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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 729 and 1446

Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts with certain modification the interim rules published in the Federal Register on April 19, 1991 (56 FR 16206 and 56 FR 16227), which set forth regulations governing the federal poundage quota and price support programs for peanuts and peanut handler operations to be codified in 7 CFR parts 729 and 1446.

More specifically, this final rule sets forth regulations to implement the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Act") with respect to the 1991 through 1995 crops of peanuts, and the collection of marketing assessments for peanuts, as required for the 1991 through 1995 crops by Section 1105 of the Omnibus Budget Reconciliation Act of 1990 (the "1990 Budget Act"). With respect to part 729, the amendments to the interim rules adopted in this final rule principally involve: (1) Apportionment of the national poundage quota to Oklahoma and New Mexico, and (2) reallocation in Texas of any increased State quota, quota reduced for nonproduction, and permanently released quota. With respect to part 1446, the principal modifications involve: (1) Settlement of loan pools for Valencia peanuts produced in New Mexico and (2) the terms and conditions governing the contracting of additional peanuts for export or crushing.

These regulations are required by provisions of the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act").

The modifications made in the final rule have been made after consideration of the public comments. In some instances, the modifications are technical changes made for purposes of clarity.

EFFECTIVE DATE: This final rule is effective August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382-0156.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified "not major." It has been determined that this action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions. Furthermore, it will not have significant adverse effects 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.

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

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) and the Agricultural Stabilization and Conservation Service (ASCS) are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Except with respect to § 729.205, the information collection requirements contained in the regulations of 7 CFR parts 729 and 1446 for the peanut poundage quota program and the price support program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560-0006, 0560-0014, and 0560-0133. OMB has approved the collection requirements through May 31, 1992. This final rule does not change the information collection as approved by OMB. The information collection required by § 729.205 will not be applicable to the 1991 crop of peanuts because there has not been an increase in any State's poundage quota for the 1991 crop. The information collection requirements for § 729.205 will be submitted for OMB approval not later than October 15, 1991. The public reporting burden for this collection of information is estimated to vary from 9 to 30 minutes per response, with an average of 14 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0560-0006), Washington, DC 20503.

Statutory Background

Title VIII of the 1990 Act which was enacted on November 28, 1990, amended the 1938 Act and the 1949 Act to provide, for the 1991 through 1995 crops, for the peanut poundage quota and peanut price support programs.

In addition, section 1105 of the 1990 Budget Act which was enacted on November 5, 1990, provided for a marketing assessment equal to one percent of the national average quota or additional price support rate per pound, as applicable, for the applicable crop, to be collected with respect to all marketings of the 1991 through 1995 crops of peanuts.

Many of the statutory provisions for peanuts contained in the 1990 Act and 1990 Budget Act were described in the

supplementary information published with the interim rules.

1. Summary of Comments to Part 729

A total of 11 comments were received with respect to the interim rule for Part 729 that was published in the **Federal Register** on April 19, 1991. Most of the comments related to the 1990 Act provision that permits a tenant to share with the farm owner in any quota increase that is allocated to the farm, from any increase in a State's poundage quota, as a result of the tenant's production of additional peanuts on the farm. Other comments related to the special Texas provision for allocating quota to farms in certain Texas counties and the provision relating to marketing assessments. There were single comments submitted on other issues as well. Although the comment period ended on May 20, 1991, the Department continued to consider comments received through close of business on July 15, 1991.

Section 729.205—Allocation of Increased Quota to Tenants

There were 5 comments received relating to the provision that the tenant share equally with the farm owner, on a farm that was leased to the tenant for peanut production, in any increase in the farm poundage quota that results from the tenant's production of additional peanuts, if the poundage quota allocated to the State was greater than the poundage allocated to the State for the preceding year.

One respondent suggested that the tenant should not share in any increase in poundage quota allocated to a farm as a result of the tenant's production of additional peanuts on the farm. The respondent recommended that any quota allocated to the farm should remain on the farm on which the peanuts were produced. Adopting this suggestion would be contrary to the plain language of the 1990 Act.

Other respondents felt that tenants should share in the quota increase without regard to whether the tenant received a 100 percent share of the peanuts or a lesser share. Their view was that the words "leased to a tenant for peanut production" as in section 358–1(b)(2)(D) of the 1938 Act, by the 1990 Act, should be read to include within its coverage, tenants with a "share lease" arrangement as well as tenants with a "cash lease" arrangement. The term "leased to a tenant for peanut production" was interpreted in § 729.205 of the interim rule to apply only to those tenants who leased part or all of a farm and had a 100 percent producer interest in one or more fields where peanuts were produced on the farm during the base period. That interpretation is maintained in this final rule to be consistent with the provision that limits this special grant to where the quota is derived from the tenants' own production rather than where the owner of the farm is in fact a producer of the peanuts. In addition, a tenant with a share lease may not have full control of management decisions in the farm's operation and may not in that sense be considered a lessee but may instead be in a position of a farm manager or employee.

Section 729.204—Allocating Quota Increase or Decrease

There were two comments on the general method for allocating the quota increase or decrease to farms. One respondent stated that allocating the quota increase on the basis of farm's production history unduly benefits large farmers. Since the quota decrease is based on the size of farm's quota, the respondent suggested that the quota increase should also be based on the farm's quota. However, use of the production history is explicitly required by section 358–1(b)(2)(a) of the 1938 Act.

Another respondent recommended that the quota decrease should be based on the farm's production history because the quota increase is based on the farm's production history. Section 358–1(b)(2)(B) of the 1938 Act provides that in the event the poundage quota apportioned to a State for any of the 1991 through 1995 marketing years is decreased from the poundage quota apportioned to farms in the State for the immediately preceding year, the decrease shall be allocated among all the farms in the State for each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made. The 1938 Act does not specify how the quota decrease in the national quota shall be allocated to States. However, if the production history were used to allocate the quota decrease, the greater amount of quota would move away from producing farms, which is contrary to the preference in the current poundage quota legislation to place the quota on farms that are actually producing peanuts.

Accordingly, the method for allocating the quota increase to farms and for determming the quota decrease on farms shall remain as provided in the interim rule.

Section 729.103—Considered Produced Credit

One respondent suggested that considered produced credit should be granted on a farm for failure to produce peanuts because of a disaster. No modification in the regulations is needed to accommodate this suggestion. The interim rule in § 729.103 provides for granting considered produced credit if peanuts are not produced because of drought, flood, or any other natural disaster or any other condition beyond the control of the producer.

Section 729.212—Considered Produced Credit for Temporary Owner or Operator Transfer

One respondent stated that a producer who temporarily transfers quota by an owner or operator transfer under the transfer provisions in § 729.212, should receive considered produced credit on the transferring farm if the transferred quota is not produced on the receiving farm because of conditions beyond the control of the operator on the receiving farm. Section 358b(a)(2) of the 1938 Act provides in part, with respect to owner or operator transfers of quota to a self-owned or operated farm, that "any farm poundage quota transferred * * * shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm." Historically, considered produced credit has been granted for all farms only up to an amount not to exceed the basic quota for the farm. Modifying the historical definition and granting considered produced credit for owner and operator transfers in excess at the farm's basic quota, would significantly modify the method of allocating quota increases or reallocating quota reduced for nonproduction, would create inequities in the administration of the program, and would thereby be contrary to the provisions of the statute. Accordingly, no change has been made in this provision of the regulations.

Another respondent recommended that considered produced credit should be granted to all farms for 1991, because of the planting decisions that had to be made before the interim rule was issued. Although the interim rule was not published until April 19, 1991, producers had sufficient time after receipt of their initial notice of quota to plant the peanut acreage. In order to avoid a reduction in quota in such circumstances, the producer only has to plant sufficient acres to produce the basic quota, and from the previously

announced national poundage quota most producers could determine the acreage of peanuts that would be required to produce the farm's basic quota. Further, there were provisions in the interim rule for granting considered produced credit for leasing and releasing quota.

Section 729.204—Reallocation of Increased Quota, Quota Reduced for Nonproduction, and Permanently Released Quota in Texas

There were 2 comments that related to the method used in the interim rule to determine the eligibility of counties in Texas to participate in the special quota allocation. Both of the respondents indicated that the basic quota, rather than the effective quota, should have been used to determine counties eligible for the special provision. Section 358-1(b)(2)(B) of the 1938 Act provides that in the event the poundage quota apportioned to Texas for any of the 1991 through 1995 marketing years exceeds the poundage quota apportioned to farms in the State for the immediately preceding year, 33 percent of the increased quota shall be allocated to farms having poundage quotas for the 1990 marketing years in any Texas county in which the production of additional peanuts in 1989 exceeded the total quota allocated to the county for the 1989 marketing year. The 1938 Act also provides that quota voluntarily released or reduced for nonproduction on all Texas farms, shall be reallocated to farms in any Texas county in which the production of additional peanuts in 1989 exceeded the total quota allocated to the county for the 1989 marketing year. The interim rule interpreted the legislative language "total quota allocated to the county for the 1989 marketing year" to mean the 1989 effective quota rather than the 1989 basic quota since the effective quota includes temporary adjustments to the quota. By using the 1989 effective quota, two counties (Hidalgo and Bailey) that would have qualified, if the basic quota had been used, were excluded. On review of the comments and the statute, it has been determined that the term "allocated" is more correctly read to refer to "basic" quota rather than the "effective" quota, particularly as this portion of the statute appears to be designed to provide for increases in counties with low established quota compared to actual production. The regulations have been modified accordingly. Therefore, Hidalgo and Bailey counties will be eligible to receive a share of any "bonus" quota increase that is granted to eligible Texas counties. This change will have no effect on any other State and there will be no budgetary or regulatory change in the impact of the peanut program at the national level.

Section 729.206—Experimental and Research Programs

Two comments related to the quota allocated to experimental and research farms. One respondent suggested that the research institutions be permitted, in cooperation with the State ASC committee, to assign a portion of quotas allocated to them to any farm in the State for purposes of on farm research when under the supervision of the institution. Another respondent suggested that additional quota, or a percent of the quota allocated to the research institutions under § 729.206 of the interim rule, be made available to privately owned farms for experimental and research purposes. The 1938 Act is very specific as to the description of the institutions that qualify under this provision. It provides that the Secretary may permit a portion of the poundage quota established in the State for the 1991 crop to be allocated to each land-grant institution identified in the Act of May 8, 1914 (38 Stat. 372, chapter 79; 7 U.S.C. 341 *et seq.*), colleges eligible to receive funds under the Act of August 30, 1890 (26 Stat. 419 chapter 841; 7 U.S.C. 321 *et seq.*), including Tuskegee Institute and, as appropriate, the Agricultural Research Service of the Department of Agriculture, if such institution possessed a quota for the 1985 crop year or was authorized under this part at that time to market peanuts from the 1985 crop for quota purposes without incurring marketing penalties. Section 729.311 of the interim rule provides that peanuts grown for experimental or research purposes shall not be subject to penalty on the marketing of any peanuts that are grown only for experimental or research purposes, which will include seed determined to be breeder or foundation seed or grown on land owned or leased by a publicly-owned agricultural experiment station, which will include State-operated seed organizations. Accordingly, peanuts grown for experimentation and research purposes on land owned or leased by a publicly-owned experiment station are not subject to penalty if the peanuts are retained for further experimentation and the peanuts are not used for food, feed or seed to produce another crop.

Section 729.212—Transfers

There was one comment that appeared to recommend that the regulations permit, in all States, transfers of quota to contiguous counties within the State for purposes of crop rotation and management practices. The interim rule, in accordance with the statute, provided that transfers to a contiguous county within the same State are generally only permitted in cases for an "owner transfer" or "operator transfer" where the two farms have the same owner or operator and only where the receiving farm had a basic quota established for the preceding year's crop. However, the 1938 Act provides in the case of any State for which the poundage quota allocated to a State is less than 10,000 tons for the previous year's crop, that all or any part of the farm poundage quota may be transferred by sale or lease from a farm in the county to a farm in any other county in the same State. The statute does not permit the transfer of quota by sale or lease to contiguous counties except under these conditions. As the interim rule accurately reflected the provisions of the statute, no change was adopted.

Section 729.303—Designing Category of Marketings

There was one comment received regarding the designation of the peanut marketing category by the producer. The respondent suggested that 7 workdays after inspection instead of 3 workdays after inspection be provided for the producer to designate the category of marketings (i.e., whether the peanuts will be marketed as quota peanuts or as additional peanuts). The three-day period appears to be duly sufficient for the producer to make the marketing decision and the shorter period will facilitate the orderly marketing of the crop during harvest season. Peanuts cannot, in most cases, be unloaded from a producer's vehicle until the producer designates the category of sale and the identity of the purchaser has been determined. Long delays in marketing decisions would cause peanuts to sit at the buying point unattended, encourage confusion, and subject peanuts to loss or damage. Accordingly, no change in this provision of the regulations has been made. Producers wishing to have more time to make a marketing decision can hold the peanuts on the farm for a longer period.

Section 729.315—Segregation 3 Peanuts

There was one comment relating to the provision contained in § 729.315 of the interim rule for the supervision of Segregation 3 peanuts. The respondent suggested that handlers who are members of the Peanut Administrative Committee (PAC) already have Segregation 3 supervision by the PAC

and any further instructions for supervision is not required. The provisions in § 729.315 were implemented to control producer marketings of Segregation 3 peanuts. Producers as individuals are not signers of the marketing agreement. Further, this provision of the interim rule permits the sale of Segregation 3 peanuts for seed use to handlers who are not signers of the marketing agreement. Accordingly, no change was adopted.

Section 729.301—Identification of Producer by Name on Producer Identification Card

There was one comment relating to protecting the producer's identity at time of grading the peanuts by not identifying the producer on the producer identification card because of discriminatory and preferential treatment a producer may or may not receive at the grading process. No change has been adopted. The 1938 Act provides that all peanuts that are harvested and delivered to market from a farm must be properly identified to the farm of production. This is necessary to determine whether the peanuts are eligible for the category of marketing in which they are being sold. Use of all identifying information assures that inspections will properly be matched with the correct peanuts. Because of the requirement to identify the farm of production and the severe penalties that may be imposed for false identification of peanuts, the producer identification card is considered essential to the marketing process. Further, there are administrative procedures already available for contesting inspection results.

Section 729.316—Marketing Assessments

Two comments addressed the time for submitting the marketing assessments that are collected by the handler for peanuts marketed through the handler and that are paid by the producer for uninspected peanuts marketed by the producer. One respondent suggested that the time provided in § 729.316 for remitting the assessment is not realistic. Section 729.316 of the interim rule provides that the marketing assessment shall be remitted during the 5 days that follow the week in which the data from the applicable form ASCS-1007 was transmitted to ASCS. Under this provision a handler could have from 5 to 12 days to remit the marketing assessment, depending on the date of transmittal of the data. The postmark on the envelope in which such marketing assessment is remitted shall be the basis for determining whether the marketing assessment was remitted timely. For a producer, the interim rule provides that the marketing assessment shall be remitted, within 7 days after the date such peanuts were marketed, to the county ASCS office that serves the county in which the farm is administratively located. USDA believes that the time prescribed in the regulations for remitting the assessments is more than reasonable. Further delay would unduly prejudice the public's financial interest in expeditious collection of the assessment.

Another respondent recommended that the interim rule should be amended to require that the producer "shall" pay one-half of the marketing assessment. The final rule was amended to provide that the handler shall collect one-half of the marketing assessment from the proceeds that otherwise will be due the producer.

Corrections to Interim Rule for Part 729

The final rule makes the following corrections and change to the interim rule for part 729:

1. Under the definitions contained in § 729.103, the quantity marketed or considered marketed as "Noninspected peanuts" under definition for "Peanut quantity marketed or considered marketed" is defined in the final rule as the gross weight instead of the net weight for determining the weight of the lot of peanuts that is not inspected by the Federal-State Inspection Service at the time of marketing.

2. The definition for "Considered produced credit" is changed in the final rule to prohibit the granting of considered produced credit for peanut poundage quota that was leased and transferred for the current year after July 31. This was to clarify the intent that considered produced credit was not to be granted for a fall transfer of quota.

3. The quota allocation factors in § 729.201 have been recalculated for New Mexico and Oklahoma. In New Mexico, a farm permanently transferred quota from one county to another and the quota inadvertently was duplicated in both counties. However, the error was not discovered before the interim rule was issued. In Oklahoma, as a result of an appeal, additional quota was granted after the preliminary quotas had been determined.

4. Section 729.204 has been amended, with respect to cases involving farm reconstitutions in qualifying Texas counties, to provide that: (1) If a farm is divided after the 1990 crop year, the resulting farms will, with respect to the requirement that the farm had a 1990 basic quota, be considered eligible to receive a share of any "bonus" quota that is allocated to eligible Texas counties in a year subsequent to the division and (2) if a farm is combined after 1990 with another farm, the resulting farm will not be considered to meet the 1990 basic quota requirement unless, prior to the combination, each farm that is involved in the combination had a 1990 basic quota.

2. Summary of Comments to Part 1446

In response to the interim rule for Part 1446 that was published on April 19, 1991, a total of 17 respondents submitted 19 comments which addressed more than 75 separate issues. Respondents addressed many minor issues such as technical changes and clarifications. Some respondents addressed issues that are beyond the scope of this rulemaking or requested procedural clarifications that do not involve adjusting the terms of the regulations. These comments are not addressed in the final rule. Although the comment period ended on May 20, 1991, the Department continued to consider comments received through the close of business on July 15, 1991. The more important issues germane to the rulemaking, are the following:

Section 1446.102—Administration

Three respondents commented on the provisions of the interim rule that allow the Administrator, Agricultural Stabilization and Conservation Service (ASCS) or the Executive Vice President, CCC, to change a determination made by a designee of the Administrator or Executive Vice President. The respondents suggested that a person acting on a determination or action taken by an ASCS employee or representative should be exempt from any liability for actions taken on such information if the Administrator or Executive Vice President or designee modifies or rescinds any determination or action taken by the employee or representative.

Part 790 of this title, in accordance with section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339c), is incorporated into the regulations in Part 1446 only and provides the authority for the Administrator, ASCS (Executive Vice President, CCC), to grant benefits in certain instances when the incomplete performance was based entirely upon action or advice of an authorized representative of the Secretary. However, with respect to penalties, even though a person may have relied in good faith on the advice of an employee, if the advice was in fact erroneous, relief under this statutory provision is not possible since the

statute does not extend to the assessment of penalties.

One respondent stated that allowing export credit for peanut products that are exported to Canada or Mexico should be allowed for the 1991 crop as a means of expanding U.S. exports and increasing the market for U.S. peanuts.

Due to the complexity of this issue, further study will be undertaken and comments sought with respect to the 1992 through 1995 crops of peanuts. However, the interim rule will remain in effect for the 1991 crop of peanuts.

Section 1446.103—Definitions

Seven respondents requested that several definitions which were excluded from the interim rule be added to the regulations. Also, respondents requested changes to several definitions that appeared in the interim rule.

It was determined to add into the final rule definitions for "additional peanuts", "bright hull Valencia peanuts", "dark hull Valencia peanuts", "fragmented peanuts", "treated seed peanuts", and "Valencia peanuts produced in the Southwest suitable for roasting." Also, it was determined that the final rule adopt the suggested changes in the definition of "eligible peanuts" to include peanuts to be delivered in bags for price support loan in the Southwest area (as defined in the regulations).

Section 1446.201—General Handler Requirements

Two respondents requested that the regulations list the specific requirements which must be met for handler approval. It was determined that the regulations accurately set out the statutory requirements for handler approval while providing adequate flexibility for handling unusual cases.

Section 1446.302—Eligibility of Peanuts for Price Support at the Additional Loan Rate

Seven respondents addressed the eligibility of peanuts for loan. Suggestions include: (1) Requiring the same moisture requirements for seed peanuts as for non-seed peanuts, (2) requiring that peanuts must contain not more than 10 percent foreign material unless the peanuts are bought back by the handler and stored separately, and (3) changing the provisions regarding Segregation 2 and Segregation 3 peanuts.

No change in the regulations was found to be necessary. It was determined that these suggestions are procedural in nature and are not appropriate matters for coverage in the regulations. In addition, such items are applicable to peanut quality and are subject to the quality program administered by PAC and by the Agricultural Marketing Service.

Section 1446.307—Disaster Transfer of Segregation 2 or Segregation 3 Peanuts From Additional Loan to Quota Loan

Six respondents addressed the disaster transfer provision. Five of the comments wanted technical changes to assure accurate calculations. One respondent asked that the regulations clarify the options of using the disaster transfer provision where crop insurance indemnification may also be offered by the Federal Crop Insurance Corporation (FCIC).

It was determined that the regulations adequately set forth the requirements for disaster transfers and that step-by-step instructions for making calculations are more suitable for inclusion in a directive handbook.

Also, since the provisions of the crop insurance program are not addressed by the regulations of part 1446, suggestions regarding the handling of such claims were beyond the scope of this rulemaking and were not adopted.

Section 1446.308—Loan Pools

Ten respondents commented on the provisions of the interim rule which addressed pools for Valencia peanuts produced in New Mexico. The respondents suggested continuation of the same method of cross compliance between pools that had been used with respect to the 1986 through 1990 crop of peanuts. As the statutory language which applied to these crops was adopted intact in the 1990 Act and the method of accounting for these pools was well known, these comments have been adopted in the final rule. This will mean that gains in pools in other areas will not be used to offset losses in the pools for Valencia peanuts produced in New Mexico. Also, it exempts the New Mexico pools for bright hull and dark hull Valencia peanuts from offsetting losses in dark hull Valencia peanuts from gains in bright hull Valencia peanuts, and vice versa.

Section 1446.309—Immediate Buyback and Sale of Loan Peanuts to the Storing Handler

Seven respondents objected to the provision of the interim rule which allows the purchase of additional peanuts for domestic edible uses under the "immediate buyback" provision.

Five respondents wanted the same language that was applicable for the 1986–1990 peanut crops which prohibited immediate buyback purchases until all contract additional peanuts were delivered from the farm. One respondent wanted some form of restriction but suggested such restrictions should apply by peanut type. It was determined not to change the interim rule as contracting parties may agree to contract provisions to restrict "immediate buyback" without the need for the regulations to impose such restrictions on all producers and handlers. However, this issue will be further reviewed and public comments on the matter solicited at a later date for the 1992 and subsequent crops.

Section 1446.401—Contracts for Additional Peanuts for Crushing or Export

Ten respondents commented on the provisions that apply to contracting additional peanuts for export or crushing.

