69 to Michigan Highway 21, westerly along Michigan 21 to I-96, northerly along I-96 to I-196, westerly along I-196 to Lake Michigan Drive (M-45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Early Canada Goose Seasons:

Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties and the Allegan State Game Area in Allegan County.

Upper Peninsula—That area encompassed by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. 2 to Interstate Highway 75, north along I-75 to State Highway 28, west along State 28 to State 221, north along State 221 to Brimley, then north to the Ontario border.

Minnesota

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac Qui Parle Zone—That area encompassed by a line beginning at the intersection of U.S. Highway 212 and

County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Southeast Zone: The Counties of Anoka, Carver, Chisago, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Southwest Border Zone: All of Martin County and that portion of Jackson County south and east of U.S. Highway 60.

Twin Cities Metro Zone: All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County Line, and east along the Carver County Line to the Hennepin County Line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Missouri

Same zones as for ducks but in addition:

North Zone:

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Central Zone: Boone County and that portion of Callaway County west of U.S. Highway 54.

Middle Zone:

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone:

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Early-season Canada Goose Area—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Lake Erie SJBP Zone: Those portions of Erie, Lucas, Ottawa, Sandusky, and Wood counties encompassed by a line beginning in Toledo at the intersection of Summit street and the Michigan border and extending southerly along Summit street to State Route 51, southeasterly along State 51 to Interstate Highway 80/90, easterly along I-80/90 to U.S. Highway 6, northeasterly along U.S. 6 to State 2, easterly along State 2 to the east bank of the Huron River, northerly along the east bank of the Huron River to Lake Erie, and continuing north to the Ontario border.

Northeast SJBP Zone: Those portions of Ashtabula and Trumbull counties encompassed by a line beginning at the intersection of U.S. Highway 6 and the Pennsylvania border and extending southwesterly along U.S. 6 to State Route 534, southerly along State 534 to State 82, then easterly along State 82 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west

by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I-90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Early-Season Goose Subzone: That area encompassed by a line beginning at Lake Michigan in Port Washington and extending west along State Highway 33 to State 175, south along State 175 to State 83, south along State 83 to State 36, southwest along State 36 to State 120, south along State 120 to U.S. Highway 12, then southeast along U.S. 12 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I-25 from the Wyoming border south to I-70; west on I-70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park Area: Chaffee, Custer, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Area: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Remainder: Remainder of the Central-Flyway portion of Colorado.

Kansas

Light Geese

Unit 1: That area east of U.S. 75 and north of I-70.

Unit 2: The remainder of Kansas.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S-169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I-35, I-35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I-70, I-70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central-Flyway portion of Montana.

Nebraska

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

New Mexico (Central Flyway Portion)

Light Geese

Middle Rio Grande Valley Unit: The Central-Flyway portions of Socorro and Valencia Counties.

Remainder: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I-94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I-94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Dark Geese

Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of SD 65), Dewey, Gregory, Haakon (north of Kirley Road and east of Plum Creek), Hughes, Hyde, Lyman (north and east of I-90 and U.S. 183), Potter, Stanley, Sully, Tripp (east of U.S. 183), Walworth, and Yankton (west of U.S. 81).

Remainder: The remainder of South Dakota.

Texas

West Unit: West of U.S. 81.

East Unit: East of U.S. 81.

Wyoming (Central Flyway Portion)

Area 1: Albany, Campbell, Carbon, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties east of the Continental Divide.

Area 2: The Counties of Converse and Natrona.

Area 3: The Counties of Bighorn, Fremont, Hot Springs, Park, and Washakie.

Area 4: Goshen County.

Area 5: Platte County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I-5 at the town of Weed; south along I-5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I-10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I-15; east on I-15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I-5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45-162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I-5; southerly on I-5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

Browns Park Area: The Browns Park portion of Moffatt County.

Delta/Montrose Area: All of Delta and Montrose Counties.

Gunnison/Saguache Area: Gunnison County and that portion of Saguache County west of the Continental Divide.