Eight respondents commented about the contract form required for contracting additional peanuts. One respondent opposed the contract form on the basis it is not necessary and suggested that a list of requirements for approval should be included in the regulations rather than in a specified form. Requiring regularity in the contract complies with the statutory requirement that the contract be submitted "on a form" specified by the Secretary. In addition, this will avoid administrative confusion and unnecessary review with little imposition on handlers.

Respondents raised questions concerning contracts entered into before the interim regulations were issued, and contracts reproduced on legal sized paper. These questions relate to procedure and it was determined not to amend the regulations with respect to the issues addressed by the questions. CCC did not intend Form CCC–1005 for mass distribution but rather to be used as a template by handlers and producers. One respondent questioned whether any addendum to the contract should be filed with the contract and this prompted the determination to include in the final rule a provision that any addendum must accompany the contract when it is filed at the county ASCS office. Further, to provide for the orderly contracting and marketing of 1991-crop peanuts and to facilitate marketing of that crop, the final rule also provides that a contract form of the handler's own design will be considered an approved form for that crop, but only if the provisions of such contract otherwise meet the requirements for contract approval. However, for 1992 and subsequent crops, a form using CCC–1005 as a template and containing all requirements as set out in the

regulations must be used for contracting purposes.

Other respondents commented on the language content of the contract, including the statement that peanuts covered by the contract could not be disposed of by the handler directly for domestic edible or seed use. The respondent maintained that such statement would conflict with the provisions of the regulations that allow the use of contracted additional peanuts for domestic edible use whenever the President suspends the import quota imposed under section 22 of the Agricultural Adjustment Act of 1933.

In such cases, should they occur, an appropriate announcement will be made, and at such time the handler and producer could, by mutual consent and in accordance with the regulations, agree to a different use of the peanuts. Therefore, no change in the regulations was found to be needed.

One respondent requested that weather at time of planting be considered a basis for extending the contract deadline since this would affect the yield. It was determined that the language in the interim rule appropriately sets forth the provisions of the statute. Therefore, the suggestion was not adopted.

Four respondents requested modification of the provisions of the interim rule applicable to the final contract price to allow some type of "formula" pricing as was permitted by the regulations applicable to the 1986 through 1990 crops. The final rule clarifies that the final contract price must be established in such a manner that a third party may determine such price without the need for further negotiation.

Section 1446.402—Approval as Handler of Contract Additional Peanuts

Six respondents addressed the provisions on handler approval. One respondent alleged that billing for supervision is nonconsistently applied to all handlers. This comment addresses a program administration issue and not a regulatory one. The billing procedures will be reviewed to assure that billing for supervision costs is made to the appropriate person and in appropriate amounts.

Five respondents suggested that the regulations include a provision prohibiting substitution of facilities after an entity has been approved as a handler. The suggestion is adopted in the final rule to help assure, as provided by Congress, that the facilities used to handle peanuts be approved by July 1. However, the regulations permit the Executive Vice President, CCC, in certain specified cases, to approve the substitution of facilities in order to avoid undue hardship for the handler and producers. Also, the respondents requested that the regulations applicable to extension of the letter of credit in an amount to cover the penalty for prior crop years include a statement that the amount of the letter of credit would be supplied to the association by the Tobacco and Peanuts Division of ASCS. It was determined that the interim rule provided adequate regulatory authority for extending the letter of credit. Accordingly, this suggestion was not adopted.

Section 1446.403—Letter of Credit

Three respondents objected to the letter of credit amount as being excessive and suggested that a handler be allowed to increase the letter of credit at a later time if the posted letter of credit was insufficient. It was determined that, a letter of credit based on the potential penalty on 8 percent of the amount of peanuts contracted does not represent an unreasonable amount of financial guarantee to assure that contract additional peanuts will be exported or crushed, especially in view of the potential harm to the peanut program for a failure to properly dispose of additional peanuts.

Three respondents requested that the handler be allowed to voluntarily increase the letter of credit at a later time if such handler realized the posted letter of credit is insufficient. It was determined that, if a handler could increase the letter of credit as suggested, the requirement for an adequate initial letter of credit would be a moot point. Handlers would have no reason to post an adequate letter of credit before contracts were approved and this would interfere accordingly with the efficient administration of the program.

Two respondents requested that the term "associated with" in this portion of the regulations be defined or clarified since the term makes obtaining a letter of credit more difficult. Financial institutions may have reservations about extending credit when it is not plainly clear what the term encompasses. The paragraph containing the term "associated with" is expanded in the final rule to provide further clarification of the use of this term.

Three respondents addressed the section on increased letter of credit due to violation history. The respondents suggested that the violations listed in § 1446.403(c) were so minor in nature that no increase in the letter of credit is necessary. Also, the respondents objected to the inclusion of penalties under appeal as part of the violation history requiring an increase in the letter of credit.

It was determined that all program violations should have some bearing upon the violation history of a handler and the letter of credit requirements in subsequent years. Certain violations may not be as serious as others but the existence of such violations will raise the concern that similar or more serious violations will occur. Also, the existence of an administrative appeal will not remove the obligation for an increased letter of credit amount since it would not be possible to assume that the increased amount would be collected after the appeal was resolved and since this would encourage appeals that may be frivolous.

Section 1446.404—Transfer of Contracts Prior to Delivery

Eight respondents commented on the provisions which allow contracts to be transferred to another handler whenever the original contracting handler is unable to perform under the contract due to circumstances beyond the handler's control.

Two respondents requested that the regulations permit the contract price to be changed if the contract is transferred The respondents stated that handlers might be unwilling to assume the original handler's contract at the original contract price. It has been determined that changing the contract price or the amount of peanuts contracted after the final contracting deadline would amount to contracting after the statutory deadline. The statute does not provide exceptions for contracting after the final date for filing contracts for approval. Accordingly, the suggestion is not adopted and the provisions for contract transfer prior to delivery as set forth in the interim rule are adopted as a final rule without change.

Four respondents suggested including language to assure that the receiving handler's letter of credit was sufficient to cover the amount of peanuts such handler contracted plus the amount of peanuts transferred. This was believed to comport with the intent of the regulations to assure adequate protection of CCC's financial interest and was adopted.

One respondent requested that two handler-to-handler transfers of lots of additional peanuts be allowed after delivery, but before export or crushing; provided each transfer is to a manufacturer. This suggestion, if adopted, would unduly discriminate against handlers who were not manufacturers. In addition, the current

procedure whereby the original handler may disclaim export credits on a lot of peanuts has been shown to be a satisfactory and efficient method for the otherwise difficult task of tracking export obligations and credits. Accordingly, the suggestion is not adopted.

Section 1446.407—Handler Transfer of Contract Additional Peanuts or Transfer of Disposition Credit

Six respondents commented on the issue of transfer of peanuts or disposition credit.

Five respondents stated that the bill of sale should not be required as part of the documentation for proof of export. The respondents expressed concern that requiring a bill of sale when the peanuts had been involved in multiple sales would place undue burden on handlers, and also stated that CCC's interests are adequately protected without including the bill of sale as documenting proof of export. It has been determined that this comment has merit and that the administration of the peanut price support program will not be adversely affected by not requiring the bill of sale as part of the export documentation. Accordingly, the interim rule is revised by the final rule to reflect that the bill of sale will not be required for proof of export.

Section 1446.408—Decreasing or Drawing Upon a Letter of Credit

Seven respondents addressed the issue of reduction of the letter of credit and extension of the deadline for filing export documentation.

One respondent suggested that a handler be allowed to reduce the posted letter of credit prior to January 31 if weather was obviously affecting deliveries or if the final deliveries were determined prior to this date. Accordingly, the final rule provides that the letter of credit may be reduced prior to January 31 if the Deputy Administrator, State and County Operations approves such reduction.

Three respondents opposed the phrase "may reduce" on the basis it gave the area marketing association discretionary power to reduce the letter of credit and recommended using the phrase "shall reduce" instead. This suggestion was determined to have merit. Accordingly, the interim rule is amended by the final rule with respect to reducing the letter of credit after January 31 to state that the association "shall, upon request of the handler" reduce the letter of credit when the regulatory conditions are met.

Three respondents requested that the March 31 and May 31 dates for reducing the letter of credit be removed. This comment was found to have merit and regulations applicable to reducing the letter of credit subsequent to January 31 have been revised by the final rule to remove these dates. This will permit monthly reductions of letters of credit after January.

Two respondents requested that an extension of the time to file documentation when the handler could show that such delay is due to conditions beyond the handler's control. A determination was made to adopt this request in the final rule.

Section 1446.410—Extension of Final Disposition Date

Seven respondents commented on the provision for extending the final date for export or disposition.

Three respondents expressed concern that handlers could not request an extension as a matter of choice, and should not be required to supply a reason for the request. The interim rule requires that, in order to be approved for an extension, a handler must explain why the handler will be unable to meet the final disposition date.

In order that the actual deadline be maintained to assure expeditious resolution of the crop on the part of all parties, it has been determined that the extension to allow a handler additional time to complete exportation or crushing of additional peanuts should be granted only when completion of the export or crushing has been delayed beyond the normal disposition deadline of the applicable year for reasons beyond the control of the handler, such as equipment failures, strikes, natural disasters, and other similar reasons. For purposes of granting an extension of time to export or crush peanuts, failure to secure an export market will not be considered as a reason beyond the handler's control. The final date for exporting or crushing, once established, should apply to all handlers on an equitable basis. If an extension could be granted on the sole basis of allowing more time to secure an export market, the established final export date virtually becomes a meaningless provision. However, to provide partial relief for these concerns, the final date for exporting is changed to October 15 and the final date for requesting an extension is changed to September 15.

Two respondents objected to the requirement that a request to extend the final export date must be made a month in advance. The respondent stated that unwary handlers will be put into a penalty situation and that handlers should be allowed until the final disposition date to request an extension. The reason for providing a period of time between the date for requesting an extension and the final extension date was to allow a handler, whose extension is denied, ample time to avoid a penalty by disposing of the handler's remaining contract additional peanut obligation by crushing if export cannot be accomplished. If the final date for requesting an extension and the final date for disposing of contract additional peanuts were the same date, the handler would be subject immediately to penalty for failure to export or crush contract additional peanuts. Accordingly, the final rule continues to require that any request for an extension to export or crush must be made in advance of the final date for export or crush. However, as noted, the date for requesting the extension and the final date for exporting have been changed.

One respondent requested that the provision for extension include language that would: (1) Require that the handler specify the kernel type (i.e., SMK, SS, and AO kernels) for which the extension was being requested, (2) require that the handler increase the letter of credit to cover 140 percent of the quota support rate on the remaining obligation, (3) require the handler to dispose of the entire quantity of peanuts for which an extension has been granted, (4) require the handler to agree to pay supervision costs, and (5) make the handler subject to penalty assessment for failure to comply with provisions of the regulations. It was determined that the regulations in the interim rule provided adequate regulatory provisions for adequate disposition of contract additional peanuts where an extension is granted.

Section 1446.412—Evidence of Export

Five respondents requested that the required documentation of export by water be the original or carbon copy of the on-board ocean bill of lading. The respondent noted that this would prevent alterations to the document. This comment was found to have merit and, accordingly, the final rule requires that the on-board ocean bill of lading be either the original or an original duplicate (not a machine made copy) of the original bill of lading.

Section 1446.416—Suspension of Restrictions on Imported Peanuts

Eight respondents commented on the provisions that are applicable to the suspension of restrictions on imported peanuts.

Five of these suggested that the regulations be amended to provide that additional peanuts that are purchased

for domestic edible use in such cases must be purchased only through the immediate buyback provision. This is not consistent with the statute and has not been adopted.

Three respondents objected to the provision that limits the purchase of contract additional peanuts from a producer by the contracting handler for sale for domestic edible use to those cases in which import restrictions under section 22 are temporarily suspended. The respondents stated that such interpretation, in effect negates the statute, since it is highly unlikely that import quotas would be suspended to allow an unlimited quantity of peanuts to be imported. The suggestion was not adopted because the statute explicitly applies only in cases of a "suspension."

Two respondents objected to the restriction that limits, to undelivered additional peanuts, the purchase of contract additional peanuts from a producer for domestic edible use. The respondents stated that U.S. produced additional peanuts should be able to compete with foreign peanuts for the domestic market and some type of pooling, among those producers that agree to sell their additional peanuts for domestic use, should be devised without regard to whether or not the peanuts had been delivered. It was determined that the statutory language allowing a handler "to purchase" additional peanuts from a producer would require that the producer own such peanuts and thereby exclude peanuts which the producer had marketed previously. The ownership of delivered contract additional peanuts has passed to the handler and additional peanuts placed under loan have been pledged as loan collateral and are no longer under control of the producer. In addition, such peanuts have been commingled with peanuts produced by other growers, thereby losing any identity with respect to a particular producer as the peanuts delivered by the producer. Accordingly, this suggestion was not adopted.

Section 1446.601—Disposition Requirements Under Nonphysical Supervision

Seven respondents commented on the disposition requirement for handlers operating under nonphysical supervision.

Four respondents requested that the provisions include language that a lower "shrink" amount be allowed for handlers who fail to comply with restrictions on the use of peanuts as may be specified by CCC. Similar language was contained in the regulations applicable to the 1986 through 1990 peanut crops. It was determined that such language is no longer necessary due to the implementation of the regulations at 7 CFR part 997 that apply to handlers who are not operating under the standards and handling procedures established by PAC. Therefore, with respect to such language, the interim rule is adopted as a final rule without change.

Six respondents addressed the amount of shrink permitted for handlers operating under nonphysical supervision. Five respondents requested that the shrink be set at 4 percent, the minimum shrink permitted by statute. One respondent supported the 4.5 percent shrink amount as set by the interim rule which continued the shrink allowance previously in place.

USDA is currently conducting a study of the shrink experience for warehouse-stored peanuts. The study will be concluded with the completion of the 1991 crop year. Congress was aware of the study and it would be premature and disruptive to adjust the shrink allowance at this time.

Seven respondents suggested that the term "transshipped" is not needed in the provision that denied credit for peanuts that are diverted or "transshipped" to an ineligible country, or that, in the alternative, the term "transshipped" should be defined. The term "transshipped" has been removed from §§ 1446.503 and 1446.601 in the final rule. The term did not add to the clarity or coverage of the provisions in which the term appeared.

Section 1446.602—Disposition Credits Under Nonphysical Supervision

Seven respondents commented on the provisions concerning disposition requirements under nonphysical supervision.

Two respondents requested that the term "may" should read "shall" in the provision applicable to granting disposition credits. This suggestion has been adopted in the final rule.

Five respondents requested clarification of the interim rule with respect to disposition credit for farmers stock peanuts in order to assure that farmers stock peanuts must meet the PAC incoming quality standards for Segregation 1 peanuts to be eligible for disposition credit. This comment was determined to have merit. A determination was made that the provisions applicable to disposition credits for exported farmers stock peanuts should require such peanuts to meet the PAC incoming quality standards for Segregation 1 peanuts. The PAC indemnification program is available to handlers for farmers stock peanuts which do not grade out of warehouse storage as Segregation 1 peanuts. Accordingly, the suggestion was adopted and the interim rule is amended by the final rule to reflect the suggested change.

Five respondents requested an adjustment in the credit for crushing farmers stock peanuts when the average dollar value graded out of warehouse storage is less than the average dollar value of the contract additional peanuts purchased by the handler. This suggestion has been adopted in the final rule in order to ensure that handlers do not unduly achieve, without compensation to producers and to the disadvantage of other handlers, an enhancement of the quality of the handler's peanuts available for marketing as quota peanuts.

Two respondents suggested removal of the provision of the interim regulations which limits the credit for crushing positive aflatoxin peanuts to the percentage of contract additional purchased relative to the total peanuts purchased. The respondents stated that such a provision does not encourage improvement of peanut quality. Adoption of this comment could provide an undue advantage to some handlers and diminish producer returns. Therefore, the suggestion was not adopted and the provision of the interim rule applicable to this disposition credit limitation is adopted as a final rule without change.

Five respondents suggested adding a provision that would address the issuance of disposition credits for AO kernels. Upon review of the interim regulations it was determined that the suggested provision was necessary for establishing TKC disposition credit. Accordingly, the suggestion was adopted by adding a provision that addresses AO disposition credits.

Five respondents suggested removing the reference to AO peanuts with respect to disposition credits for in-shell Virginia peanuts. The respondents stated that AO kernels are not considered to be part of in-shell peanuts. The suggestion was not adopted because inclusion of AO kernels in the rule will not have any impact if AO kernels are not determined in the official grades of in-shell Virginia peanuts. However, should the grade determination be changed, the rule will be in place to grant export credit accordingly.

Section 1446.603—Disposition Credit for Peanuts in Exported Products Made from Quota Peanuts

Six respondents suggested that the term "AO kernels" be removed in

paragraph (b)(2)(iii) and suggested that credit be granted for disposition of rejects. As before, the suggestion is not adopted because the reference to "AO kernels", while it may not be necessary and of no effect at this time, will be available without further amendment if a need should arise. Also, since this section involves peanuts in exported products, no reference to rejects is needed since rejects will not be in the exported product.

Section 1446.703—Assessment of Penalties Against Handlers

Two respondents commented on the penalty provision of the interim regulations. The respondents pointed out that the penalty assessed under § 1446.703(a)(10) for failure to timely remit the marketing assessment was also addressed under § 729.316. In addition, the respondents believed a penalty of 140 percent of the quota support rate was excessive.

Upon review of the separate regulations at 7 CFR parts 729 and 1446 it was determined that the reference to this particular penalty was adequately covered in Part 729 and accordingly the reference was removed in § 1446.703.

Having violations be subject to a penalty of 10 percent of the quota support rate was determined not to be excessive. Accordingly, the penalty assessment for failure to timely remit marketing assessments as appears in § 729.316 is adopted as a final rule.

Section 1446.704—Reduction of Marketing Penalties

Two respondents suggested that the final rule clarify the language in the interim rule that is applicable to reducing the marketing penalties. The respondents suggested changing the language "including a full reduction of the entire penalty." It was determined not to adopt this suggestion because the suggestion would not change the dollar effect of the penalty proceedings but could cause some confusion about the effect of the reduction on the application of the letter of credit requirements in the regulations as they apply to instances where the handler has a history of program violations.

In addition, the respondents suggested clarification of § 1446.704(b)(3)(ii) with respect to limiting the amount of reduction to an amount equal to 40 percent. This provision is clarified in the final rule.

Section 1446.801—Recordkeeping Requirements

Three respondents commented on the cost of recordkeeping that is required for the peanut price support program. The statute, as a condition of participating in the price support program or for handling contract additional peanuts, requires that the handler keep and submit records and other information in accordance with regulations as the Secretary may prescribe. The recordkeeping requirements as set forth in the interim rule are necessary to the fair and efficient operation of the program and are adopted without change.

Pre-regulatory Comments

Five respondents objected to only being able to comment on published rules and not being involved in the development of the rules prior to publication.

These comments do not directly address provisions of the interim rule. The publication of the rules provides for full and fair comment and accommodates all suggestions for change. Additional procedures are not required, would be unwieldy, would delay implementation of the regulations, and would not be of any additional material value.

Quality Improvements

Two respondents commented on the issue of quality improvements. One respondent questioned why the regulations did not provide that producers be compensated for quality improvements. One respondent suggested that a new section should be added to the regulations to address the quality improvement program. The respondent suggested that, specifically, the regulation could be revised to: (1) Promote the crushing of peanuts at greater risk of deterioration before peanuts of lesser risk, (2) ensure that CCC stocks sold for domestic use are inspected as farmers stock and as shelled or in-shell peanuts, (3) operate the peanut program in coordination with PAC to improve the quality of domestic peanuts, (4) adjust loan schedules upward to reflect additional handling and production cost required of producers to improve quality, and (5) assure all peanuts used domestically comply with quality standards of PAC.

CCC's policy is, and will continue to be, to endeavor to crush peanuts that are considered at greater risk of deterioration before crushing other CCC peanut stocks and to operate the peanut price support program in coordination with PAC to improve the quality of domestic peanuts. With respect to adjustment in the loan schedule, the loan schedule is based on historic peanut marketing patterns, values and use by type. With respect to inspection of peanuts, CCC stocks under the warehouse-stored loan program must be inspected as farmers stock peanuts.

It was determined that regulatory changes were not needed to address these comments, as the regulations are adequate to administer the peanut price support program in an efficient and cost effective manner.

Request for Further Comment

One respondent requested the opportunity to comment further on any new regulatory interpretations that differed from the regulations applicable to the 1986 through 1991 crops. CCC and ASCS believes that the rulemaking procedures provide adequate opportunity for public participation in rulemaking. Also, comments and suggestions for improving program administration are always welcome.

Administrative Hearings

One respondent recommended annual hearings on the terms and conditions of the peanut program. The statute does not require hearings concerning the peanut program and, as indicated above, such a formalized method of making suggestions for changes does not appear to be of material value. Accordingly, the suggestion is not adopted and the interim rule is published as a final rule without change.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1446

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

Accordingly, the regulations set forth in chapters VII and XIV of title 7 are amended as follows:

PART 729—[AMENDED]

1. In chapter VII, the regulations at 7 CFR part 729 were published in the **Federal Register** on April 19, 1991 (56 FR 16206), as an interim rule. The interim rule is adopted as the final rule, except as follows:

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

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c-3.

b. In § 729.103, paragraph (b) is amended by: (1) Revising the introductory paragraph of paragraph (ii) of the definition "Considered produced credit." and (2) by revising paragraph (ii)

of the definition for "Peanut quantity marketed or considered marketed." to read as follows:

§ 729.103 Definitions.

* * * * *

(b) * * *

Considered produced credit. * * *

(ii) Peanut poundage quota that was voluntarily released for the current year, or was leased and transferred by a transfer agreement that was filed before August 1 of the current year, if neither of the following are applicable:

* * * * *

Peanut quantity marketed or considered marketed. * * *

(ii) *Noninspected peanuts.* For peanuts not inspected by the Federal-State Inspection Service at the time of marketing, the gross weight of the lot.

* * * * *

§ 729.201 [Amended]

c. Section 729.201 is amended by removing the words "New Mexico—0.00583210" and inserting in their place "New Mexico—0.00580694" and removing the words "Oklahoma—0.06675097" and inserting in their place "Oklahoma—0.06677613".

d. Section 729.204 is amended by revising paragraphs (f) (1), (2) and (4)(i) to read as follows:

§ 729.204 Determining a farm's basic quota.