Dolores/Montezuma Area: All of Dolores and Montezuma Counties.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Kootenai, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; Clearwater; those portions of Elmore north and east of I-84, and south and west of I-84, west of ID 51, except the Camas Creek drainage; Gem; Idaho, Latah; Lewis; Nez Perce; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia except the Minidoka National Wildlife Refuge; those portions of Elmore south of I-84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51, and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39; and Teton.

Zone 5 (Ft. Hall-American Falls Zone): All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific-Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific-Flyway portion of Montana.

Nevada

Clark County Zone: Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific-Flyway portion of New Mexico located north of I-40.

South Zone: The Pacific-Flyway portion of New Mexico located south of I-40.

Oregon

Western Zone: All counties west of the summit of the Cascades, excluding Klamath and Hood River Counties.

Special Canada Goose Management Area: Those portions of Coos, Curry, Douglas, and Lane Counties west of U.S. 101; and that portion of western Oregon west and north of a line starting at the Columbia River at Portland, south on I-5 to OR 22 at Salem, east on OR 22 to the Stayton Cutoff, south on the Stayton Cutoff to Stayton and straight south to the Santiam River, west (downstream) along the north shore of the Santiam River to I-5, south on I-5 to OR 126 at Eugene, west on OR 126 to OR 36, north on OR 36 to Forest Road 5070 at Brickerville, west and south on Forest Road 5070 to OR 126, west on OR 126 to the Pacific Coast.

Northwest Oregon Special Permit Goose Area: Includes Sauvie Island Wildlife Area, only in designated areas but excluding North Unit and Columbia River Beaches, private lands of Sauvie Island, and including Scappoose Flat and Deer Island, lower Columbia River Area, Ankeny National Wildlife Refuge, private lands adjacent to William L. Finley National Wildlife Refuge, and private lands adjacent to Baskett Slough National Wildlife Refuge.

Early-season Canada Goose Area—Those portions of Multnomah, Columbia, and Clatsop Counties (excluding Sauvie Island Wildlife Area) within the following boundary: Beginning at Portland, Oregon, at the south end of the I-5 bridge; south on I-5 to U.S. 30; west on U.S. 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Washington border; east and south along the Washington border to the I-5 bridge; south on the I-5 bridge to the point of beginning.

Eastern Zone: All counties east of the summit of the Cascades, including all of Klamath and Hood River Counties.

Columbia Basin Goose Area: Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco Counties.

Malheur County Zone: All of Malheur County.

Lake, Klamath, and Harney Counties Zone: All of Klamath, Lake, and Harney Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Early-Season Canada Goose Area: Cache County.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Goose Area—Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Counties and east of Satus Pass (U.S. 97) in Klickitat County.

West Zone: All areas west of the East Zone.

Lower Columbia River Area—Clark, Cowlitz, Pacific and Wahkiakum Counties.

Skagit Area—Island, Skagit, Snohomish, and Whatcom Counties.

Early-Season Canada Goose Area—That area bounded by a line extending from Vancouver at the I-5 Bridge north on I-5 to Kelso, west on WA 4 from Kelso to WA 401, south and west on WA 401 to the Astoria-Megler Bridge, from the Astoria-Megler Bridge along the Oregon border to the point of beginning.

Wyoming (Pacific Flyway Portion)—See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

[FR Doc. 92-22976 Filed 9-21-92; 8:45 am]