* * * * *

(f) *Reallocation in Texas of increased quota, quota reduced for nonproduction, and permanently released quota.*—(1) *Special provisions for certain Texas Counties.* Notwithstanding the provisions in paragraphs (b) and (e) of this section, 33 percent of any increase in the Texas peanut poundage quota resulting from an increase in the national quota and all of the quota reduced for nonproduction on all Texas farms, except that portion reallocated to nonquota farms in accordance with paragraph (e) of this section, shall be reallocated to farms having 1990-crop basic quotas in any Texas county in which the production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in such county. The production of additional peanuts in 1989 exceeded the total of 1989-crop basic quotas on all farms in each of the following Texas counties: Andrews, Bailey, Briscoe, Childress, Collingsworth, Dickens, Donley, Gaines, Hale, Hall, Hardeman, Haskell, Hidalgo, Hockley, Knox, Lamb, Terry, Wheeler, Wilbarger, and Yoakum counties.

(2) *Allocation to counties.* Any quota to be allocated to eligible Texas counties in accordance with paragraph (f)(1) of this section shall be apportioned to the eligible counties on the basis of the total production of additional peanuts in the respective counties for the 1988 crop. Accordingly, based on the production of additional peanuts in 1988, such quota shall be apportioned to eligible counties according to the following factors: Andrews—0.005342, Bailey—0.003007, Briscoe— 0.016039, Childress—0.008190, Collingsworth—0.184498, Dickens—0.000000, Donley—0.03 1981, Gaines—0.413627, Hale—0.000647, Hall—0.063101, Hardeman—0.010278, Haskell—0.137459, Hidalgo—0.026700, Hockley—0.000679, Knox—0.002818, Lamb—0.026475, Terry—0.009885, Wheeler—0.003102, Wilbarger—0.000000, and Yoakum—0.056172.

* * * * *

(4) *Determining factor for reallocation of quota.*—(i) To receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section, a farm must have had a basic quota greater than zero for the 1990 crop of peanuts. If a farm that had a basic quota greater than zero in 1990 is reconstituted subsequent to 1990:

(A) By division, the resulting farms will be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section.

(B) By combination, the resulting farm will not be considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive a share of any quota allocated to eligible Texas counties under paragraph (f)(2) of this section unless, prior to the combination, each farm that is involved in the combination was considered to have had a basic quota greater than zero in 1990 for purposes of determining eligibility to receive an increased quota under paragraph (f)(2) of this section.

* * * * *

§ 729.316 [Amended]

e. Section 729.316 is amended in paragraph (b)(1) by removing the word "may" in the second sentence and inserting in its place the word "shall".

PART 1446—[AMENDED]

2. In chapter XIV, the regulations at 7 CFR part 1446 were published in the **Federal Register** on April 19, 1991 (56 FR 16227) as an interim rule. The interim rule is adopted as the final rule, except as follows:

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

Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.*; 15 U.S.C. 714b and 714c.

b. Section 1446.103 is amended as follows: (1) by revising the introductory text, (2) by revising the definition of "Eligible country"; by, for the definition of "Eligible peanuts", revising paragraphs (5) and (6) and by adding a new paragraph (7); by revising the definition of "Peanut product", and (3) by adding, as new definitions, definitions for "Additional peanuts", "Bright hull Valencia peanuts", "Dark hull Valencia peanuts", "Fragmented peanuts", "Treated seed peanuts", and "Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting":

§ 1446.103 Definitions.

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1402, 1403, 1407, 1421, 1422 and 1498 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean to any persons designated by the Executive Vice President. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

* * * * *

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

* * * * *

Bright hull Valencia peanuts. Valencia type peanut produced in the Southwest for which not more than 25 percent of the shells are damaged by:

(1) Discoloration;

(2) Cracks or broken ends; or

(3) Both discoloration and cracks or broken ends.

* * * * *

Dark hull Valencia peanuts. Valencia type peanuts that are produced in the Southwest and that do not meet the requirements for bright hull Valencia peanuts.

* * * * *

Eligible country. With respect to credit for exportation of additional peanuts, any destination outside the United States for which an export

license may be acquired, except that with respect to the 1991 crop, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products other than treated seed peanuts.

Eligible peanuts. * * *

(5)Were not produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession;

(6) Have been inspected and have an official grade determined by a Federal or Federal-State inspector; and

(7) Must, if delivered to the association in bags in the Southwestern area, be in new or thoroughly cleaned used bags which:

(i) Are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers;

(ii) Are free from holes;

(iii) Are finished at the top with either the selvage edge of the material, a binding, or a hem; and

(iv) Are uniform in size with approximately a 2 bushel capacity.

* * * * *

Fragmented peanuts. Peanuts meeting the qualifications for fragmented peanuts as defined in the outgoing quality regulations of the Peanut Marketing Agreement (No. 146) applicable to the crop year in which the peanuts were produced.

* * * * *

Peanut product. Any product, other than peanut oil or peanut meal, that is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, treated seed peanuts, roasted peanuts (either shelled or in-shell), pressed peanuts, and peanut granules.

* * * * *

Treated seed peanuts. Shelled peanuts that have been modified from their original shelled state by a treatment to make them suitable for seed purposes.

* * * * *

Valencia type peanuts produced in the Southwest that are suitable for cleaning and roasting. Peanuts that are identified, determined and classified by the Federal-State Inspection Service as bright hull Valencia peanuts.

c. In § 1446.308, paragraph (d)(2) is revised to read as follows:

§ 1446.308 Loan pools.

* * * * *

(d) * * *

(2) With respect to loan pools for Valencia peanuts produced in New Mexico, if the loan indebtedness on the peanuts in a Segregation 1 quota pool:

(i) For dark hull peanuts, exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered from any net gains on Segregation 1, 2 and 3 loan pools for New Mexico dark hull additional peanuts, proportionately to net gains in each pool.

(ii) For bright hull peanuts, exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered from any net gains on Segregation 1, 2 and 3 loan pools for New Mexico bright hull additional peanuts, proportionately to net gains in each pool.

* * * * *

d. In § 1446.401, paragraphs (a) and (c)(2)(vi) are revised to read as follows:

§ 1446.401 Contracts for additional peanuts for crushing or export.

* * * * *

(a) *Contract form and addendum.*—(1) *Contract form.* In order to be approved by the county committee:

(i) *1991-crop peanuts.* With respect to 1991-crop peanuts, the contract may be on:

(A) Form CCC–1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or

(B) A form of the respective handler's design if such form meets all of the substantive requirements of paragraph (c)(2) of this section.

(ii) *1992 through 1995 crops of peanuts.* With respect to the 1992 through 1995 crop of peanuts, the contract must be completed on form CCC–1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, or on a form approved by the Executive Vice President which follows the organization of the CCC–1005 and contains as a minimum all of the requirements provided for in paragraph (c)(2) of this section.

(2) *Availability of CCC–1005.* The marketing association shall make available a form CCC–1005 to each approved handler and to any producer upon request.

(3) *Addenda.* The handler may use an addendum to a contract form if such addendum neither negates nor conflicts with any provision in this part. Any existing addendum to the contract which relates to the marketing of additional peanuts must accompany the contract at the time the contract is filed with the county committee.

* * * * *

(c) * * *

(2) * * *

(vi) The final contract price to be paid by the handler and shown as a set percentage of the loan rate for quota peanuts of the type indicated on the contract; except that such final contract price shall not be less than the additional loan rate for the type of peanut indicated on the contract. A contract or an addendum to a contract that provides for a conditional supplemental payment to the producer will not be considered to negate the final contract price only if the supplemental payment to be made is expressed in a manner that a third party may determine the amount of the supplemental payment without a need for additional negotiations;

* * * * *

e. Section 1446.402 is amended by redesignating paragraph (c) as paragraph (d), revising paragraphs (a)(3) and (b)(4) and inserting new paragraph (c), to read as follows:

§ 1446.402 Approval as handler of contract additional peanuts.

(a) * * *

(3) *Letter of credit for prior crop years.* Establish an irrevocable letter of credit, or increase any existing letter of credit applicable for a previous crop year, in an amount necessary to cover any outstanding marketing penalties on peanuts produced in such crop year which are still under administrative appeal or are unpaid. This requirement is in addition to any letter of credit requirement for the current year.

(b) * * *

(4) Has complied with the requirements of paragraph (a)(3) of this section.

(c) *Rescission of approval.* Unless the Executive Vice President, CCC, shall otherwise agree in writing, a handler's previous approval to contract for the purchase of additional peanuts for exporting or crushing and to receive and handle such peanuts shall be considered to be rescinded upon such handler's use of facilities, other than those on which the approval was based, to receive, store, process, or ship contract additional peanuts. However, a rescission will not apply if substituted facilities are approved by the association, in accordance with instructions issued by CCC, when the handler can show, as determined by the association subject to review by the Executive Vice President, that the original facilities are no longer available for use due to circumstances beyond the handler's control such as, but not limited to, fire, flood, wind damage, or mechanical failure. In the event of rescission of a handler's approval, any purchases of peanuts from producers by such handler subsequent to the

rescission will be considered as purchases of quota peanuts and will subject the handlers and producers to penalties, as prescribed by this part and in 7 CFR Part 729 for marketing excess quota peanuts unless such peanuts are recorded on the producer's marketing card as a marketing of quota peanuts.

* * * * *

f. Section 1446.403 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 1446.403 Letter of credit.

* * * * *

(b)(1) * * *

(ii) Who, for purposes of handling peanuts is, as determined by CCC, a partnership, merger, joint venture, or other similar business relationship having officials who were officials of an organization having such a record or is composed in whole or in part by merger, succession, consolidation, association or assimilation, of entities with such a record; or

* * * * *

g. Section 1446.404 is amended by adding a new paragraph (a)(3) to read as follows:

§ 1446.404 Transfer of contracts prior to delivery.

* * * * *

(a) * * *

(3) If the receiving handler:

(i) Has an existing letter of credit, such handler may increase the existing letter of credit to cover the total amount of farmers stock peanuts that is to be transferred. However, any increase must be made within 14 days after the transfer is approved, otherwise any increased letter of credit will not be considered for purposes of determining whether an increase will be required in the next year's letter of credit because of a deficiency in the letter of credit.

(ii) Does not have an existing letter of credit, the transfer shall not be approved unless such handler secures an acceptable letter of credit to cover the amount of farmers stock peanuts that is to be transferred.

* * * * *

h. Section 1446.407 is amended by revising paragraph (d) to read as follows:

§ 1446.407 Handler transfer of contract additional peanuts or transfer of disposition credit.

* * * * *

(d) *Transfer of export credit for peanuts which have been exported.* Credit for peanuts that have been exported under the provisions of this part will be given to the applicant shown on the form FV-184-9 for the lot of peanuts that has been exported. However, if a disclaimer to the credit for export is submitted with the applicable form FV-184-9, the export credit will be transferred to the person to whom the credit was assigned.

* * * * *

i. Section 1446.408 is amended by: (1) in paragraph (b) in the second sentence, by removing the word "may" and inserting in its place the word "shall" and by removing the words "and on March 31, May 31,", and (2) by revising paragraphs (a) and (c)(1) to read as follows:

§ 1446.408 Decreasing or drawing upon a letter of credit.

(a) *Decreasing the letter of credit to reflect TKC obligation.* Any existing irrevocable letter of credit that has been presented by a handler may be decreased after January 31 of the calendar year following the year in which the peanuts were produced, or such earlier date as may be authorized by the Deputy Administrator, State and County Operations, if the final TKC obligation determined for such handler, when converted to a farmers stock peanuts basis by dividing the TKC pounds by 0.795 for runner peanuts; 0.75 for Spanish peanuts; 0.735 for Virginia peanuts; or 0.77 for Valencia peanuts, is less than the amount that would be applicable for such handler and for such amount of farmers stock peanuts as determined in accordance with § 1446.403 of this part. The letter of credit may be decreased to the amount so determined.

* * * * *

(c) *Drawing against the letter of credit.*—(1) If less than 16 days remain before the expiration of a handler's letter of credit, and upon authorization by CCC, the marketing association may draw against the letter of credit and apply the amount toward any penalty due for failure to properly dispose of, or account for, contract additional peanuts in accordance with this part if:

(i) By the final disposition date required in this part, a deficiency remained in the handler's obligation to crush or export contract additional peanuts;

(ii) By the date required in this part, the handler did not provide satisfactory documentary evidence of the full export of peanuts or peanut products; or

(iii) The handler has committed another violation of this part with respect to such peanuts.

* * * * *

§ 1446.410 [Amended]

j. In § 1446.410, paragraph (a) is amended by removing the word "September" and inserting in its place the word "October" and paragraph (b) is amended by removing the word "August" and inserting in its place the word "September".

k. Section 1446.412 is amended by: (1) In the introductory paragraphs for paragraphs (b)(2) and (b)(3), inserting the words "and peanut products" after the word "peanuts" and (2) by revising (b) introductory text and (b)(1) introductory text to read as follows:

§ 1446.412 Evidence of export.

* * * * *

(b) *Documentation.* Not later than 45 days after the final disposition date provided in this part, or a later date established by the Director, TPD, for cases where the Director finds that the handler has made a good faith effort to furnish documentation in a timely manner and that the failure to do so was due to conditions beyond the control of the handler, furnish to the marketing association or CCC the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* For peanuts or peanut products and peanut products that were exported by water, a nonnegotiable original or original duplicate copy (not a machine made copy) of an on-board ocean bill of lading. Such bill of lading must have been signed on behalf of the carrier and must include:

* * * * *

§ 1446.503 [Amended]

l. Section 1446.503 is amended in paragraph (b) by removing the words "or transshipped" in both the paragraph heading and in the text.

§ 1446.601 [Amended]

m. Section 1446.601 is amended in paragraph (f) by removing the words "or transshipped" in both the paragraph heading and in the text.

n. Section 1446.602 is amended: (1) in paragraph (a) introductory text by removing in the third sentence the word "may" and inserting in its place the words "shall, subject to the provisions of this part,"; (2) in paragraph (e) introductory text by removing in the first sentence the word "blancher" and by inserting in its place the word "handler"; (3) in paragraph (f) introductory text by, in the first sentence before the word "quality", inserting the word "outgoing"; and (4) by revising paragraphs (a) (3), (4) and (6); (b) introductory text; and paragraph (d) to read as follows:

§ 1446.602 Disposition credit for peanuts under nonphysical supervision.

(a) * * *

(3) Exported kernels that meet PAC outgoing quality standards for domestic edible use; or

(4) Peanuts that are exported as farmers stock peanuts, provided that such peanuts meet PAC incoming quality standards for Segregation 1 peanuts and are positive lot identified; or

* * * * *

(6) Peanuts that are exported as milled or in-shell peanuts if they meet PAC outgoing quality standards for domestic edible peanuts; or

* * * * *

(b) *Requesting physical supervision of crushing for disposition credit.* Prior to the disposition date for contract additional peanuts, as provided in this part, a handler operating under the provisions of this part with respect to nonphysical supervision may request and arrange for the marketing association to supervise the crushing of SMK, SS and AO peanuts for disposition credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions:

* * * * *

(d) *Application of crushing credits to disposition obligation.*—(1) *Milled peanuts.*—Milled peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC outgoing quality standards for domestic edible peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC outgoing quality standards for domestic edible use due to aflatoxin contamination, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(iii) If such peanuts fail to meet PAC outgoing quality standards for reasons other than aflatoxin contamination, disposition credit must be applied exclusively as AO kernels.

(2) *Farmers stock peanuts.*—Farmers stock peanuts that are crushed under physical supervision for disposition credit may receive credit as follows:

(i) If such peanuts meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type.

(ii) If such peanuts fail to meet PAC incoming quality standards for Segregation 1 peanuts, disposition credit may apply to the SMK, SS or AO kernel obligations for the respective like peanut type and for like kernel type; except that, the percentage of such peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(iii) If such peanuts do not meet PAC incoming quality standards for Segregation 1 peanuts for any reason other than the presence of A. flavus mold, disposition credit must be applied exclusively as AO kernels.

(3) *Adjusting export credit for average dollar value of farmers stock peanuts.* If CCC determines that the average dollar value of edible farmers stock peanuts graded out of commingled storage and crushed for export credit under the provisions of this section is less than the average dollar value of all like type peanuts purchased by the handler as contract additional peanuts, the amount of export credit for each kernel type determined under paragraph (b)(2) of this section shall be adjusted by multiplying each quantity for each kernel type by a factor to be determined by dividing:

(i) The average dollar value per ton of peanuts graded out of the handler's commingled storage, accounted for as set forth in this part, and crushed for export credit under the provisions of this section; by

(ii) The average dollar value per ton of all peanuts purchased by the handler as contract additional peanuts.

* * * * *

§ 1446.703 [Amended]

o. Section 1446.703 is amended in paragraph (a)(8) by placing the word "or" after the semicolon, in paragraph (a)(9) by changing the semicolon to a period and by removing the word "or", by removing paragraph (a)(10), in paragraph (b)(9) by inserting the word "or" after the semicolon, by removing paragraph (b)(10), and by redesignating paragraph (b)(11) as (b)(10).

p. Section 1446.704 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 1446.704 Appeals and requests for reconsideration and reduction.

* * * * *

(b) * * *

(3) * * *

(ii) If one of the criteria in paragraphs (b)(2) (i) and (ii) of this section has not been satisfied and the remaining criteria has been satisfied, the penalty shall not be reduced to less than an amount which is equal to 40 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts involved in the violation.

* * * * *

q. Section 1446.807 is revised to read as follows:

§ 1446.807 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0006, 0560-0014 and 0560-0133.

Signed at Washington, DC on August 7, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-19092 Filed 8-7-91; 4:53 pm]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 210a, 214, 241 and 242

[INS No. 1438-91; AG Order No. 1519-91]

Revision of Grounds for Deportation; Conforming Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends 8 CFR parts 210a, 214, 241 and 242 by providing technical amendments to conform with section 241 of the Immigration and Nationality Act, as amended by section 602 of the Immigration Act of 1990 (IMMACT). This interim rule is necessary to ensure implementation of

and regulatory compliance with IMMACT.

DATES: This interim rule is effective March 1, 1991. Written comments must be submitted on or before September 27, 1991.

ADDRESSES: Written comments should be submitted in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper and timely handling please include INS number 1438-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Gale David, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street NW., room 1102, Washington, DC 20536, telephone (202) 514-1954.

SUPPLEMENTARY INFORMATION:

General Comments

The majority of the amendments made to section 241 of the Immigration and Nationality Act, ch. 477, 66 Stat. 163 (1952), as amended (Act), by section 602 of the Immigration Act of 1990, Public Law 101-649, are technical in nature, relating in large part to citation changes. These do not substantively affect the rights of those bound by this section. Consequently, the regulatory changes to 8 CFR necessitated by enactment of section 602 are also primarily technical in nature. Those regulatory changes which do alter the substantive rights of those who are bound by this title have been so identified in the sections below.

In addition, to those changes necessitated by IMMACT, grammatical and technical errors in 8 CFR have also been corrected.

Changes to 8 CFR

Section 210a.8(b)(3) is amended to revise the reference to section 241(a)(20) of the Act to read "241(a)(1)(F)";

Section 214.1(e) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)";

Section 214.1(f) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)";

Section 214.1(g) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)";

Section 241.2(a)(10) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)" in each of the two sentences within that paragraph

Section 214.2(e)(1) is amended to revise the reference to section 241(a)(9) of the Act to read "241(a)(1)(C)(i)". This paragraph is also amended to correct typographical errors by correcting the spelling of "nomimmigrant"; by adding an apostrophe in "alien's place of residence", and by changing the phrase "Service offices" to "Service officers".

Section 214.2(f)(12)(i)(E) is amended to revise the reference to section 241(a) (2) or (9) of the Act to read "241(a)(1) (B), (C), or (D)".

Section 214.2(g)(10) is amended to revise all references to 241(a)(9)(A) of the Act to read "241(a)(1)(C)(i)".

Section 214.2(m)(16)(i)(E) is amended to revise the reference to section 241(a) (2) or (9) of the Act to read "241(a)(1) (B), (C), or (D)".

Section 241.1 is amended to revise the reference to section 241(a)(11) of the Act to read "241(a)(2)(B)".

Section 242.7a is amended to revise the reference to section 241(f) of the Act to read "241(a)(1)(H)". The phrase "a special inquiry officer" in the last sentence of this section is also changed to "the Immigration Judge".

Section 242.8(a) is amended by revising an erroneous reference to section 241(a)(11) of the Act because no application was provided for under that section. The reference to section 241(f) of the Act is revised to read "241(a)(1)(H)". Finally, a reference to section 241(a)(1)(E)(ii) of the Act is added to authorize the Immigration Judge to determine applications for waivers of deportability for smuggling violations, as set forth in section 241(a)(1)(E) of the Act, as amended by section 602 of IMMACT. While the statutory amendment might substantively affect the rights of those regulated, this regulatory language merely tracks the statute, and, therefore, is deemed technical for regulatory purposes.

Section 242.17(d) is amended in both the heading and the text to revise the reference to section 241(f) of the Act to read "241(a)(1)(H) and 241(a)(1)(E)(ii)". The word "section" was also made plural to comport with the amendment. The reference to section 241(a)(1)(E)(ii) has been added to the interim rule to effectuate the alien respondent's ability to apply for relief from deportation for smuggling violations, as set forth in section 241(a)(1)(E) of the Act, as amended by IMMACT. While the statutory amendment might substantively affect the rights of those regulated, this regulatory language merely tracks the statute, and, therefore, is deemed technical for regulatory purposes.

Section 242.23(c) is amended to revise the reference to paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241(a) of the Act to read "paragraphs (2), (3), or (4) of section 241(a)". The changed citations coincide with the changes set forth in sections 242 (e) and (f) of the Act, as amended by section 602 of IMMACT. In addition, the term "special inquiry officer" in paragraph (d) is changed to "the Immigration Judge".