BILLING CODE 4310-55-F

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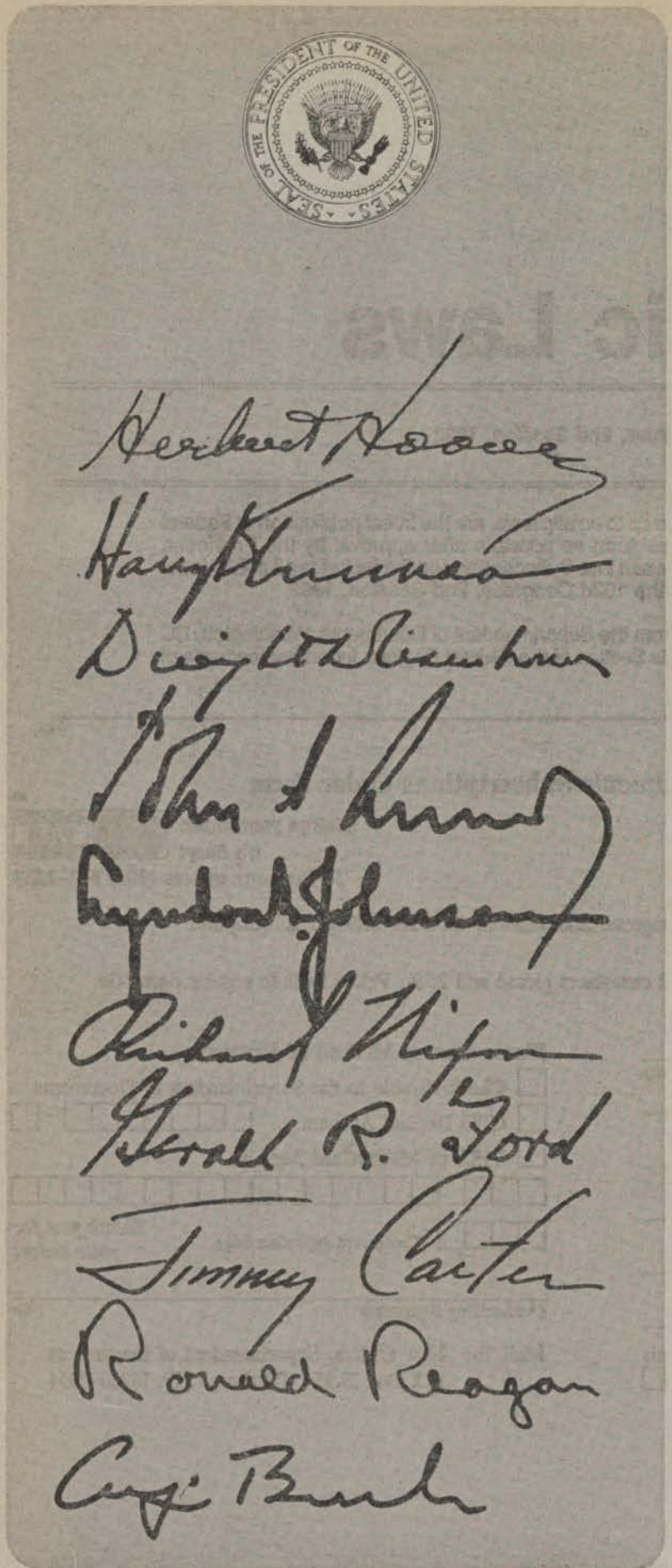
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