Table of citation changes to section 241 of the Act, as mandated by section 602 of the Immigration Act of 1990:

Former citation	New citation (effective 3/1/91)
241(a)(1)	241(a)(1)(A).
241(a)(2)	241(a)(1)(B).
241(a)(3)	Removed.
241(a)(4)	241(a)(2)(A) (i), (ii), (iii).
241(a)(5)	241(a)(3) (A), (B) [Note: Some parts of 241(a)(5) removed].
241(a)(6)	Removed.
241(a)(7)	241(a)(4)(A).
241(a)(8)	241(a)(5).
241(a)(9)(A)	241(a)(1)(C)(i).
241(a)(9)(B)	241(a)(1)(D)(i).
241(a)(10)	Removed.
241(a)(11)	241(a)(2)(B).
241(a)(12)	Removed.
241(a)(13)	241(a)(1)(E)(i).
241(a)(14)	241(a)(2)(C).
241(a)(15)	Removed.
241(a)(16)	Removed.
241(a)(17)	241(a)(2)(D) (i), (ii), (iii).
241(a)(18)	241(a)(2)(D)(iv).
241(a)(19)	241(a)(4)(D).
241(a)(20)	241(a)(1)(F).
241(a)(21)	Removed.
241(b)(1)	241(a)(2)(A)(iv).
241(b)(2)	Removed.
241(c)(1)	241(a)(1)(G)(i).
241(c)(2)	241(a)(1)(G)(ii).
241(d)	241(c).
241(e)	241(b).
241(f)(1)	241(a)(1)(H).
241(f)(2)	Removed.
241(g)	241(a)(1)(D)(ii).
None	241(a)(1)(C)(ii).
None	241(a)(1)(E)(ii).
None	241(a)(4)(B).
None	241(a)(4)(C)(i).

The Attorney General's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found in 5 U.S.C. 553(d). The reasons and necessity for immediate implementation of this interim rule are as follows: The statutory requirements upon which this rule is based became effective on March 1, 1991, and this rule implements predominantly technical changes to align 8 CFR with these statutory requirements.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation

of a Federal Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 241

Administrative practice and procedure, Aliens, Courts, Crime, Deportation.

8 CFR Part 242

Administrative practice and procedure, Aliens, Apprehension, Crime, Custody, Detention.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 210a—REPLENISHMENT AGRICULTURAL WORKERS

1. The authority citation for part 210a continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 210a.8 [Amended]

2. Section 210a.8 paragraph (b)(3) is amended by revising the reference to "section 241(a)(20)" to read "section 241(a)(1)(F)".

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184; 8 CFR part 2.

§ 214.1 [Amended]

4. Section 214.1 paragraph (e) is amended by revising the reference to "section 241(a)(9)" to read "241(a)(1)(C)(i)".

5. Section 214.1 paragraph (f) is amended by revising the reference to "section 241(a)(9)" to read "section 241(a)(1)(C)(i)".

6. Section 214.1 paragraph (g) is amended by revising the reference to "section 241(a)(9)" to read "section 241(a)(1)(C)(i)".

§ 214.2 [Amended]

7. Section 214.2 paragraph (a)(10) is amended by revising the reference to "section 241(a)(9)(A)" to read "section 241(a)(1)(C)(i)" wherever it appears in the paragraph.

8. Section 214.2 paragraph (e)(1) is amended by:

a. Revising, in the second sentence, the word "nonimmigrant" to read "nonimmigrant";

b. Revising, in the second sentence, the word "aliens" to read "alien's";

c. Revising, in the fifth sentence, the term "Service offices" to read "Service officers"; and

d. Revising, in the last sentence, the reference to "section 241(a)(9)" to read "241(a)(1)(C)(i)".

9. Section 214.2 paragraph (f)(12)(i)(E) is amended by revising the reference to "section 241(a) (2) or (9)" to read "section 241(a)(1) (B), (C), or (D)".

10. Section 214.2 paragraph (g)(10) is amended by revising the reference to "section 241(a)(9)(A)" to read "section 241(a)(1)(C)(i)" wherever it appears in the paragraph.

11. Section 214.2 paragraph (m)(16)(i)(E) is amended by revising the reference to "section 241(a) (2) or (9)" to read "section 241(a)(1) (B), (C), or (D)".

PART 241—CONTROLLED SUBSTANCE VIOLATIONS

12. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357; 8 CFR part 2.

§ 241.1 [Amended]

13. Section 241.1 is amended by revising the reference to "section 241(a)(11)" to read "section 241(a)(2)(B)(i)".

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

14. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1252; 8 CFR part 2.

§ 241.7a [Amended]

15. Section 242.7a is amended by:

a. Revising, at the end of the first sentence, the reference to "section 241(f)" to read "section 241(a)(1)(H)"; and

b. Revising, in the last sentence, the phrase "a special inquiry officer" to the phrase "the Immigration Judge".

§ 242.8 [Amended]

16. Section 242.8 paragraph (a) is amended by revising the reference to "sections 208, 212(k), 241(a)(11), 241(f), 244, 245 and 249 of the Act;" to read "sections 208, 212(k), 241(a)(1)(E)(ii), 241(a)(1)(H), 244, 245 and 249 of the Act;".

§ 242.17 [Amended]

17. Section 242.17 paragraph (d) heading and text are amended by revising the reference to "section 241(f)" to read "sections 241(a)(1)(H) and 241(a)(1)(E)(ii)".

§ 242.23 [Amended]

18. Section 242.23 paragraph (c) is amended by revising the reference to "paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241(a)" to read "paragraph (2), (3) or (4) of section 241(a)".

19. Section 242.23 paragraph (d) is amended by revising the term "the special inquiry officer shall" to "the Immigration Judge shall".

Dated: August 2, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-19189 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 88-010F]

RIN 0583-AA85

Importation of Livestock Carcasses With Tissues Removed

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations by removing the requirements contained in § 327.3(d) which prohibit the importation into the United States of carcasses or parts of carcasses of certain livestock from which the pleura, peritoneum, or body or portal lymph nodes are removed. This action is in response to a petition submitted by Cloverdale Foods Company, Minot, North Dakota.

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: William O. James, DVM, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a major rule

under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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. This final rule will allow certain livestock carcasses and parts from countries eligible to ship product to the United States to be imported and transported in commerce under the same provisions as those carcasses and parts that are inspected and passed in the United States. Additionally, the Agency believes that the final rule will ease the inspection burden on the Agency and the importing industry, ease congestion of loading docks, and reduce inspection time at the port of entry. Inspectors will not be required to specifically determine whether certain tissues have been removed from carcasses or parts, but will assure that products are from countries eligible to import meat products into the United States and are wholesome, not adulterated, and properly marked and labeled.

Effect on Small Entities

The Administrator of the Food Safety and Inspection Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule will not impose any new requirements on the meat industry; rather, it will permit this industry to use more imported livestock carcasses or parts. The carcasses and parts will be further processed in the United States; thus, there will be less importation of processed products.

Background

On January 17, 1989, FSIS published a proposed rule in the **Federal Register** (54 FR 1724) to amend the Federal meat inspection regulations by deleting the requirements contained in § 327.3(d) (9 CFR 327.3(d)). The proposal was a result of a petition from Cloverdale Foods Company, Minot, North Dakota, to amend the Federal meat inspection regulations by removing the requirements which prohibit the importation into the United States of carcasses or parts of carcasses of certain livestock from which naturally associated tissues are removed. The tissues specifically addressed by the petitioner are the pleura, peritoneum, or body or portal lymph nodes.

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, carry out a post-mortem inspection of carcasses and parts of cattle, sheep, swine, goats, horses, mules or other equines, when they are slaughtered in an establishment that is subject to inspection under the FMIA.

Post-mortem inspection involves a series of routine and special examinations by one or more veterinary medical officers, or trained food inspectors under veterinary supervision, of the head, viscera, and other parts of the carcass of each animal slaughtered to detect diseases or abnormalities that could cause the carcass or any part to be adulterated. Routine post-mortem inspection is divided into three phases: Head inspection, viscera inspection and carcass inspection. During each phase, FSIS inspectors perform specific tasks which involve a sequence of observing, palpating, and incising certain tissues and lymph nodes. During inspection of the viscera, the inspectors examine all organs and corresponding lymph nodes, including the portal lymph nodes; and during inspection of the carcass, they examine all carcass surfaces including the pleura, peritoneum, and body lymph nodes. When carcasses are affected by diseases or abnormalities, such carcasses are retained for a special examination by FSIS veterinary medical officers who, depending upon the diseases or abnormalities, perform thorough and expanded examinations by observing, palpating and incising tissues and lymph nodes. These tasks have been tested and have proved to be effective and efficient methods of inspection. It is during all these tasks that, if any abnormalities, such as localized adhesions, small encapsulated abscesses, localized bruises, and so forth, are found on the pleura, peritoneum or lymph nodes, these abnormalities are removed with the surrounding tissues, destroyed or denatured, and not saved for human food. The removal or absence of the pleura, peritoneum, or some lymph nodes does not mean that the remaining parts of the carcass are adulterated and not fit for human consumption. As stated above, the conditions causing removal of the tissues are localized conditions which would not affect the wholesomeness of the remainder of the carcass.

Under section 20 of the FMIA (21 U.S.C. 620), FSIS is responsible for assuring that imported carcasses and parts of cattle, sheep, swine, goats, horses, mules or other equines and their products meet the same standards as those applied in the United States. FSIS carries out this responsibility by reviewing the inspection system of each country that wishes to import such carcasses, parts or other products into the United States, by determining whether the foreign country's laws and inspection program are "at least equal to" those of the U.S. system, and by reinspecting imported products at the port of entry.

For a country's inspection system to be considered "at least equal to" that of the United States, that country must provide documentary proof that it has an "at least equal" operating inspection system. If the review of the documents demonstrates that the country has such a system, FSIS personnel conduct on-site reviews of the country's system. If all requirements of the FMIA are met, the country is considered to be "eligible" to import products into the United States. In addition to the documents' review and on-site reviews of each foreign country system, FSIS carefully reinspects the product at the port of entry in the United States and assures that the foreign country system continues to produce product that conforms to the standards for product produced in the United States.

The present requirements of 9 CFR 327.3(d) have been part of the Federal meat inspection regulations for many years and were promulgated in response to foreign countries' exporting practices in existence at that time.

Response to Comments

The Agency received four comments which addressed several issues regarding the proposed rule. The following is a discussion of the comments and the Agency's responses.

Comment: The American Veterinary Medical Association (AVMA) stated that it supports the proposal. It stated that it believes there is no need for naturally associated tissues such as lymph nodes to be present when product arrives in the United States, provided that product has been inspected under an inspection program that is at least equal to that of the United States.

Response: FSIS agrees with this comment. Under section 20 of the Federal Meat Inspection Act (21 U.S.C. 620), FSIS is responsible for assuring that imported carcasses and parts of carcasses meet standards "at least equal to" those applied to carcasses and parts of carcasses produced in the United States. FSIS carries out this

responsibility by reviewing the inspection system of each country that wishes to import carcasses or parts of carcasses into the United States. A foreign country's laws and inspection programs must be determined to be "at least equal to" those of the United States before products may be imported into the United States. In addition, such imported products are reinspected at the port of entry.

Comment: Two comments from individuals indicated that they believed the regulations should not be changed. They stated that inspection of certain tissues help inspectors to detect disease or residues, and, therefore, it should be required that these tissues remain in the carcass.

Response: FSIS disagrees with these comments. The rule will not adversely affect the inspection of carcasses and parts by the United States or other countries. If during post-mortem inspection, any minor abnormality (an abnormality that would not cause total carcass condemnation) is found, the abnormality and surrounding tissue is removed. For example, if scar tissue or a small abscess is found on the lining (pleura) of the thoracic cavity or lungs, the lesion and some or all of the pleura will be removed. The removal or absence of the pleura, peritoneum, or some lymph nodes does not mean that the remaining parts of the carcass are adulterated and not fit for human consumption. Because this inspection procedure applies to both domestic and foreign establishments, application of the "at least equal to" provision would support removal of such diseased or abnormal tissues before export. The absence of those tissues does not render reinspection of imported product less effective. Such tissues are not needed for the inspector to perform proper reinspection and to detemine whether or not the carcass is wholesome, unadulterated, and fit for human consumption.

Deleting the requirements contained in section 327.3(d) of the regulations allows carcasses and parts which have been inspected under a system that is "at least equal to" the U.S. system to be imported into the United States when abnormal tissues have been removed.

Comment: A trade association, the National Lamb Feeders Association, stated that the regulations should not be changed. They are concerned about the monitoring of livestock additives and drugs. They are also concerned that the proposed rule would lower the safety requirements and allow more product to enter the country.

Response: FSIS disagrees with this comment. Existing requirements relating to pesticides and other livestock additives and drugs are not changed by this regulation.

The Agency believes that the change to the regulations will not appreciably alter the number of carcasses or parts of carcasses eligible for importation into the United States. As stated above, the safety requirements that the United States presently imposes on carcasses and parts of carcasses imported into the United States will not be changed by deleting the requirements contained in § 327.3(d) (9 CFR 327.3(d)).

Final Rule

For the reasons set out in the preamble, § 327.3 of the Federal meat inspection regulations is amended as set forth below:

List of Subjects in 9 CFR Part 327

Meat inspection; Imported products.

PART 327—[AMENDED]

1. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 327.3 [Amended]

2. Section 327.3 (9 CFR 327.3) is amended by removing and reserving paragraph (d).

Done at Washington, DC, on June 21, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91–19206 Filed 8–12–91; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AD99

Imports From South Africa

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the import of source material or special nuclear material from South Africa to permit uranium manufactured or produced in South Africa to be imported into the United States under general license. This action is being taken to conform the Commission's regulations to Executive Order 12769, issued by the President on July 10, 1991, which among other things, terminates the prohibition on nuclear trade with South Africa in section 309 and 311 of the Comprehensive Anti-Apartheid Act of 1986.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald D. Hauber, Assistant Director for Exports, Security and Safety Cooperation, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–0344.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Anti-Apartheid Act of 1986 (the Act), Public Law 99–440, was enacted on October 2, 1986 to establish a framework to guide the efforts of the United States to help end the apartheid system in South Africa and to assist in the establishment of a nonracial, democratic form of government in that country. The Act imposed a wide range of measures against South Africa to undermine apartheid, including a ban on the importation of uranium ore and oxide "produced or manufactured" in South Africa. Section 309(a) of the Act (22 U.S.C. 5059) prohibited the importation into the United States of uranium ore and uranium oxide that is produced or manufactured in South Africa.

The NRC, which has independent regulatory authority under the Atomic Energy Act over the import of uranium, amended its regulations in 1986 to conform with the requirements of the Act and to ensure that its regulations were consistent with the provisions of the regulations of the Treasury Department (51 FR 47207; Dec. 31, 1986), which was delegated authority in the Executive Branch to implement the Act's provisions on the importation of uranium (section 309(a)). The amendment deleted the Commission's general license in 10 CFR 110.27 with respect to the import of any uranium of South African origin. Before the amendment, NRC's import regulations in § 110.27 had permitted a person to import byproduct material or unirradiated source or special nuclear material, including uranium ore and uranium oxide, from any country under general license if the consignee in the United States was authorized to possess the material.

Section 311 of the Act (22 U.S.C. 5061) provides that the conditions specified in title 3 (i.e., the ban on imports of uranium from South Africa) shall terminate when the President determines, and so reports to the Speaker of the House of Representatives and the Chairman of the Committee on

Foreign Relations of the Senate that the Government of South Africa has taken all of the actions specified in section 311(a) of the Act, namely:

(1) Released all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;

(2) Repealed the state of emergency in effect on the date of enactment of the Act and released all detainees held under such state of emergency;

(3) Unbanned democratic political parties and permitted the free exercise by South Africans of all races of the right to form political parties, express political opinions and otherwise participate in the political process;

(4) Repealed the Group Areas Act and the Population Registration Act and instituted no other measures with the same purposes; and

(5) Agreed to enter into good faith negotiations with truly representative members of the black majority without preconditions.

The President, by Executive Order 12769 dated July 10, 1991, has concluded that the Government of South Africa has taken all of the steps described, thus satisfying the specified conditions in section 311 of the Act. Therefore, title 3 of the Act has been terminated, including the ban on the import of uranium from South Africa. The President has directed all agencies affected by this determination to take all necessary steps to comply with the Executive Order, effective immediately.

Commission Action on the Executive Order

To conform with the President's determination, the Commission has reinstated the pre-1986 formulation of its regulations in § 110.27 to permit a person to import byproduct material, or unirradiated source or special nuclear material including uranium ore and uranium oxide, from any country under general license if the consignee in the United States is authorized to possess the material. Accordingly, uranium manufactured or produced in South Africa may now be imported into the United States under general license.

Because this rulemaking involves a foreign affairs function of the United States and since the President has directed affected agencies to take all necessary steps to comply with the Executive Order 12769, effective immediately, notice of proposed rulemaking and public procedure thereon are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(1)), and the final rule may be made effective upon publication in the **Federal Register.**

Environmental Impact: Categorical Exclusion

The NRC has determined that the final rule in part 110 is the type of action described in 10 CFR 51.10 and 51.22(c)(1) of this chapter. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0036.

Regulatory Analysis

NRC already controls the import of uranium of South-African origin. Currently, the NRC's import regulations in part 110 require a specific license to import this material into the United States. NRC's sole objective in developing the revision is to conform with the President's Executive order of July 10, 1991, by amending NRC's import regulations in § 110.27 to permit uranium manufactured or produced in South Africa to be imported into the United States under general license. There are no alternatives for achieving the stated objective. The consequences of the specific NRC rulemaking action will have a minor but positive impact on the public. It will mean that those persons previously submitting specific license applications to import South African origin uranium for NRC consideration would now be allowed to use the general license provision in § 110.27 as their licensing authority. In this respect, NRC believes that no persons will be adversely affected by this rule. The rule will become effective immediately.

Backfit Analysis

The NRC determined that the backfit analysis provisions in 10 CFR 50.109 do not apply to this final rule, and, therefore, a backfit analyses is not required.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

Pursuant to Executive Order 12769, sections 309(a) and 311 of Public Law 99–440, the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 is revised to read as follows:

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

Section 110.1(b)(2) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475, (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 110.20–110.29, 110.50, and 110.120–110.129 also issued under sections. 161 b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i)); and §§ 110.7a and 110.53 are also issued under sections 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 110.27, paragraph (b) is revised to read as follows:

§ 110.27 Imports.

* * * * *

(b) The general license in paragraph (a) of this section does not authorize the import of source or special nuclear material in the form of irradiated fuel that exceeds 100 kilograms per shipment.

* * * * *

Dated at Rockville, Maryland, this 1st day of August 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–19217 Filed 8–12–91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-152-AD; Amendment 39-8000; AD 91-17-02]

Airworthiness Directives; Canadair, Ltd., Model CL-600-2A12 and CL-600-2B16 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 series airplanes, which requires repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. This amendment is prompted by recent reports of broken level control valve sensing lines. This condition, if not corrected, could result in the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area.

DATES: Effective August 28, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 1991.

ADDRESSES: The applicable service information may be obtained from Bombardier, Inc., Canadair, Division Challenger, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Propulsion Branch, ANE-174, telephone (516) 791-7421. Mailing address: FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Canadair Model CL-600-2A12 and CL-600-2B16 series airplanes. There have been two recent reports of sensing lines to the tail cone fuel tank level control valves breaking as a result of damage caused by maintenance in the aft equipment bays. In both cases, the break was at the forward end of the sensing line at the shrouded refuel/defuel line connection boss. The resultant fuel spillage was contained by the shroud and drained overboard through the shroud drain. If the sensing line breaks at any other location, the fuel in the tail cone fuel tank will empty into the aft equipment bay via the refuel/defuel line. However, the leakage rate will be slowed due to the 0.052-inch diameter flow restrictor located in the refuel/defuel line between the sensing line connection and the tail cone fuel tank. This condition, if not corrected, could result in the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area.

Bombardier, Inc., Canadair, Division Challenger has issued Alert Wire TA601-0381-003, dated June 11, 1991, which describes procedures to perform repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. Transport Canada has classified this alert wire as mandatory, and has issued Canadian Emergency Airworthiness Directive CF-91-22 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary, in accordance with the alert wire previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-17-02. Canadair, Ltd.: Amendment 39-8000. Docket No. 91-NM-152-AD. Applicability: Model CL-600-2A12 and CL-600-2B16 series airplanes equipped with a tail cone fuel tank.

Compliance: Required as indicated, unless previously accomplished.

To prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a

lightning strike or other ignition source in the area, accomplish the following:

(a) Within 5 days after the effective date of this AD or prior to refuelling of the tail cone fuel tank, which ever occurs later, perform a visual inspection of the unshrouded portion of the sensing line in the aft equipment bay to detect any damage or deformation, in accordance with Canadair Alert Wire TA601-0381-003, dated June 11, 1991. Thereafter, repeat the inspection prior to each refuelling. If damage or deformation of the sensing line is found as a result of the visual inspection, accomplish either subparagraph (a)(1) or (a)(2) of this AD, in accordance with the alert wire:

(1) Prior to further flight, drain the tail cone fuel tank, and continue flight operations with *no* fuel in the tail cone fuel tank; or

(2) Prior to further flight, drain the tail cone fuel tank, replace the level control valve sensing line, and continue flight operations with fuel in the tail cone fuel tank.

(b) After each refuelling of the tail cone fuel tank, inspect for any signs of leakage from the fuel sensing line in the aft equipment bay and at the fuel shroud drain in accordance with Canadair Alert Wire TA601-0381-003, dated June 11, 1991. If leakage is found, prior to further flight, either drain the tail cone fuel tank, or replace the tail cone fuel tank level control valve sensing line, in accordance with the alert wire.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection and replacement requirements shall be done in accordance with Canadair Alert Wire TA601-0381-003, dated June 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bombardier, Inc., Canadair, Division Challenger, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; or at the FAA, Engine and Propeller Directorate, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39-8000, AD 91-17-02) becomes effective August 28, 1991.

Issued in Renton, Washington, on July 31, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19158 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-125-AD; Amendment 39-7076; AD 91-12-51]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-12-51, which was previously made effective as to all known U.S. owners and operators of certain de Havilland Model DHC-8-300 series airplanes by individual telegrams. This AD requires repetitive visual inspections of the dry bay area, and repair, if necessary. This action is prompted by recent reports of fuel leaking into the dry bays inboard of the wing fuel tanks. This condition, if not corrected, could result in accumulation of fuel vapors in the dry bay areas, presenting a potential risk of an in-flight explosion in the event of a lightning strike.

DATES: Effective August 26, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T91-12-51, issued June 6, 1991, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Propulsion Branch, ANE-174, telephone (516) 791-7421. Mailing address: FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: On June 6, 1991, the FAA issued telegraphic AD 91-12-51, applicable to certain de Havilland Model DHC-8-300 series airplanes, which requires repetitive visual inspections of the dry bay areas, and repair, if necessary. That action was prompted by recent reports of fuel leaking into the dry bays inboard of the wing fuel tanks. These leaks are caused by inadequate sealing material at the sealed end rib. This condition, if not corrected, could result in accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike.

Boeing of Canada, Ltd., de Havilland Division has issued Alert Service Bulletin A8-28-16, Dated May 30, 1991, which describes procedures to perform repetitive visual inspections of the dry bay area, and repair, if necessary. Transport Canada has issued emergency Airworthiness Directive CF-91-15 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, this airworthiness directive is issued to require repetitive visual inspections of the dry bay area, and repair, if necessary.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on June 6, 1991, to all known U.S. owners and operators of certain de Havilland Model DHC-8-300 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been

determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-12-51. **Boeing of Canada, LTD, De Havilland Division:** Amendment 39-7076. Docket No. 91-NM-125-AD.

Applicability: Model DHC-8-300 series airplanes, as listed in de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike, accomplish the following:

(a) Within 24 hours after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the accomplishment instructions of the service bulletin.

(b) Within 24 hours after the effective date of this AD, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991.

(c) Within 7 days after the effective date of this AD, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (b) of this AD; perform an internal visual inspection of the wing dry bay in accordance with de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991.

(1) If no leakage is found as a result of the inspection required by paragraph (c) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (c) of this AD at intervals not to exceed 14 days.

(2) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the accomplishment instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(i) Perform the internal visual inspection of the wing dry bay required by paragraph (c) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(ii) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM: "Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(3) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the accomplishment instructions of the service bulletin.

(4) Application of fuel vapor barrier coating in accordance with paragraph D. of the accomplishment instructions of the service bulletin constitutes terminating action for the repetitive internal visual inspections required by paragraph (c)(1) of this AD.

(d) Accomplishment of the repair described in paragraph E. of the accomplishment instructions of de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39-7076, AD 91-12-51) becomes effective August 26, 1991, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T91-12-51, issued June 6, 1991, which contained this amendment.

Issued in Renton, Washington, on August 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-19219 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8358]

RIN 1545-AH75

Treatment of Certain Stripped Bonds and Stripped Coupons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations that apply to taxpayers holding stripped bonds and stripped coupons under section 1286 of the Internal Revenue Code. The regulations are needed to provide guidance on the treatment of original issue discount (OID) that arises under Code section 1286(a). This guidance is intended to simplify the tax treatment of certain stripped bonds and stripped coupons. The text of the temporary regulations contained in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective on and after August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mark S. Smith, telephone 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Code section 1286(a) provides that a stripped bond or stripped coupon purchased after July 1, 1982, is treated by the purchaser as a bond originally issued on the purchase date and having OID equal to the excess of (1) the stated redemption price at maturity (or, in the case of a coupon, the amount payable on the due date of the coupon), over (2) the bond's or coupon's ratable share of the purchase price. Code section 1273(a)(3) provides that if a debt instrument has only a de minimis amount of OID, then the OID shall be treated as zero. However, the statute does not specifically apply this de minimis rule to stripped bonds and

stripped coupons that have OID pursuant to section 1286(a). The regulations make it clear that the de minimis rule applies to stripped bonds and stripped coupons.

Additional simplified treatment of stripped bonds also may be appropriate in some situations. For example, mortgage loans become stripped bonds when they are sold if the seller retains a right to receive mortgage interest other than as compensation for servicing the mortgages. See Rev. Rul. 91-46, 1991-34 I.R.B. (August 26, 1991). The regulations authorize the Internal Revenue Service to publish guidance in the Internal Revenue Bulletin treating certain stripped bonds as market discount bonds under section 1278, provided that certain criteria are met.

Explanation of Provisions

The regulations contained in this document add new § 1.1286-1T. Paragraph (a) of new § 1.1286-1T provides that if the OID determined under section 1286(a) with respect to the purchase of a stripped bond or stripped coupon is less than the amount computed under the OID de minimis rule of section 1273(a)(3), then the amount of OID is considered to be zero. Special definitions are provided for applying section 1273(a)(3) to stripped bonds and stripped coupons.

Paragraph (b) of new § 1.1286-1T provides that the Internal Revenue Service, by publication in the Internal Revenue Bulletin, may provide that certain mortgage loans that are stripped bonds are to be treated as market discount bonds under section 1278. This authority is subject to a limitation provided by new paragraph (b)(2).

The temporary regulations added by this document are effective on and after August 8, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Need for Immediate Guidance

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. It is therefore found impractical and contrary to the public interest to issue this Treasury decision with notice and procedure under section 553(b) of title 5, United States Code, or subject to the effective date limitation of section 553(d) of title 5, United States Code.

Drafting Information

The principal author of these temporary regulations is Mark S. Smith, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1231-1 through 1.1297-3

Income taxes, Capital gain and losses, Original issue discount, Applicable Federal rate, Market discount, Short-term obligations, Stripped bonds and stripped coupons, Tax-exempt obligations.

Amendment to the Regulations

Accordingly, title 26, chapter I, part 1 of the Code of Federal Regulations is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PARAGRAPH 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * § 1.1286-1T also issued under 26 U.S.C. 1275(d) and 1286(f).

PAR. 2. New § 1.1286-1T is added to read as follows:

§ 1.1286-1T Tax treatment of certain stripped bonds and stripped coupons.

(a) *De minimis OID.* If the original issue discount determined under section 1286(a) with respect to the purchase of a stripped bond or stripped coupon is less than the amount computed under subparagraphs (A) and (B) of section 1273(a)(3) and the regulations thereunder, then the amount of original issue discount with respect to that purchase shall be considered to be zero. For purposes of this computation—

(1) The term "stated redemption price at maturity," when applied to a bond, has the meaning given to this term by section 1273(a)(2) and, when applied to a coupon, means the amount payable on the due date of the coupon; and

(2) The number of complete years to maturity is the number of full years from the date the stripped bond or stripped coupon is purchased to final maturity.

(b) *Treatment of certain stripped bonds as market discount bonds*—(1) *In general.* By publication in the Internal Revenue Bulletin, the Internal Revenue Service may (subject to the limitation of paragraph (b)(2) of this section) provide that certain mortgage loans that are stripped bonds are to be treated as market discount bonds under section 1278. Thus, any purchaser of such a bond is to account for any discount on the bond as market discount rather than original issue discount.

(2) *Limitation.* This treatment may be provided for a stripped bond only if, immediately after the most recent disposition referred to in section 1286(b)—

(i) The amount of original issue discount with respect to the stripped bond is considered to be zero under paragraph (a) of this section, or

(ii) The annual stated rate of interest payable on the stripped bond is no more than 100 basis points lower than the annual stated rate of interest payable on the original bond from which it and any other stripped bond or bonds and any stripped coupon or coupons were stripped.

(c) *Effective date.* This regulation is effective on and after August 8, 1991.

Michael J. Murphy,
Acting Commissioner of Internal Revenue.
Approved: July 29, 1991.
Kenneth W. Gideon,
Assistant Secretary of the Treasury.
[FR Doc. 91-19229 Filed 8-8-91; 3:16 pm]
BILLING CODE 4830-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 91-7]

General Provisions—Registry of Visual Art Incorporated in Buildings

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: The Copyright Office of the Library of Congress is issuing a regulation establishing a Visual Arts Registry for the filing of statements and documentation relating to works of visual art incorporated in buildings. The Judicial Improvements Act of 1990, Public Law 101-650, amends the

Copyright Act, title 17 of the U.S. Code and establishes rights of attribution and integrity in certain works of visual art. For works of visual art that are incorporated in buildings, the Act directs the Copyright Office to establish a registry to assist the owner of a building in notifying the artist of a work of visual art that the owner intends to remove the artwork from the building. The regulation establishes the Registry and sets forth the content of statements and the recordation procedures.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Pub. L. 101-650, which amends the Copyright Act of 1976, title 17 of the United States Code. Title VI of the Act is known as the Visual Artists Rights Act of 1990. It vests in artists rights of attribution and integrity in certain works of visual art, which take effect June 1, 1991. The right of attribution ensures that artists are correctly identified with the works of art they create, and that they are not identified with works created by others. The right of integrity allows artists to protect their works against modifications and destructions that are prejudicial to their honor or reputations.

The newly created rights for artists are analogous to those protected by Article 6*bis* of the Berne Convention, and are commonly known as "moral rights."

In enforcing these rights, special considerations apply where a work of visual art is incorporated in a building, and the owner of the building decides to have the work removed. To cover these cases, section 113 of title 17 of the United States Code was amended creating special rules. Under the amended provisions, the rights of attribution and integrity apply to any effort of the building owner to remove the work, subject to two important exceptions. First, if the building owner makes a diligent, good faith effort to notify the author in writing of the pending removal, but is unsuccessful in his efforts, he may undertake removal himself. Second, if the owner successfully notifies the author in writing, but the author fails to respond within 90 days to arrange for removing the work or to pay for its removal, the building owner is allowed to proceed with removal. The statute creates a presumption that an attempt to notify the author by registered mail constitutes a diligent, good faith effort.

In order to assist owners of buildings in locating authors, the Copyright Office is directed to establish a system of records permitting authors of works of visual art to record their identities and addresses. The system is intended to benefit the interests of authors seeking to protect their rights and of building owners attempting diligently, and in good faith, to notify these authors of proposed removals.

Statements submitted for recordation should be as complete as possible in disclosing the pertinent information. Incomplete statements may be found by a court to be insufficient to protect the rights of the party submitting the statement. The Copyright Office will not, however, examine the statements or verify their accuracy or completeness.

After recordation, the sender will receive a certificate of record from the Copyright Office. Photographs accompanying a statement will be retained by the Copyright Office, and may be selected by the Library of Congress for retention in the general collections of the Library.

Recordation of a Statement in the Visual Arts Registry is, of course, not a substitute for registration of a claim to copyright in the work of art. Information about registration of a claim to copyright may be obtained by contacting the Public Information Office of the Copyright Office, Washington, DC 20559.

The Library of Congress and the Copyright Office considered but decided against issuance of a rule that would establish mandatory archival quality standards regarding accompanying photographs and documentation. Artists and others authors are nevertheless encouraged voluntarily to submit good quality, durable photographs disclosing their works of art and the location in buildings. The Library of Congress will be more inclined to select the photographs and documentation for retention in its collections if they are durable and of good quality. The Library reserves the right to determine which deposits will be added to the collections. Those deposits that are selected for the collections may become part of future Library of Congress exhibits that highlight and exemplify the cultural heritage of the United States.

The regulation governing the Visual Arts Registry is issued in final form without public comment since we have tracked the existing procedure regarding recordation of documents and have encouraged the submission of particular information and photographs rather than mandated their form and content as a condition of filing in the Registry. Also, the immediate implementation of the Visual Arts Registry is beneficial to the public.

Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Visual Arts Registry.

Final Regulations

In consideration of the foregoing, the Copyright Office amends part 201 of 37 CFR, chapter II in the manner set forth below.

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702, § 201.25 is also issued under Public Law 101-650, 104 Stat. 5089, 5130-31.

2. New § 201.25 is added as follows:

§ 201.25 Visual Arts Registry.

(a) *General.* This section prescribes the procedures relating to the submission of Visual Arts Registry Statements by visual artists and owners of buildings, or their duly authorized representatives, for recordation in the Copyright Office under section 113(d)(3) of Title 17 of the United States Code, as

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1976, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyrights deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

amended by Public Law 101-650, effective June 1, 1991. Statements recorded in the Copyright Office under this regulation will establish a public record of information relevant to an artist's integrity right to prevent destruction or injury to works of visual art incorporated in or made part of a building.

(b) *Forms.* The Copyright Office does not provide forms for the use of persons recording statements regarding works of visual art that have been incorporated in or made part of a building.

(c) *Recordable statements*—(1) *General.* Any statement designated as a "Visual Arts Regulatory Statement" and which pertains to a work of visual art that has been incorporated in or made part of a building may be recorded in the Copyright Office provided the statement is accompanied by the fee for recordation of documents specified in section 708(a)(4) of title 17 of the United States Code. Upon their submission, the statements and an accompanying documentation or photographs become the property of the United States Government and will not be returned. Photocopies are acceptable if they are clear and legible. Information contained in the Visual Arts Registry Statement should be as complete as possible since the information may affect the enforceability of valuable rights under the copyright law. Visual Arts Registry Statements which are illegible or fall outside of the scope of section 113(d)(3) of title 17 may be refused recordation by the Copyright Office.

(2) *Statements by artists.* Statements by artists regarding a work of visual art incorporated or made part of a building should be filed in a document containing the head: "Registry of Visual Art Incorporated in a Building—Artist's Statement." The statement should contain the following information:

(i) Identification of the artist, including name, current address, age, and telephone number, if publicly listed.

(ii) Identification of the work or works, including the title, dimensions, and physical description of the work and the copyright registration number, if known. Additionally, it is recommended that one or more 8 x 10 photographs of the work on good quality photographic paper be included in the submission; the images should be clear and in focus.

(iii) Identification of the building, including its name and address. This identification may additionally include 8 x 10 photographs of the building and the location of the artist's work in the building.

(iv) Identification of the owner of the building, if known.

(3) *Statements by the owner of the building.* Statements of owners of a building which incorporates a work of visual art should be filed in a document containing the heading: "Registry of Visual Art Incorporated in a Building—Building Owner's Statement." The statement should contain the following information:

(i) Identification of the ownership of the building, the name of a person who represents the owner, and a telephone number, if publicly listed.

(ii) Identification of the building, including the building's name and address. This identification may additionally include 8 x 10 photographs of the building and of the works of visual art which are incorporated in the building.

(iii) Identification of the work or works of visual art incorporated in the building, including the works' title(s), if known, and the dimensions and physical description of the work(s). This identification may include one or more 8 x 10 photographs of the work(s) on high quality photographic paper; the images should be clear and in focus.

(iv) Identification of the artist(s) who have works incorporated in the building, including the current address of each artist, if known.

(v) Photocopy of contracts, if any, between the artist and owners of the building regarding the rights of attribution and integrity.

(vi) Statement as to the measures taken by the owner to notify the artist(s) of the removal or pending removal of the work of visual art, and photocopies of any accompanying documents.

(4) *Updating statements.* Either the artist or owner of the building or both may record statements updating previously recorded information by submitting an updated statement and paying the recording fee specified in paragraph (d) of this section. Such statements should repeat the information disclosed in the previous filing as regarding the name of the artist(s), the name of the work(s) of visual art, the name and address of the building, and the name of the owner(s) of the building. The remaining portion of the statement should correct or supplement the information disclosed in the previously recorded statement.

(d) *Fee.* For a statement covering no more than one title, the basic recording fee is $20. An additional charge of $10.00 is made for each group of not more than 10 titles. For these purposes the term "title" refers to an identification of the work of visual art which is covered by the statement.

(e) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. Any documentation or photographs accompanying any submission will be retained and filed by the Copyright Office. They may also be transferred to the Library of Congress, or destroyed after preparing suitable copies, in accordance with usual procedures.

(f) The Copyright Office will record statements in the Visual Arts Registry without examination or verification of the accuracy or completeness of the statement, if the statement is designated as a "Visual Arts Registry Statement" and pertains to a work of visual art incorporated in or made part of a building. Recordation of the statement and payment of the recording fee shall establish only the fact of recordation in the official record. Acceptance for recordation shall not be considered a determination that the statement is accurate, complete, and otherwise in compliance with section 113(d), title 17, U.S. Code. The accuracy and completeness of the statement is the responsibility of the artist or building owner who submits it for recordation. Artists and building owners are encouraged to submit accurate and complete statements. Omission of any information, however, shall not itself invalidate the recordation, unless a court of competent jurisdiction finds the statement is materially deficient and fails to meet the minimum requirements of section 113(d) of title 17, U.S. Code.

Dated: July 26, 1991.

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-19179 Filed 8-12-91; 8:45 am]

BILLING CODE 1410-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL-3951-9]

Underground Storage Tanks; Technical Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document by the Environmental Protection Agency finalizes a technical amendment to the underground storage tank regulations.

The Agency is adding to overfill design standards that require the use of overfill prevention equipment by allowing alternative uses of equipment located closer to the tops of larger tanks if it can be done in a manner that achieves certain minimum levels of performance. This technical amendment is issued to complete EPA's response to a petition for rulemaking.

DATES: *Effective Date:* September 12, 1991.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or 382-3000 (in Washington, DC).

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1988 (53 FR 37082) EPA promulgated technical requirements under subtitle I of the Resource Conservation and Recovery Act (RCRA) for underground storage tanks containing petroleum or substances defined as hazardous under the Comprehensive Response, Compensation, and Liability Act of 1980 (CERCLA), except for substances regulated as hazardous waste under subtitle C of RCRA. Those rules went into effect 90 days later on December 22, 1988. Today's document finalizes a technical addition to § 280.20 of those final regulations where they address design requirements for overfill prevention equipment.

In a letter dated December 8, 1988, the American Petroleum Institute submitted a petition under section 7004(a) of RCRA requesting technical amendments to the final regulations. On April 27, 1990 the Agency published its decision to deny the petition for rulemaking in 5 issue areas (55 FR 17763). On that date the Agency also proposed to grant the petitioner's request in one technical issue area, and accordingly solicited public comment on a proposed technical amendment to the regulations in the design requirements for overfill equipment (55 FR 17767). In sum, the issue raised by API was whether or not the Agency should allow alternative environmentally protective ways for locating overfill prevention equipment on new and existing tanks not allowed under the final rules: Particularly by allowing the use of some equipment located closer to the top of larger tanks (those greater than 4,000 gallons). EPA proposed to add a performance standard to the spill and overfill requirements in § 280.20(c)(1)(ii) to address these technical questions.

Today, the Agency is finalizing the proposed performance standard to enable the use of numerous types of overfill equipment closer to the tops of larger tanks, as long as the equipment achieves the minimum standards of performance required to prevent overfills.

II. Amendment of Spill and Overfill Prevention Requirements (Section 280.20(c)(1)(ii)(C))

Overfilling UST systems is a common source of petroleum and hazardous substance USTs releases onto the surface of the ground. EPA studies have found that UST owners and operators without overfill prevention equipment on their USTs often inadvertently force product into the environment through tank bung holes, vent lines, or fill ports when the volume of liquid delivered exceeds the tank's storage capacity. Sections 280.20(c) and 280.30 of the final regulations provide requirements for spill and overfill prevention that mandate UST owners and operators use prevention equipment as well as follow procedures for preventing spillage and overfills into the environment during each tank in-filling operation. More specifically, § 280.20(c)(1)(ii) of the existing rules requires that owners and operators prevent overfills by installing equipment with a design that will either: (1) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering an alarm, or (2) automatically shut off flow into the tank when the tank is no more than 95 percent full.

On December 8, 1988, the American Petroleum Institute submitted a rulemaking petition requesting, in part, that EPA review and change the technical requirements for overfill prevention equipment. This petition identified a technical oversight in an assumption used to develop the rule's final design standards for where to locate overfill prevention equipment at the top of tanks, particularly as they are applied to larger tanks. In calculating the percent of tank capacity at which flow restrictors, alarms, or shut off devices should be triggered (see previous paragraph above), the final design standard was based on an assumed average tank size of 4,000 gallons. As pointed out by API in its petition, new tank sizes are likely to increase over time, particularly in the retail motor fuel sector. Therefore, under the design standard alternatives allowed under the existing regulation, the maximum tank capacity of larger tanks (i.e., 10,000 gallons) is needlessly restricted from the standpoint of protecting the environment. For example, under the existing rules, a 10,000 gallon tank equipped with a flow restrictor overfill prevention device can be filled only to 90% capacity (and necessitates 1000 gallon of ullage be left in the tank) to enable the operator sufficient time to respond and safely prevent an overfill by shutting off the product delivery after the on-set of the flow restrictor. In response to the petition, EPA proposed performance criteria for what constitutes a safe response time (see 55 FR 17767) using various types of equipment, and the Agency requested public comments on whether such additional standards allowing larger tanks to be filled to a much higher capacity would still be protective of human health and the environment.

The April 27, 1990 proposal consisted of an additional set of performance standards that could be used as another alternative to the existing overfill prevention design standards. The proposed overfill performance standards would allow use of equipment capable of:

- Restricting flow 30 minutes prior to overfill,
- Alerting the operator with a high level alarm one minute before overfilling, or
- Automatically shutting off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

The Agency chose these alternative performance criteria to present the minimum response times necessary to prevent overfills with the major types of available equipment and thereby protect human health and the environment. The proposed performance standards were intended to enable the location of the different types of overfill equipment sometimes even closer to the tops of the larger tanks, as long as the use of the equipment achieves one of these proposed minimum levels of performance.

EPA received public comments concerning these proposed alternative performance standards. Some specific technical concerns received on the overfill performance criteria included such items as the potential for spillage from larger tanks that may be tilted, and the insufficient time a one-minute alarm allows for the operator to shut off the inflow of product before it reaches the top of the tank. All these technical issues addressed by the commenters were previously raised and considered when devising the existing overfill design standards promulgated September 23, 1988. Because the Agency did not solicit more comment on these technical questions (such as the adequacy of flow restrictor methods of overfill prevention), they were not

considered in finalizing today's amendment. No new evidence or data were provided by commenters that called into question the basic design assumptions used by the Agency to guide the development of the overfill equipment standards.

One commenter believed the performance standard for flow restrictors was unnecessarily strict because the requirment to begin flow restriction 30 minutes prior to overfilling would unduly add time and expense to a delivery. EPA does not agree and believes the commenter does not understand the intent and effect of this rule. The requirement for a flow restrictor (or some other type of equipment) is intended to simply serve as a warning device to the operator that the filling process is to stop and the remaining product in the delivery hose should be emptied into the tank. The equipment is not intended to alert the deliverers that it will take 30 minutes longer to completely fill the remaining ullage. The requirement grants a deliverer using flow restrictor equipment 30 minutes reaction time as a margin of safety. Within this 30 minute period, the delivery process must cease in order to prevent overfills.

EPA agrees with those commenters who support the proposed performance standards as an environmentally protective option for spill and overfill requirements. Several commenters recognized that adopting a time-based performance standard for overfill equipment provides the advantages of more efficient utilization of tank capacities. For example, some commenters identified that fuller use of tanks decreases petroleum product transportation and associated delivery hazards (i.e., spillage through hose connections and disconnections), thereby increasing efficient supply to the American consumer. They also pointed out that time-based performance standards also eliminate various expenditures, including those associated with more frequent deliveries, installation of otherwise unnecessarily larger-sized tanks to compensate for the excessive ullage requirement, and retrofitting tanks with alternative overfill protection systems.