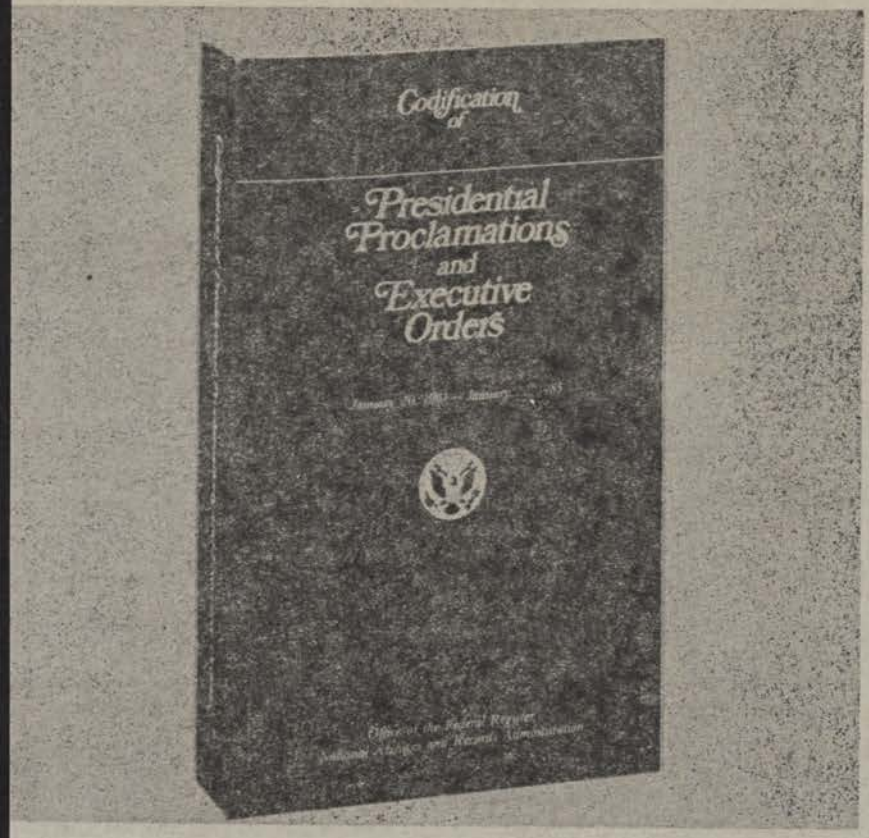
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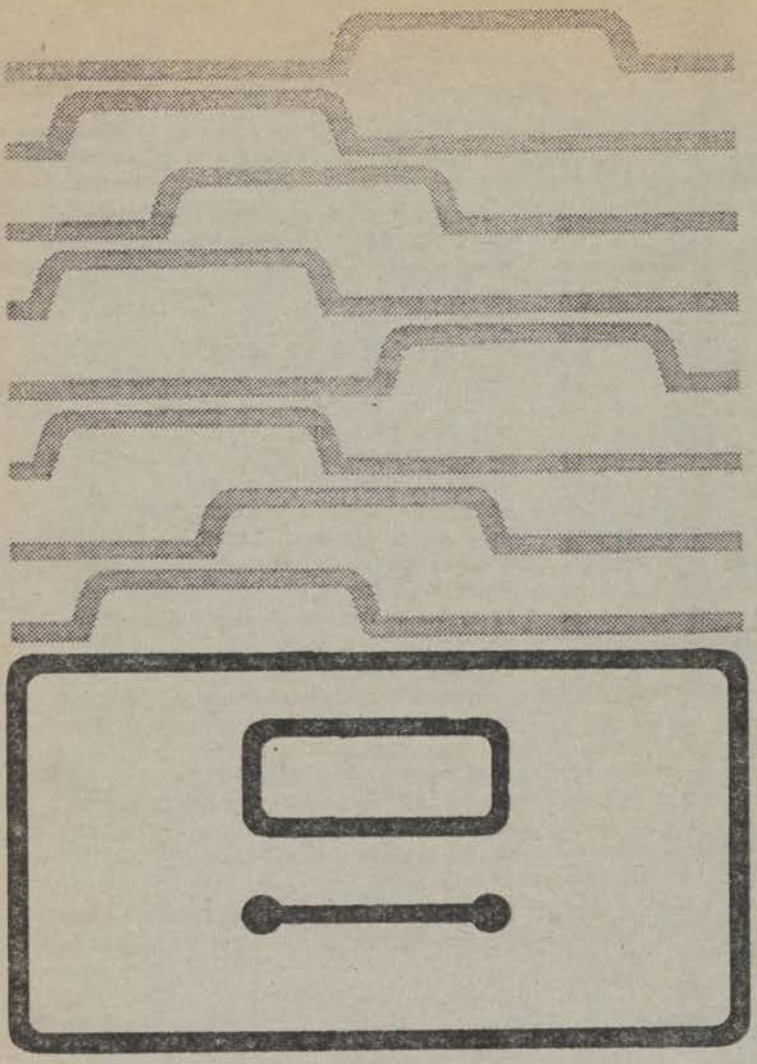
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