EPA expects that the existing overfill design standards will continue to be the requirement of choice by owners and operators of tanks smaller than 4,000 gallons. However, today's added performance standard alternatives address the petitioner's concerns that the September 23, 1988 regulation in several cases unnecessarily reduced maximum tank storage capacity for larger tanks, and will allow additional options for owners and operators, and equipment providers. EPA has concluded that today's amendment provides some additional flexibility in the use of overfill equipment with no reduction in protection of human health and the environment. The full comment response document is available in the UST Docket. Call (202) 475-9720 to make an appointment with the docket clerk.

III. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Since this amendment simply increases the regulated community's flexibility of implementation by adding some equally protective minimum performance standard alternatives to the existing overfill design standards, the amendment does not require a Regulatory Impact Analysis.

This document was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Agency to prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant impact on a substantial number of small entities. EPA believes that this rule will not have a significant economic impact on a substantial number of small entities. The rule will provide additional flexibility in complying with the standards for preventing the overfilling of USTs. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Federalism Assessment

Executive Order 12612 requires the Agency to perform a federalism assessment on proposed and final rules. The Executive Order specifies that Federal agencies should refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is a clear constitutional authority and the presence of a problem of national scope. The Executive order provides for a preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

The Agency has revised today's rule and concluded that a federalism assessment, as defined by Executive Order 12612, is not required. Today's rule merely adds another option for meeting the Federal overfill prevention standards; the overfill protection objective for State programs approval has not changed.

D. Paperwork Reduction Act

This final rule contains no new information collection requirements and thus will not increase the paperwork burden on the regulated community in contravention of the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 280

Hazardous materials, Petroleum, Underground storage tanks.

Dated: August 5, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, 40 CFR 280 is amended as set forth below:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h).

2. Section 280.20 is amended by revising paragraph (c)(1)(ii)(B) and by adding paragraph (c)(1)(ii)(C) to read as follows:

§ 280.20 Performance standards for new UST systems.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the

fittings located on top of the tank are exposed to product due to overfilling.

* * * * *

[FR Doc. 91-19204 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 97

Consolidation of Grants to the Insular Areas

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule with comment period.

SUMMARY: This technical rule adds five programs to the list of Department of Health and Human Services formula and block grant programs which may be consolidated by the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Republic of Palau) and continues to permit consolidation of certain Public Health Service programs to the Federated States of Micronesia and the Republic of the Marshall Islands.

DATES: Effective date: This final rule with comment period is effective August 13, 1991. Comments on this rule must be received October 15, 1991.

ADDRESSES: Please submit written comments to: Mr. Jim Mason, Office of the Deputy Under Secretary for Intergovernmental Affairs, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Ave, SW., room 614E, Washington, DC 20201.

Comments received in response to this rule may be reviewed in room 614E between the hours of 9 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, beginning one week after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Jim Mason, (202) 245-6036 or Frank Burns, (202) 245-2892.

SUPPLEMENTARY INFORMATION:

I. Background

Section 501 of Public Law 95-134, commonly referred to as the Omnibus Territories Act of 1977, as amended (48 U.S.C. 1469a), authorizes Federal agencies to consolidate grants to certain "insular areas", i.e., the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Specifically, section 501 permits: (a) A Federal agency to consolidate any or all grants to each of these insular areas except those grants used to make direct payments to individuals;

(b) A Federal agency to waive requirements for matching funds, applications, and reports with respect to the consolidated grants;

(c) An insular area to use the consolidated grant funds for any purpose or purposes authorized under any of the grant programs that have been consolidated;

(d) An insular area to determine the amount of funds to allocate to each program or purpose authorized under the consolidated grant;

(e) An insular area to tailor Federal assistance to its needs and to reduce the application, reporting and administrative requirements; and

(f) An insular area to use Federal assistance derived from one program for purposes authorized by another, and determine how funds will be allocated among the programs consolidated. It, however, must meet all the statutory and regulatory requirements of the program(s) under which the application for a consolidated grant is submitted.

The Department published regulations authorizing the consolidation of certain formula and block grants to insular areas on January 19, 1981 (46 FR 4921), December 16, 1982 (47 FR 56466), March 25, 1987 (52 FR 9494), and October 28, 1987 (52 FR 41431). Since that time, all eligible insular areas have submitted consolidated grant applications. For fiscal year 1990, all of the insular areas submitted consolidated grant applications, ranging from one insular area consolidating six programs to another consolidating thirteen programs.

II. Provisions of the Final Rule

The technical amendments to 45 CFR part 97, at § 97.12, will add two programs administered by the Administration for Children and Families (ACF) and three programs administered by Public Health Service (PHS) to the list of formula and block grant programs which may be consolidated. Specifically, we are adding the following block grant program to the list:

Community Youth Activity, 42 U.S.C. 11841. (PHS).

Additionally, we are adding the following other formula grant programs:

(1) Emergency Community Services Homeless, 42 U.S.C. 11301. (ACF);

(2) Community Food and Nutrition, 42 U.S.C. 9910a. (ACF);

(3) Protection and Advocacy for Mentally Ill Individuals, 42 U.S.C. 9501. (PHS); and

(4) Projects for Assistance in Transition from Homelessness, 42 U.S.C. 290 (cc-21) et seq. (PHS).

In addition, in order to accommodate additional program(s) which the Secretary may determine are available for consolidation, we are revising the first paragraph of § 97.12 to read as follows:

> (a) These regulations apply to the consolidation of grants under the programs listed in paragraphs (b) and (c) of this section and to any additional program(s) as determined by the Secretary. This list of programs will be periodically updated in the Code of Federal Regulations through publication in the Federal Register.

Finally, in § 97.11 we have deleted the specific jurisdictional entities that make up the Trust Territory of the Pacific Islands (TTPI) since only the Republic of Palau is still a territory. The Federated States of Micronesia and the Republic of the Marshall Islands were previously part of the TTPI but they have entered into Compacts of Free Association with the United States and remain eligible for certain health programs.

III. Waiver of Notice and Comment Procedures

A final rule is being published as this action is a technical change which will afford the insular areas maximum flexibility in the operation/administration of their programs. Accordingly, the Secretary has determined that it would be impracticable, unnecessary, and contrary to the public interest to use notice and comment procedures in issuing these regulations. All comments received will be considered, and the rules will be revised, if appropriate.

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. The Department has determined that this technical rule is not a major rule within the meaning of the Executive order because it will not have any effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 5 U.S.C. chapter 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a

"significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small not for profit organizations and small governmental entities.

The primary impact of these regulations is on the insular areas which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or record keeping requirements in a proposed or final rule. This rule does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

V. List of Subjects in 45 CFR Part 97

Administrative practice and procedures, Aged, Alcoholism, Child welfare, Community action programs, Dependent care planning, Drug abuse, Energy, Family violence prevention, Grant programs-energy, Grant programs-health, Grant programs-social programs, Health care, Maternal and child health, Mental health programs, Public health.

For the reasons set forth in the preamble, title 45 part 97 of the Code of Federal Regulations is amended as follows:

PART 97—CONSOLIDATION OF GRANTS TO THE INSULAR AREAS

1. The authority citation for part 97 is revised to read as follows:

Authority: Sec. 501, Pub. L. 95-134, as amended, 48 U.S.C. 1469a.

2. Section 97.11 is revised to read as follows:

§ 97.11 Which jurisdictions may apply for a consolidated grant?

The following jurisdictions (insular areas), as appropriate with respect to each block and formula grant program, may apply for a consolidated grant under this Part: the Virgin Islands; Guam; American Samoa, the Commonwealth of the Northern Mariana Islands; and the Trust Territory of the Pacific Islands (the Republic of Palau). In addition, the Federated States of Micronesia and the Republic of the Marshall Islands may apply for a consolidated grant for certain PHS programs as indicated in § 97.12.

3. Section 97.12 is revised to read as follows:

§ 97.12 Which grants may be consolidated?

(a) These regulations apply to the consolidation of grants under the programs listed in paragraphs (b) and (c) of this section and to any additional program(s) as determined by the Secretary. The list of programs will be periodically updated in the Code of Federal Regulations through publication in the **Federal Register**.

(b) Block Grants.

(1) Preventive Health and Health Services, 42 U.S.C. 300w-300w-10.[1]

(2) Alcohol and Drug Abuse and Mental Health Services, 42 U.S.C. 300x-300x-9.[2]

(3) Maternal and Child Health Services, 42 U.S.C. 701-709.[3]

(4) Social Services, 42 U.S.C. 1397-1397f.

(5) Community Services, 42 U.S.C. 9901-9912.

(6) Low-Income Home Energy Assistance, 42 U.S.C. 8621-8629.

(7) Community Youth Activity, 42 U.S.C. 11841.[4]

(c) Other Grants.

(1) Child Welfare Services, 42 U.S.C. 620, et seq.

(2) Developmental Disabilities, 42 U.S.C. 6021-6030.

(3) Aging Supportive Services and Senior Centers, 42 U.S.C. 3030d.

(4) Congregate Meals for the Elderly, 42 U.S.C. 3030e.

(5) Home Delivered Meals for the Elderly, 42 U.S.C. 3030f.

(6) Child Abuse and Neglect State Grants, 42 U.S.C. 5103(b).

(7) Dependent Care Planning and Development State Grants, 42 U.S.C. 9871, et. seq.

(8) Family Violence Prevention and Services, 42 U.S.C. 10401, et seq.

(9) Children's Justice Act, 42 U.S.C. 5101, et seq.

(10) Child Development Associate Scholarship Assistance Act, 42 U.S.C. 10901, et seq.

(11) Emergency Community Services Homeless, 42 U.S.C. 11301.

(12) Community Food and Nutrition, 42 U.S.C. 9910a.

(13) Protection and Advocacy for Mentally Ill Individuals, 42 U.S.C. 9501.

(14) Projects for Assistance in Transition from Homelessness, 42 U.S.C. 290 (cc-21) *et seq.*

[1] Certain Public Health Service programs for which the Federated States of Micronesia and the Republic of the Marshall Islands may apply for a consolidated grant.

[2] See footnote 1 in § 97.12(a)(1).

[3] See footnote 1 in § 97.12(a)(1).

[4] See footnote 1 in § 97.12(a)(1).

Approved: June 27, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-19180 Filed 8-12-91; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 910899-1199]

Groundfish of the Gulf of Alaska; and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Emergency interim rule.

SUMMARY: NMFS has determined that an emergency exists in groundfish fisheries being conducted in the Gulf of Alaska (GOA) and in the Bering Sea and Aleutian Islands area (BSAI). Current management measures applicable to the GOA and BSAI could result in unnecessarily high bycatches of halibut in trawl fisheries. Therefore, the Secretary of Commerce (Secretary) is implementing new measures to constrain halibut bycatch rates. This action is necessary to constrain Pacific halibut bycatch amounts and facilitate enforcement. It is intended to further the goals and objectives in the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and for the Groundfish Fishery of the Bering Sea and Aleutian Islands area.

DATES: Effective August 7, 1991 through November 12, 1991. Comments particularly are invited on the Environmental Assessment (EA) prepared for this action.

ADDRESSES: Copies of the EA may be obtained from Dale R. Evans, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fisheries Management Division, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the FMPs. The FMPs were prepared by the North Pacific Fishery Management

Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by respective regulations for the foreign fishery at 50 CFR 611.92 and 611.93 and for the U.S. fishery at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

At times, amendments to the FMPs and/or their implementing regulations are necessary to respond to fishery conservation and management issues that cannot be addressed under normal procedures within a timeframe provided for by the Magnuson Act. Section 305(c) of the Magnuson Act provides for issuance of an emergency rule to resolve conservation and management issues for up to 90 days with a possible 90-day extension.

The Council recommended at its April 23–26, 1991, meeting that an emergency rule be issued that would (1) amend GOA regulations at 50 CFR 672.20(f) to prohibit trawling for groundfish in the GOA once the bycatch allowance for Pacific halibut is reached, except that trawling for pollock with pelagic trawls would be allowed, and (2) amend GOA and BSAI regulations at 50 CFR 672.20(g) and 50 CFR 675.20(h), respectively, by reducing the directed fishing standards for Pacific cod and for groundfish other than pollock in the BSAI and GOA pollock fisheries conducted with pelagic trawls.

In addition, NMFS has determined that two other changes are necessary. First, an amendment to the definition of a fishing trip in BSAI regulations at 50 CFR 675.20(i)(2) is necessary to relieve a burden on fishermen, and second, amendments to GOA and BSAI regulations at 50 CFR 672.20(f)(1) and 675.21(c)(2), respectively, are necessary to enforce closures to fishing by vessels using nonpelagic trawls.

Therefore, this emergency rule implements the following measures:

(1) All trawling for groundfish in the GOA is prohibited when the halibut prohibited species catch (PSC) limit or seasonal allowance thereof is reached, except that directed fishing for pollock by vessels using pelagic trawls will be allowed;

(2) Directed fishing standards are reduced for BSAI Pacific cod and for all GOA groundfish other than pollock that are caught while fishing for pollock with pelagic trawl gear;

(3) The definition of a fishing trip in the BSAI for purposes of calculating directed fishing standards is amended such that a vessel starts a new trip when it enters or leaves a subarea or reporting area to which a directed fishing prohibition applies; and

(4) Vessels must render non-pelagic trawls unusable for fishing when conducting fishing operations in areas closed to the use of non-pelagic trawls for a particular target species category if that vessel retains proportions of that target species category equal to or greater than the applicable directed fishing standard.

Restrictions on the Use of Trawls in the Gulf of Alaska

In the GOA, Pacific halibut are caught in the groundfish fisheries as bycatch. Halibut bycatch is controlled through the use of PSC limits. For the 1991 fishing year, 2,000 metric tons (mt) of Pacific halibut mortality are apportioned to trawl gear. This amount is seasonally apportioned into bycatch allowances for each of the four calendar quarters. The allowances are: 600 mt for each of the first and second calendar quarters and 400 mt for each of the third and fourth calendar quarters.

Gulf of Alaska regulations at 50 CFR 672.20(f) require the Regional Director, NMFS, to prohibit fishing with non-pelagic trawl gear for the remainder of a season or for the remainder of the fishing year if the trawl bycatch allowance or the trawl PSC limit is reached. Pelagic trawl gear is defined at 50 CFR 672.2.

As currently defined in BSAI and GOA regulations, the wide mesh configuration of the forward portion of a pelagic trawl is intended to release bycatches of halibut that are susceptible to capture by a pelagic trawl while fishing for groundfish species, such as pollock. NMFS has learned that when closures to nonpelagic trawls were instituted in the BSAI during the first quarter of 1991, some fishermen reconfigured conventional bottom trawls to meet the pelagic trawl definition by adding a wide-mesh section to the forward portion of the net. When trawling with non-pelagic trawls was prohibited as a result of the halibut seasonal bycatch allowance being reached, fishermen continued to fish with a reconfigured trawl for the same species. NMFS reviewed BSAI observed bycatch data that demonstrated halibut bycatch rates achieved with reconfigured trawls to be the same as those achieved with bottom trawls. The reconfiguration complied with the technical definition of a pelagic trawl and, therefore, could not be prohibited in areas open to the use of a pelagic trawl.

The continued use of a reconfigured trawl once the seasonal halibut allowance has been reached resulted in additional halibut bycatch, thereby frustrating the intent of the Council to minimize halibut bycatch. To allow continuing halibut bycatch after a closure that is intended to limit halibut bycatch amounts is inconsistent with the goals and objectives of the FMP. In response to this problem, NMFS amended BSAI regulations at 50 CFR 675.21(c)(2)(iii)–(iv) by prohibiting all trawling for Pacific cod when the seasonal allowance of the Pacific halibut PSC apportioned to the "other fishery" is reached (56 FR 21619; May 10, 1991).

The Council anticipates that the problem experienced in the BSAI also will occur in the GOA. When the Pacific halibut seasonal PSC allowance is reached, and all trawling with non-pelagic trawls is closed, fishermen simply can use reconfigured trawls and resume fishing on the sea bed for the same species for which the fishermen were fishing prior to the closure. Subsequent Pacific halibut bycatches would be expected to continue, probably at the same rate experienced with bottom trawls. Although any bycatches would be counted against the next quarter's allowance, the Council's intent to promote trawling opportunity through the year would be thwarted. When the entire 2,000 mt of Pacific halibut mortality is reached, halibut bycatch could still continue, thwarting the Council's intent to limit the amount of trawl-caught mortality to 2,000 mt.

The Council recommended that the Secretary implement an emergency rule to amend existing GOA regulations by prohibiting all trawling for groundfish, except pollock, once the halibut bycatch allowance apportioned to trawl gear is reached. Trawling for pollock with pelagic trawls will still be allowed.

The Secretary concurs in the Council's recommendation, and hereby prohibits all trawling for groundfish in the GOA, except pollock, once the halibut PSC limit, or seasonal allowance thereof, is reached. Trawling for pollock with pelagic trawl gear will be allowed.

Directed Fishing Standards

Based on advice from NMFS, the Council considered the extent to which vessels might fish for pollock with pelagic gear and then top off their BSAI catches of pollock with Pacific cod, and their GOA catches of pollock with other bottom dwelling groundfish, resulting in high bycatch rates of halibut. Existing standards for directed fishing at 50 CFR 672.20(g) and 50 CFR 675.20(h) allow retained amounts of Pacific cod to comprise up to 20 percent of all other fish or fish products retained on board a vessel during a trip. A pelagic trawl as defined normally is not used to fish for

Pacific cod, and the pelagic trawl fishery for pollock normally intercepts only small amounts of Pacific cod as bycatch. A vessel could use other trawl gear to target on Pacific cod, topping off the amounts of retained pollock onboard with up to 20 percent Pacific cod. Because the value of trawl-caught Pacific cod that has been frozen at sea is relatively high, the economic incentive to top off with Pacific cod exists. Trawling for Pacific cod with reconfigured pelagic trawls would result in additional catches of Pacific halibut, worsening the problem of halibut bycatch in areas where the seasonal or annual halibut bycatch allowance to trawl gear has been reached.

To resolve this problem, the Council recommended reduction of certain directed fishing standards that are used to govern retention of various groundfish species for which directed fisheries have been closed. The BSAI and GOA directed fishing standards are found at 50 CFR 675.20(h) and 50 CFR 672.20(g), respectively.

In the BSAI, retained amounts of Pacific cod that are 20 percent or more of the aggregate catch of other fish retained on board at the same time during the same trip are considered to have occurred as a result of directed fishing. Amounts of Pacific cod less than 20 percent would be considered to have been incidentally caught (see 50 CFR 675.20(h)(i)). In the GOA, retained amounts of any groundfish other than sablefish that are 20 percent or more of the aggregate catch amounts retained on board at the same time during the same trip are considered to have occurred as a result of directed fishing (see 50 CFR 672.20(g)(3)). Amounts of any groundfish other than sablefish less than 20 percent would be considered to have been incidentally caught.

However, in the BSAI and GOA, if the directed fishery for Pacific cod has been closed, but pollock directed fishing with pelagic trawls is still ongoing, then amounts of Pacific cod up to 20 percent of the amount of pollock retained onboard would be permissible. This percentage of Pacific cod measured against pollock caught with non-pelagic trawls would be appropriate. In a pelagic trawl fishery for pollock, a substantially smaller proportion of Pacific cod would suffice to accommodate incidental catch.

For the BSAI, the Council recommended that the directed fishing standard for Pacific cod caught in a pollock fishery with pelagic gear be reduced so that Pacific cod must comprise less than 7 percent of the amount of pollock retained on board. In fisheries still open to all trawl gear, the directed fishing standard for Pacific cod would remain unchanged at 20 percent. For the GOA, the Council adopted a NMFS recommendation that the directed fishing standard for all groundfish caught in a pollock fishery with pelagic gear be 7 percent of the amount of pollock. A directed fishing standard for just Pacific cod in the BSAI and not all groundfish is appropriate because other directed trawl fisheries, such as flatfish, would still be open under other provisions of 50 CFR part 675.

The Secretary concurs in the Council's recommendation, and hereby reduces the BSAI directed fishing standard for Pacific cod to 7 percent when only pelagic trawls for pollock are allowed. The Secretary also reduces the GOA directed fishing standard for groundfish, other than pollock, to 7 percent in a directed pollock fishery when only pelagic trawls are allowed. Reducing the directed fishing standard will remove the economic incentive to fish non-pelagic trawls to top off pollock catches.

Definition of a Trip for Purposes of Calculating Directed Fishing Standards in the BSAI

In the BSAI, the amount of a groundfish species that may be retained on board when directed fishing is closed is measured on the basis of a fishing trip. As applied, the definition of a trip at § 675.20(i)(2) prevents fishermen from being able to start new trips for bycatch accounting purposes when moving into areas subject to inseason bycatch restrictions. These restrictions, found at § 675.21, constrain amounts of Pacific halibut, red king crab, and Tanner crab that may be taken as bycatch in various trawl fisheries.

As an example, § 675.21(c)(1)(iii) illustrates a bycatch restriction that is linked to the definition of a trip at § 675.20(i)(2), using rock sole as a target species. Section 675.21(c)(1)(iii) requires the Secretary to publish a notice in the **Federal Register** closing Zones 1 and 2H to vessels engaging in the directed rock sole fishery for the remainder of the fishing year or for the remainder of the season if, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the primary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the BSAI management area while participating in the domestic annual processing rock sole fishery. In 1991, Zones 1 and 2H were actually closed on March 15 (56 FR 11697; March 20, 1991). The definition of directed fishing for rock sole is found at § 675.20(h)(1) which, in turn, references the definition of a trip in § 675.20(i)(2).

As stated at § 675.20(i)(2), the operator of a vessel is engaged in a single fishing trip from the commencement of or continuation of fishing after the effective date of a notice prohibiting directed fishing under § 675.20(a)(8) until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves the subarea where fishing activities commenced, whichever occurs first. Two subareas in the BSAI are defined at § 675.2 as the Bering Sea subarea and the Aleutian Islands subarea.

When the directed fishery for rock sole is closed in Zones 1 and 2H as described above, the directed rock sole fishery elsewhere in the Bering Sea subarea could still be open. A vessel could have rock sole on board that was caught legally within the Bering Sea subarea but outside Zones 1 and 2H as a result of a directed fishery. The vessel could then move into either Zone 1 or Zone 2H and immediately be in violation, because the "fishing trip" has not ended under the existing trip definition, thus preventing the vessel from beginning a new count of how much rock sole the vessel is allowed to have on board. To be legal, the vessel operator would have to discard rock sole, or otherwise offload the rock sole products, until the remaining proportion of rock sole on board was consistent with the directed fishing definition.

This situation imposes unnecessary burdens on fishing vessels. Vessels should be able to move into areas where a directed fishing prohibition applies even though vessels have the legally harvested prohibited species on board.

For reasons given above, the Secretary is amending the definition of a trip in the BSAI regulations such that a vessel starts a new trip from the date that directed fishing prohibitions apply until the vessel enters or leaves a subarea or reporting area to which a directed fishing prohibition applies. As with other directed fishing prohibitions, vessel operators will need to maintain logbooks required by existing recordkeeping and reporting regulations at § 675.5 to substantiate amounts of groundfish species on board in areas otherwise closed to directed fishing.

Rendering Non-Pelagic Trawls Unusable for Fishing

In the GOA and BSAI, regulations at 50 CFR 672.20(f) and 675.21(c)(2) authorize continued trawling for groundfish or pollock, respectively, by vessels using pelagic trawls after certain bycatch allowances have been reached. Such authorized trawling could occur in reporting areas that simultaneously are

open to directed fishing for other groundfish species. A vessel operator could have both pelagic and non-pelagic trawls on board the vessel. Without a constant enforcement presence, a vessel operator could target on BSAI pollock or GOA groundfish with a non-pelagic trawl in areas closed to directed fishing with such gear. The vessel operator could then record all retained BSAI pollock or GOA groundfish as having been caught with pelagic trawls. NMFS has no practical way to enforce against this loophole.

NMFS has determined that regulations at 50 CFR 672.20(f)(1)(i) and 675.21(c)(2) are not enforceable without substantial commitments in manpower and funding. Therefore, the Secretary amends 672.20(f)(1) and 675.21 by requiring vessels to render each non-pelagic trawl unusable for fishing if the vessel is fishing in reporting areas closed to directed fishing with non-pelagic trawls for a particular target species category but the use of pelagic trawls for that target species category is still allowed. This requirement will only apply to vessels that have a proportion of that target species category on board equal to or greater than the applicable directed fishing standard. To be unusable for fishing means that the non-pelagic trawl must be detached from trawl reels and towing lines, and it must be removed from the trawl alley and stored either below deck, or otherwise secured.

A definition of trawl alley is added to 50 CFR 672.2 and 675.2 as being necessary to implement the intent of this regulation. A definition of non-pelagic trawl also is added to §§ 672.2 and 675.2 to clarify this regulation and other regulations.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Adminstrator finds that reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. Based on BSAI data from the first quarter of 1991, fishing with reconfigured pelagic trawls on the seabed, resulting in unacceptable bycatches of Pacific halibut, occurred and will continue thereby undercutting the intent to limit bycatch and extend fishing through the year; topping off groundfish catches with Pacific cod will result in even more bycatches of halibut; the definition of a fishing trip used for BSAI bycatch monitoring purposes will cause some fishermen to forego fishing opportunities to avoid being in violation of a regulation that is unnecessarily burdensome; and existing closures to non-pelagic trawl gear will continue to be unenforceable and present opportunities to violate regulations important for conservation and management of the groundfish fisheries.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Assistant Administrator prepared an EA for this rule and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Director at the above address.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order is not possible.

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

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

The 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, Fishing vessels.

Dated: August 5, 1991.

Michael F. Tillman,

Acting Asssitant 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, definitions of non-pelagic trawl and trawl alley are added in alphabetical order from August 7, 1991 until November 12, 1991 to read as follows:

§ 672.2 Definitions.

* * * * *

Non-pelagic trawl means a trawl which has discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, or which does not otherwise conform with the definition of a pelagic trawl contained in this paragraph.

* * * * *

Trawl alley means that part of the trawl deck forward of the stern of the vessel and aft of the location where trawl reels may be located and where the trawl is placed after retrieval during fishing operations for purposes of emptying the trawl of fish.

* * * * *

3. In § 672.20, paragraphs (f)(1) and (g)(3) are suspended from August 7, 1991 until November 12, 1991 and new paragraphs (f)(3), (g)(4), and (g)(5) are added from August 7, 1991 until November 12, 1991 to read as follows:

§ 672.20 General limitations.

* * * * *

(f) * * *

(3)(i) Trawl gear. If, during the fishing year, the Regional Director determines that the catch of halibut by operators of vessels using trawl gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using trawl gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting directed fishing for:

(A) Pollock by JVP or DAP vessels using non-pelagic trawl gear for the remainder of the season to which the PSC allocation applies; and

(B) Groundfish, except for pollock, by JVP or DAP vessels using any trawl gear for the remainder of the season to which the PSC allocation applies.

(ii) In reporting areas where directed fishing with nonpelagic trawls for a target species category is closed, if the amount of that target species category retained on board a vessel is equal to or greater than the applicable directed fishing standard as defined by paragraph (g) of this section, the operator of that vessel must detach all

non-pelagic trawls from trawl reels and towing lines, remove non-pelagic trawls from the trawl alley and store all non-pelagic trawls either below deck, or secure them in an area so that they are rendered unusable for fishing.

(iii) Hook-and-line gear. If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using hook-and-line gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using hook-and-line gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by JVP or DAP vessels, as appropriate, with hook-and-line gear for the remainder of the season to which the PSC allocation applies.

(iv) Pot gear. If during the year, the Regional Director determines that the catch of halibut by operators of vessels using pot gear and delivering their catch to foreign vessels (JVP vessels) or operators of vessels using pot gear and delivering their catch to U.S. fish processors or processing their catch on board (DAP vessels) will reach their proportional share of the seasonal allocation of the halibut PSC limit provided for under paragraph (f)(2) of this section, the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by JVP or DAP vessels, as appropriate with pot gear for the remainder of the season to which the PSC allocation applies.

(v) Unused PSC allocated to JVP trawl, hook-and-line, or pot gear, or to DAP trawl, hook-and-line, or pot gear will be added to its respective PSC allocation for the next season during a current fishing year.

(vi) If a seasonal allocation to JVP trawl, hook-and-line, or pot gear, or to DAP trawl, hook-and-line, or pot gear is exceeded, the amount by which the seasonal allocation is exceeded will be deducted from its respective allocation for the next season during a current fishing year.

* * * * *

(g) * * *

(4) The operator of a vessel is engaged in directed fishing for groundfish other than pollock with pelagic trawl gear if he retains at any time during a trip an amount of groundfish other than pollock equal to or greater than 7 percent of the aggregate amount of pollock retained at the same time by the vessel during the same trip.

(5) *Other.* Except as provided under paragraphs (g)(1), (g)(2), and (g)(4) of this section, the operator of a vessel is engaged in the directed fishing for a specific species or species group if he retains at any particular time during a trip that species or species group in an amount equal to or greater than 20 percent of the amount of all other fish species retained at the same time by the vessel during the same trip.

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

4. In § 675.2, definition of non-pelagic trawl and trawl alley are added in alphabetical order from August 7, 1991 until November 12, 1991 to read as follows:

§ 672.5 Definitions.

* * * * *

Non-pelagic trawl means a trawl which has discs, bobbins, rollers, or other chafe protection gear attached to the foot rope, or which does not otherwise conform with the definition of a pelagic trawl contained in this paragraph.

* * * * *

Trawl alley means that part of the trawl deck forward of the stern of the vessel and aft of the location where trawl reels may be located and where the trawl is placed after retrieval during fishing operations for purposes of emptying the trawl of fish.

* * * * *

5. Section 675.20, paragraphs (h)(1) and (h)(2) are suspended from August 7, 1991 until November 12, 1991 and new paragraphs (h)(7) and (i)(3) are added from August 7, 1991 until November 12, 1991 to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(7) Pelagic trawl gear for Pacific cod. The operator of a vessel is engaged in directed fishing for Pacific cod with pelagic trawl gear if he retains at any time during a trip an amount of Pacific cod equal to or greater than 7 percent of the aggregate amount of other fish retained on the vessel at the same time during the same trip.

* * * * *

(i) * * *

(3) *Trip.* For purposes of this paragraph, the operator of a vessel is engaged in a single fishing trip from the commencement of or continuation of fishing after the effective date of a notice prohibiting directed fishing under paragraph (a)(8) of this section, or under § 675.21(c), until the vessel enters or leaves a subarea or reporting area to which a directed fishing prohibition applies, or until any offload or transfer of any fish or fish product from that vessel, whichever occurs first.

6. In § 675.21, paragraph (c)(2)(v) is added from August 7, 1991 until November 12, 1991 to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(c) * * *

(2) * * *

(v) In reporting areas where directed fishing with non-pelagic trawls for a target species category is closed, if the amount of that target species category retained on board a vessel is equal to or greater than the applicable directed fishing standard as defined by paragraph (h) of this section, the operator of that vessel must detach all non-pelagic trawls from trawl reels and towing lines, remove non-pelagic trawls from the trawl alley and store all non-pelagic trawls either below deck, or secure them in an area so that they are rendered unusable for fishing.

* * * * *

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Proposed Rules

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

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

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 91-077]

Papayas From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Hawaiian Fruits and Vegetables" regulations to remove the "double hot water dip" as an approved quarantine treatment for papayas intended for movement from the State of Hawaii to other parts of the United States. We believe this action is necessary to reduce the risk of the spread of pests that are new or not widely prevalent or distributed within and throughout the United States.

DATES: Consideration will be given only to comments received on or before September 12, 1991.

ADDRESSES: To help ensure that your 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 91-077. 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: David R. Reeves, Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations regarding fruits and vegetables from Hawaii (contained in 7 CFR 318.13 through 318.13-16 and referred to below as the regulations), quarantine the State of Hawaii and regulate the interstate movement from Hawaii of, among other things, papayas in a raw or unprocessed state. The regulations require, as a condition of interstate movement from Hawaii, that papayas be treated with an approved treatment specified in the regulations. The approved treatments destroy the life stages of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)), the melon fly (*Dacus cucurbitae* (Coq.)), and the Oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies, commonly referred to as "Trifly," infest Hawaii but not the rest of the United States.

Removal of Double Hot Water Dip as an Approved Treatment

The current regulations is § 318.13-4f set forth, as one of the approved treatments for papayas from Hawaii, a process called the "double hot water dip." The regulations provide that this treatment may be used only for papayas of a certain ripeness, and only if completed within 18 hours of the papayas being picked. Additionally, the ambient temperature surrounding the papayas must not fall below a specified temperature from the time the fruit is picked until it is treated. The dipping itself must be carried out according to precise time/temperature combinations that require close monitoring of the dipping process.

Although research conducted by the Department of Agriculture demonstrates that the double hot water dip is effective when carried out as approved, we have found that we frequently have insufficient personnel to monitor each step of the treatment to ensure that all safeguards are maintained. It is particularly difficult to ensure that no more than 18 hours elapses between the picking of the fruit and its treatment. We believe that our inability to carry out comprehensive monitoring may be creating an unacceptable risk of the interstate spread of dangerous plant pests from Hawaii. On two occasions, quality control inspections have discovered Triflies that appear to have survived the treatment, possibly due to our inability to monitor each step of the process.

Alternatives to the use of the double hot water dip treatment exist, and offer advantages to both the Animal and Plant Health Inspection Service and the papaya industry over the double hot water dip. For instance, the industry has indicated that the double hot water dip treatment, which prohibits the processing of fruit that is more than ¼ ripe, affects the ripening of papayas and often results in undesirable hard spots. The other approved treatments do not affect the ripening of the fruit. Additionally, these alternative treatments require no pre-treatment monitoring and include no ripeness requirements, thereby posing less risk of treatment failure. We are therefore proposing to remove the double hot water dip treatment as an approved treatment for papayas from Hawaii.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed 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 would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would 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.

In 1990, approximately 19.8 million pounds of fresh papayas, valued at approximately $4.9 million, were shipped from Hawaii to the mainland United States. This represented approximately 34.2 percent of Hawaiian production.

Seven companies currently operate papaya quarantine facilities in Hawaii. Three of these companies do not use the double hot water dip treatment and would not be impacted by the proposed rule change. The remaining four companies currently use the double hot water dip treatment method, two of them exclusively. We expect that these companies would replace their double hot water dip facilities with units that have the capability to treat papayas

with both the vapor heat treatment specified in 7 CFR 318.13–4b and the high temperature forced air treatment specified in the PPQ Treatment Manual. Having access to a unit with vapor heat capabilities is an added advantage, because vapor heat is the only quarantine treatment approved by Japan for fresh papaya shipments to that country. The dual units are less costly to construct and more cost efficient to operate than units for irradiation, the other approved treatment, specified in 7 FR 318.13–4g, for papayas from Hawaii.

The estimated cost of constructing a new dual facility would range between $200,000 and $300,000. The actual price would vary depending on location and treatment capacity. Therefore, the total cost of construction would range between approximately $0.8 million and $1.2 million for the Hawaiian papaya industry.

Conversely, in the long run the Hawaiian papaya industry would benefit from lower treatment costs, including lower labor expenditures for inspection, by converting to dual facilities. Only papayas ¼ or less ripe may be treated with the double hot water dip method. This requires that labor be hired to sort papayas into groups according to a "ripeness index." At present, State inspectors monitor industry compliance with the ripeness index. With the elimination of the double hot water dip method, State inspection and fruit sorting would no longer be necessary before treating papayas in a dual facility. However, Federal inspection and monitoring would still be required during and after treatment and prior to shipment to the mainland. We estimate that each company that converts to a dual facility would realize an annual savings of between $106,950 and $191,800 over the use of the "double hot water dip" treatment. Assuming a discount rate to 10 percent to perpetuity, the companies we would expect to convert to a dual facility would be expected ultimately to save between $1,069,500 and $1,918,000 over their current treatment costs.

The cost of the proposed rule change would be approximately $8,200 to $193,050 in the first year per company that builds a dual facility. This would represent the construction costs of new quarantine treatment facilities, minus approximately $106,950 to $191,800 in first year treatment savings due to lower per unit treatment costs. In the long-run, construction costs for new quarantine treatment facilities would be offset by savings generated by the reduced per unit cost of quarantine treatment.

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

Paperwork Reduction Act

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

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.)

List of Subjects in 7 CFR Part 318

Agricultural commodities, Guam, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, we are proposing to amend 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13 [Amended]

2. In part 318, subpart—Hawaiian Fruits and Vegetables, § 318.13–1, the definition of "Compliance agreement," the references to "§ 318.13.4g" and "§ 318.13–4h" would be removed and references to "§ 318.13–4f" and "§ 318.13–4g", respectively, would be added in their place.

§ 318.13–4f [Removed]

§§ 318.13–4g and 318.13h [Redesignated §§ 318.13–4f and 318.13–4g]

3. In part 318, subpart—Hawaiian Fruits and Vegetables, § 318.13–4f would be removed and §§ 318.13–4g and 318.13–4h would be redesignated as §§ 318.13–4f and 318.13–4g, respectively.

Done in Washington, DC, this 8th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–19209 Filed 8–12–91; 8:45 am]

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9 CFR Parts 101, 112, and 113

[Docket No. 90–146]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reproposed rule.

SUMMARY: This reproposed rule revises the proposed rule concerning autogenous biologics that was published in the **Federal Register** on April 23, 1990 (55 FR 15233). The original proposed rule would have amended the regulations by: (1) Specifying data that would be required to be submitted to the Animal and Plant Health Inspection Service in support of a request to use an autogenous biologic in a herd that is adjacent to the herd of origin; (2) specifying data that would be required to use such autogenous biologics in herds which are not adjacent to the herd of origin; and (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of an additional serial of an autogenous biologic from cultures which are older than 12 months from the date of isolation. In this revision, we are deleting proposal (3) and adding the following reproposed amendments: (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of additional serials of an autogenous biologic from cultures which are older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first; (4) removing the limitation that autogenous products be used only in emergency situations; (5) specifying that the use of autogenous biologics would be restricted to a veterinarian-client-patient relationship; and (6) specifying additional testing that would be required after production of the first serial of product in order to continue producing subsequent serials of an autogenous biologic. The reproposed rule reflects our consideration of 15 oral comments from a public hearing and 18 written comments that were received in response to the proposal.

This action would ensure that persons seeking approval to use an autogenous biologic or an isolate under the circumstances described above are apprised of the data that must be submitted in support of their request, and that the Agency is provided sufficient information to properly evaluate and approve the use of

autogenous biologics in a herd other than the herd of origin. It would also provide additional safeguards concerning autogenous biologics.

DATES: Consideration will be given only to comments received on or before October 15, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and two copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90-146. Comments received may be inspected at the Public Reading Room, room 1141, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION:

I. Background

Autogenous biologics (vaccines, bacterins, and toxoids) are prepared from cultures of microorganisms which are inactivated and non-toxic. The seed organisms used to produce such autogenous biologics are isolated from sick or dead animals which are judged to be the causative agents of the diseases affecting such animals. On April 23, 1990, a proposed rule was published in the **Federal Register** (55 FR 15233-15236, Docket No. 89-200) proposing to amend the regulations pertaining to the production of autogenous biologics as found in 9 CFR 113.113 (formerly 9 CFR 113.98).

We solicited comments for 60 days with the comment period ending on June 22, 1990. On June 22, 1990, a Notice was published in the **Federal Register** (55 FR 25669-25670, Docket No. 90-123) that extended the comment period to July 23, 1990, in response to a request from a trade association. On August 8, 1990, a second Notice was published in the **Federal Register** (55 FR 32264, Docket No. 90-159) that announced a public hearing in Ames, Iowa, on August 23, 1990, and a reopening and extension of the comment period for Docket No. 89-200 until September 21, 1990.

The Animal and Plant Health Inspection Service (APHIS) received 15 oral comments at the public hearing and 18 written comments regarding the proposed rule. Comments were received from businesses engaged in the production of autogenous biologics, private individuals/consultants, trade associations, professional organizations, a state diagnostic facility, and a state livestock and poultry commission. APHIS has carefully considered all of the comments relating to the proposed rule.

Based on the comments received concerning the initial proposal and on further analysis of the present regulations, APHIS has determined that the proposal should be revised. The reason for the revision is the agency's conclusion that the present restrictions concerning autogenous biologics may no longer be appropriate, and that certain regulatory provisions need to be added. One of the restrictions which may no longer be necessary is the limitation on the use of such products to emergency situations only, unless otherwise authorized by the Administrator. Upon further reflection, the agency has concluded that autogenous products may often be needed for disease situations that may not be considered emergencies such as when licensed products with established efficacy are not available, or when there is evidence that such products have not been effective in treating a specific disease situation. Several additional changes that are being made to the original proposed rule include the addition of definitions and testing requirements. This revised proposal allows interested persons to consider fully the changes to the rule as originally proposed and its impact on consumers, manufacturers, and other affected entities. Based on the rationale set forth in this document, APHIS is issuing this reproposed rule as a revision of the proposed rule that was published on April 23, 1990.

II. Public Meeting

A public meeting on veterinary biologics in Ames, Iowa, on August 15, 1991, was announced in 56 FR 31368 (July 10, 1991). The agenda for this public meeting includes Autogenous biologics. Assuming that this reproposal (Docket No. 90-146) is published, the docket will be discussed at the public meeting on August 15, 1991, between 1 p.m. and 2:30 p.m. in the Scheman Building, Iowa State Center, Ames, Iowa. Any comments made regarding the reproposal will be made part of the record for the public meeting. Anyone who has a comment to make at the public meeting regarding the reproposal should also submit a written copy of the comment to the person listed in this document under **ADDRESSES**.

III. Contents of the Reproposal

In this reproposed rule, APHIS proposes to codify in redesignated § 113.113 of the regulations information that an applicant is required to submit to APHIS in support of an application to: (1) Use an autogenous biologic in a herd that is adjacent to the herd of origin; (2) use an autogenous biologic in a herd that is not adjacent to the herd of origin; (3) use organisms for the production of additional serials of an autogenous biologic from cultures which are older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first. The current regulations do not specify what type of information needs to be submitted in support of various applications. The reproposed rule also provides that autogenous biologics are to be administered only under a veterinarian-client-patient relationship. In addition, it provides that further testing is required for the production of autogenous products after the first serial. In the reproposed rule, we are also deleting the restriction that autogenous products are only to be used in emergency situations. In addition, we are proposing the following new definitions in § 101.2: Administrator, Animal and Plant Health Inspection Service, Herd, Herd of Origin, Adjacent Herd, and Nonadjacent Herd. Finally, we propose to amend § 112.7(m) to specify that labeling of autogenous products shall indicate that potency and efficacy have not been established.

APHIS is reproposing to amend redesignated § 113.113 "Autogenous biologics" (formerly § 113.98) by revising the introductory text, making nonsubstantive editorial changes to § 113.113(a) (1) and (2), adding § 113.113 (a)(3)(iii) to initially proposed § 113.98(a)(3), redesignating initially proposed § 113.98(a)(4) as reproposed § 113.113(b)(1), deleting initially proposed § 113.98(b)(1), redesignating initially proposed § 113.98(b)(2) as reproposed § 113.113(a)(4) and revising it, redesignating initially proposed § 113.98(b)(3) as reproposed § 113.113(b)(2), and adding new § 113.113 (c)(1)(i) and (c)(2)(i)-(iv). In addition, APHIS is reproposing amendments to § 101.2 "Definitions" and adding new § 112.7 "Labeling of autogenous biologics". These amendments, as reproposed, are referenced in the accompanying table below.

TABLE 1

Recodification	Proposal	Reproposal
113.113(a)	113.98(a)	113.113(a).
113.113(a)(1)	113.98(a)(1)	113.113(a)(1).
113.113(a)(2)	113.98(a)(2) and (3).	113.113(a)(2) and (3).
113.113(a)(3)	113.98(a)(4)	113.113(b)(1).
113.113(b)(1)	113.98(b)(1)	Deleted.
	113.98(b)(2)	113.113(a)(4).
113.113(b)(2)	113.98(b)(3)	113.113(b)(2).
113.113(c)	113.98(c)	113.113(c)(1).
113.113(c)(1)	113.98(c0(1)	113.113(c)(1)(ii).
113.113(c)(2)	113.98(c)(2)	113.113(c)(1)(iii).
		New Sections
		113.113(a)(3)(iii)
		113.113(c)(1)(i)
		113.113(c)(2)
		113.113(c)(2)(i)-(iv)
		101.2
		112.7(m)

IV. Summary and Analysis of Comments

The comments received regarding the proposed rule fall into the following general areas: The need for an expedited response to a request to use autogenous biologics under the conditions set forth in the reproposal; use of autogenous biologics in the poultry industry; the determination of efficacy and reisolation of the organism; the 12-month limitation on the use of the original isolate; APHIS' efforts to increase uniformity in the regulation of autogenous biologics; comments received at the public hearing. We address each of the comments received in the order of the subject areas listed above.

One comment was received indicating a need in the regulations for a reduction in the response time to a request to use an autogenous biologic. Use of electronic mail or a telphone response by APHIS followed by a written response was requested. The rationale for this request was that the need and the use of autogenous biologics may involve an emergency action. APHIS agrees with this comment that a telephone or facsimile response followed by a written response may be utilized in requesting and granting authorization to use autogenous products in an emergency situation. Such procedures regarding the technical aspects of program operations, however, are often included in program memoranda which are intended to provide guidance in the application of regulatory provisions. Therefore, no change to the regulations is proposed in response to this comment.

One comment was received citing the burdensome nature of paperwork, especially for small manufacturers unable to afford paperwork specialists. APHIS is aware of the time required to comply with this regulation and has attempted to require minimum data needed to properly evaluate and approve the use of autogenous biologics. APHIS, however, does not believe that the cost of complying with this regulation should be significant. The purpose of the rule is to specify in the regulations the data which are currently required to be produced in support of a request to use autogenous biologics in certain circumstances. Thus, there should be little if any additional expense in generating such data. Therefore, no change has been made in response to this comment.

Three commenters made comments regarding the use of autogenous biologics in the poultry industry. One commenter suggested that in calculating the period of use of an isolate one should begin from the date of identification rather than the date of isolation of the organism. This would allow for a longer useful life for the isolate since the identification of a virus may take more than a month to complete. It was recommended by the same commenter that a "fast track" system be developed to obtain a conditional license for a product being produced as an autogenous vaccine. The commenter further recommended that more than one additional serial of an autogenous biologic be allowed to be prepared from an extended isolate because of the limitation in the size of the serial and the large size of today's poultry flocks. The commenter also requested that applications for the production of additional serials of autogenous biologics (after the first serial) be supported by a letter from the poultry producer indicating a continue need for the autogenous product and that the need for continued use of the product be based on the professional judgment of the producer's veterinarian.

APHIS does not agree that the period of use of the isolate should being with the date of identification rather than the date of isolation of the organism. The reason is that identification of the microorganism beyond genus and species may not be completed until several months after the date of isolation. Moreover, identification of the organism is not a requirement for initial use of the autogenous biologic. In response to the comment regarding conditional licenses, it should be noted that § 102.6 of the regulations provides that, under certain circumstances, a conditional license may be granted under an expedited procedure upon such conditions as are necessary to assure purity, safety, and a reasonable expectation of efficacy. It should be further noted that APHIS no longer places a limitation on the size of the serial to be produced.

After considering the comment concerning the calculation of the dating period for isolates, APHIS proposes to delete the requirement under proposed § 113.98(b)(2) (redesignated as § 113.113(b)(2)) that the 12-month dating period begin from the date of isolation and proposes to amend the regulations in § 113.113(a0(4) as follows:

> Under normal circumstances, microorganisms used for the production of autogenous biologics may not be older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism, whichever comes first.

The microorganisms used for making the autogenous product shall be used no longer than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first. Because the two time periods start from different reference points (one from the date of isolation, the other from the date of harvest), either time period may end first. In this rule, whichever of the two time periods ends first would be used in determining when the isolate can no longer be used for making product, unless authorized by the Administrator.

One of the commenters further requested that continued production of an autogenous biologic beyond 12 months be allowed. This issue has been addressed in the discussion concerning proposed § 113.113(a).

A second commenter discussing the use of autogenous biologics in the poultry industry requested that the autogenous product be allowed to be made without reisolation of the causative organism so long as there is a disease problem in the area. APHIS notes, however, that the current regulations on the preparation and use of autogenous biologics are based on the fact that, unless otherwise authorized, autogenous biologics are to be prepared only for emergency use. Continued use of the product derived from the original isolate is limited because efficacy of the autogenous biologic has not been established. In order to ensure that the autogenous product continues to bear some relationship to the disease in the herd, a good faith effort to reisolate is currently required by the proposed rule published on April 23, 1990.

In this reproposal, APHIS proposes to delete the reisolation requirement under § 113.98(b)(2)(iii), as initially proposed, and add to the regulations reproposed § 113.113(c) requiring some additional tests in order to use the original isolate

beyond the first serial or subserial of product without reisolation of the organism. APHIS also proposes to delete the requirement under current § 113.113(b)(1) "that autogenous products be prepared for emergency use only." Reproposed § 113.113(c) would require, after production of the first serial or subserial of product full sterility, full safety, identification of the microorganism to genus and species of bacteria, fungi, or mycoplasma and at least to family if a virus, and the compliance with the applicable general requirements of § 113.100 for an autogenous bacterial product and § 113.200 for an autogenous viral product. Presently, the rule does not specify that identification of the microorganism must be made. In the reproposed rule, microorganisms older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism, whichever comes first, would have to be identified as to strain and/or serotype. Such microorganisms would also have to be tested for immunogenicity or antigenicity, and potency in order to establish a reasonable expectation of efficacy.

In proposing additional testing, it is APHIS' rationale that after initial production of a product, justification no longer exists to continue abbreviated testing (such as that which is conducted for an early release of the product). In order to be more consistent with the intent of the Virus-Serum-Toxin Act (hereinafter, the Act), a product which is older than 15 months from the date of isolation, or 12 months from harvest of the first serial produced, whichever comes first, would be tested to determine immunogenicity or antigenicity and potency in an effort to demonstrate a reasonable expectation of efficacy. The current regulations do not provide for a reasonable expectation of efficacy for autogenous biologics since they are intended for emergency use only.

As an accommodation for small serials of product, the reproposal would require that a producer use only two samples for sterility testing for serials or subserials of 50 or less final containers under reproposed § 113.113(c)(1)(i).

A third commenter discussing the use of autogenous biologics in the poultry industry introduced the concept of "subsequent flocks" whereby several flocks would pass sequentially through the same facility. These flocks would thus be exposed to a facility which was potentially contaminated with the offending species for which the autogenous product is intended. Because these facilities could not be completely sterilized despite high levels of biosecurity and between-flock sanitation, subsequent flocks would be exposed to the offending organism even after the initial flock had left. The commenter recommended that, in this situation, the use of the autogenous product be allowed to continue under the supervision of the attending veterinarian and not be limited to one additional serial of autogenous vaccine.

APHIS believes that the concept of "subsequent flocks" is analogous to that of herd of origin as that term is used in the proposed rule. Thus the requirements for herd of origin would apply to "subsequent flocks". Firms with such flocks would be allowed to continue to use an isolate that is older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial, whichever comes first, provided that the additional testing requirements under §§ 113.113 (a)(4) and (c) are met. These requirements are intended to establish minimum data showing a reasonable expectation of efficacy for continued use of the product.

Four commenters addressed the issues of reisolation of the causative organism, the measure of efficacy of the product, and the 12-month limitation on the use of the isolate. The first commenter stated that reisolation of the organism was not a reliable means to determine the continued use of the autogenous product. The commenter argued that the continued use of the autogenous product should be left to the professional judgment of the herd/flock veterinarian and that risk/benefit and cost/benefit decisions between licensed autogenous biologicals and other licensed biologicals should be left to the licensed veterinarian. Moreover, extension of the use of the isolate beyond 12 months would allow for an annual booster vaccination not otherwise possible with the 12-months limitation. Dating should begin with the date of receipt of the culture by the licensed facility or the date of first production.

APHIS agrees that subject to certain controls, autogenous products may be used beyond 12 months without reisolation. The time period that an isolate would be permitted for use in production would be limited in this reproposed rule to 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, unless authorized by the Administrator. The important criteria here are the requirement for information from the attending veterinarian under reproposed § 113.113(a)(4) and additional tests for identity, antigenicity or immunogenicity and potency under proposed § 113.113(c) before such authorization is granted.

The second commenter stated that there are advantages and disadvantages for liberalizing autogenous requirements. The removal of the emergency basis requirement would allow firms to produce "private label" autogenous products. The commenter argued that the danger is that autogenous products are a way for anyone to duplicate a federally licensed product without proving efficacy. On the other hand, autogenous products may provide greater antigen specificity than licensed products. The commenter recommended that autogenous product for an antigen be produced only by facilities with a Federal license for that antigen as a commercial product. This would assure that the laboratory has the technology to produce an effective antigen for a specific disease.

Although this reproposal removes the emergency requirement for the use of autogenous products, it adds certain safeguards and requirements. One of these requirements is that if there is a similar licensed product on the market, the veterinarian is required to provide justification to use the autogenous product in its place. APHIS believes that by proposing additional testing safeguards, the concerns of the commenter will be addressed.

The third commenter recommended that autogenous products not be used for emergencies only and that instead, they be allowed to be used on a nonemergency basis under the direction of a licensed veterinarian in the context of a veterinarian/client/patient relationship. The commenter argued, moreover, that: (1) Written documentation to use an autogenous vaccine in adjacent herds should be waived for the parent herd or the herd with direct progeny; (2) the period of time for the use of the original isolate should be changed from 12 to 24 months; and (3) the demonstration of need to use the biologic should be deleted as should the preference of one class of licensed products over another. Finally, the commenter argued that the language in proposed § 113.98(b)(2)(ii) is contradictory as autogenous products are themselves licensed products.

Based on all of the comments received, APHIS has concluded that autogenous biologics may often be used for disease situations that may not be considered emergencies such as when licensed products with established efficacy are not available or when

evidence exists that such products have not been effective in treating a specific disease situation. The reproposal therefore permits such nonemergency use with the restriction that use be permitted only by or under the direction of a licensed veterinarian in the context of a veterinarian/client/patient relationship. This added restriction is considered appropriate to assure that the use of autogenous products is based on the professional judgment of a veterinarian who is personally acquainted with the management and care of the animal(s), who makes appropriate and timely visits to the premises where the animals are kept, and who is readily available for followup in case of adverse reaction or failure of the treatment regimen. Such conditions for use are considered necessary to assure that an emergency disease condition exists in the herd, that products with established efficacy are in fact not available for the prevention or treatment of the current disease condition in the herd, that products with established efficacy have been used in the herd previously and found not to be effective in preventing or treating the current disease in the herd, or that other medically sound rationale are considered prior to the use of an autogenous biologic. APHIS believes that restriction of autogenous biologics to use by or under the direction of a veterinarian would provide greater assurance that such products are used in a manner consistent with the intent of the Act and good veterinary medical practice. APHIS thus reproposes to amend the regulations in § 113.113 to provide that such products shall be prepared only for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship.

Several other provisions of proposed § 113.113 require the use of professional medical knowledge and/or judgment to assure compliance with the regulations. Paragraph (a) requires that microorganisms used as seed shall be judged to be the causative agent of the current disease affecting such domestic animals. Paragraphs (a)(2) (ii) and (v) concerning use in adjacent herds require the attending veterinarian's name, address, and phone number and the diagnosis and clinical signs of the disease observed. Paragraph (a)(2)(x) requires the attending veterinarian's assessment of the involvement of the adjacent herd(s) with the disease observed. Provisions in paragraph (a)(3)(iii) concerning use in non-adjacent herds requires a summary of the epidemiology of the disease situation that links the designated geographic areas with the herd of origin. Paragraphs (a)(4) (i), (ii), and (iii), which concern the use of microorganisms for production beyond 12 months from the date of harvest of the first serial of product produced from the microorganism, or 15 months from the date of isolation, whichever comes first, require the attending veterinarian's current assessment of the continued involvement of a herd with the originally isolated microorganism(s) including a summary of the diagnostic work that has been done to support this assessment, evidence of satisfactory protection from the previous use of the autogenous biologic produced from the microorganism involved, and any other information the Administrator may require in order to determine the need to use the microorganism to make additional serials. APHIS believes that accurate and reliable information to assure compliance with these provisions and to ascertain that these products have at least a reasonable expectation of efficacy can only be obtained when the product is restricted to use by or under the direction of a veterinarian in the context of a veterinarian/client/patient relationship.

In further response to the third commenter, the removal of the time limit for the use of the isolate raises the issue of the continued preparation of a product based on minimal information and data regarding the product. The Act requires that, unless otherwise exempted, all veterinary biological products must be prepared in accordance with the regulations. APHIS is thus reproposing §§ 113.113 (a)(4) and (c) in response to the comment. With regard to the comment that written documentation be required for adjacent herds, the definition of "herd" under reproposed § 101.2 distinguishes between the parent herd and progeny in the determination of what constitutes the "herd of origin". Thus, no change in the regulations is made in response to this part of the comment. Finally, APHIS agrees that the language in proposed § 113.98(b)(2)(ii) may create ambiguity and is deleting that section from the reproposed rule in response to the comment.

Another comment stated that autogenous vaccines are a valid clinical approach when there is no licensed vaccine with established efficacy available. The comment continued that efficacy should be indicated by the ability of the autogenous product to prevent clinical symptoms before an extension of its use is granted. The comment further stated that selection of the vaccine of choice is not possible unless the causative agent of the current disease has been identified at least as o species. If the species of the isolate is not known, it is not possible to determine whether there is a licensed (non-autogenous) effective vaccine.

APHIS agrees with the comment that continued diagnostic monitoring of the herd needs to be done to determine the continued involvement of the herd with the originally isolated seed organism(s) (*See* reproposed § 113.113(a)(4))(i).) Use of the isolate older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial, whichever comes first, may be justified upon a showing of such continued involvement of the herd with the originally isolated seed organism(s). By this time, identification of the organism as to strain or serotype under reproposed § 113.113(c)(2)(iii) should allow an informed decision to be made as to the continued use of the original isolate. Thus §§ 113.113 (a)(4)(i) and (c)(2)(iii) of the regulations are reproposed to be amended in response to this comment.

Another comment argued that the requirements concerning the use of an autogenous vaccine in adjacent and non-adjacent herds or flocks would raise costs to the swine producer, the consumer, Federal and State agencies, the State Veterinary Diagnostic Laboratory, and private biologics companies. The commenter also argued that the requirements should decrease the time the veterinarian has to respond to an emergency disease situation and imply that the local veterinarian is not competent to assess the disease risk. Finally, the commenter argued that the 12 month dating of the isolate is not consistent with (1) the three-year life of a swine herd and (2) the difficulty and expense of isolating bacteria used in an autogenous vaccine. If the bacterin is generally effective, it is extremely difficult to isolate when the problem is under control.

APHIS is proposing to specify the data that is necessary in order for the agency to properly evaluate a request to use an autogenous biologic in herds adjacent and non-adjacent to the herd of origin. For this reason, APHIS is asking only for that data which should normally be available to the herd owner and which APHIS has traditionally required but has not codified in the regulations. APHIS is also proposing to restrict the preparation of autogenous biologics to use by or under the direction of a veterinarian in a veterinarian-client-patient relationship (*See* proposed § 113.113, introductory paragraph). The prohibition against

using a microorganism beyond 12 months from isolation has been deleted and new procedures established in reproposed §§ 113.113 (a)(4) and (c).

With regard to the commenter's assertion that the requirements in §§ 113.113(a) (2) and (3) would decrease the time a veterinarian has to respond to an emergency disease situation, APHIS will carefully consider the recommendation of the attending veterinarian in any decision that APHIS makes regarding the use of the autogenous product in herds other than the herd of origin. APHIS requires, however, that before allowing the use of autogenous bacterins in other than the herd of origin, some assessment of the involvement of the adjacent or non-adjacent herd with the microorganism isolated from the herd of origin must be made. In order to allow the use of an autogenous produce in herds adjacent to the herd of origin, APHIS proposes to require, under proposed § 113.113(a)(2)(x), the attending veterinarian's assessment of the involvement of the adjacent herd(s) with the disease observed.

Applying the same rationale as discussed above concerning the need to demonstrate a relationship between the originally isolated microorganism and the herd not adjacent to the herd of origin. APHIS reproposes to require under § 113.113(a)(3)(iii) a summary of the epidemiology of the disease situation that links the designated geographic areas with the herd from which the microorganism is isolated.

Another comment was received supporting APHIS' efforts to improve the uniformity of the regulation of autogenous biologics. The comment indicated, in most respects, full agreement with the proposed rule. It stated that the proposal generally reflects the primary principle of assuring pure, safe, potent and effective veterinary biologics. The comment indicated several areas of concern with the proposal as written. These are as follows. The commenter stated that autogenous products are needed not only in an "emergency" situation in a time sense, but also when an appropriate product is not available at an appropriate time, or when a unique animal health problems exists. Moreover, the commenter argued that the "herd or flock of origin" is not necessarily the herd or flock where the most advantageous use of autogenous biologic would occur. For example, it would be better to vaccinate weanling animals before shipment to a diseased finishing herd, but the proposed rule did not allow for such vaccination.

APHIS has reproposed amendments in §§ 113.113 (a)(4)(i) and (c)(iii) in response to this comment. Under both the proposed and reproposed rules, an autogenous product may be administered at any time to the recipient animals even though the animals may be moved to the infected herd at a later time.

The next concern suggested by the comment was that use of the isolate be allowed for 24 rather than 12 months. The comment argued that a 12-month period does not allow for adequate time to produce the biologic and also allow for implementation and evaluation of a new vaccination program, nor does it recognize the needs of the producer to administer a booster at 12 months. APHIS has explained its position on this issue previously. (*See* reproposed §§ 113.113 (a)(4) and (c).)

The commenter further requested that the dating of the isolate be linked either to the date of first harvest or the date of receipt of the organism into the licensed facility rather than the date of original isolation. APHIS has previously stated its position on this issue. (*See* § 113.113 (a)(4)).

The commenter also suggested that the requirement for a good faith effort to reisolate the organism, as initially proposed in § 113.98(b)(2)(ii), be reexamined. The comment suggests that reisolation of the vaccine strain from vaccinates is not a reliable means to predict continued need for the autogenous product. The continued need for the product is better determined by the professional judgment of the herd or flock veterinarian. We have also addressed this issue previously. The continued use of an autogenous product without reisolation would be allowed under reproposed §§ 113.113 (a)(4) and (c).

The comment further indicated that § 113.98(b)(2)(ii), as initially proposed, leads to confusion with respect to "licensed products" since autogenous products are themselves licensed products. APHIS acknowledges this confusion and has deleted § 113.98(b)(2)(ii), as initially proposed, in response to this comment.

The comment also raised the question concerning how the lack of effectiveness of other licensed non-autogenous products could be demonstrated in order to continue to use an autogenous biologic. In response to this comment APHIS proposes to allow for the continued use of autogenous biologics provided additionally data and testing requirements are met under reproposed §§ 113.113 (a)(4) and (c).

The comment further objected to the mandatory preference of a nonautogenous biologic over an autogenous biologic required by proposed § 113.98(b)(2)(ii). The commenter argued that risk/benefit and cost/benefit analyses regarding the use of a particular biological product in a disease situation are normally left to the biologics producer, the livestock producer, and his or her veterinarian.

APHIS agrees partially with this comment and has deleted § 113.98(b)(2)(ii), as initially proposed.

Finally, the comment noted that the implicit philosophy of the autogenous biologic proposal is that these are products for a limited situation. The comment suggests that some parameters are needed in order to avoid "perpetual" autogenous products in the absence of efficacy data. Some established framework needs to be used for developing the data on potency and efficacy which are lacking at the time that the autogenous license is issued. If these data are successfully generated and adequately documented, they may provide much of the foundation for the regular licensing of the product. The commenter further stated that if the data are not satisfactory, the manufacturer and the customers will not continue production of the autogenous product. In this way, a mechanism may be found to allow for the use of autogenous products as an interim step in the process of regular licensure.

In response to this comment, APHIS has included in the reproposal, provisions that would require that additional tests be performed after production of the first serial of product to determine purity, safety, and identification. After 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, such product would have to be tested for identification as to strain and/or serotype, antigenicity or immunogenicity, and potency under reproposed § 113.113(c). Moreover, since autogenous products are used in limited situations and are not subject to the same testing requirements as other licensed biologics, proposed § 112.7(m) is added to require that:

(m) All labels are autogenous biologics shall bear one of the following statements as appropriate:

(1) "Potency and efficacy of this product have not been established";

(2) "Potency of this product has not been established"; or

(3) "Efficacy of this product has not been established". APHIS believes that the inclusion of such information on the

labels would provide full disclosure of relevant information to potential users. It should be noted that these proposed labeling requirements are consistent with the requirements for the labeling of a conditionally licensed product.

Five additional comments requested that the time limit for use of the isolate be eliminated or increased from 12 to 24 or 30 months. In response to these comments, APHIS has reproposed § 113.113(c) which requires additional testing for use of the isolate after 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first.

Another comment requested that endemic bacterins be considered for licensure as autogenous biologics. The comment referred to such products as bacterins and killed vaccines made from old and new seeds isolated from the continuously changing fauna of animal pathogens. Such products are included under the reproposed autogenous regulations which no longer restrict use of the isolate to a finite length of time. Thus no change to the regulations is made in response to this comment.

Another comment requested that the isolate used for the preparation of autogenous biologics be identified as to genus and species; that the isolate be shown to be the causative agent of the disease symptoms; and that the firm demonstrate reasonable efficacy with the isolate. The comment stated that when a licensed product is ineffective, animal models are available for minimum efficacy testing. Further, the comment requested that data on efficacy be generated with controls; that uniform production of the autogenous product be established; and a conditional license be required for use of the product in non-adjacent herds and for use of an isolate after 12 months. Finally, the comment indicated that autogenous products are licensed for emergency use only and that products used to mitigate the effect of an infectious disease need to provide some indication that they will provide some degree of relief.

In response to this comment, APHIS has reproposed § 113.113(c)(2)(iii) requiring that microorganism(s) be identified to genus and species, in the case of bacteria, fungi, and mycoplasma or, in the case of viruses, at least to family after preparation of the first serial of product, if subsequent serials are to be produced. APHIS has also included in reproposed § 113.113(c)(2)(iv) a requirement of a reasonable expectation of efficacy in order to use an isolate older than 15 months from the date of isolation, or 12 months after the date of harvest of the first serial of product, whichever comes first. APHIS does not agree that a conditional license should be required for use of an autogenous product in nonadjacent herds. For such use, APHIS is requiring the data that is reproposed in § 113.113(a)(3). The new reproposed § 113.113(a)(3)(iii) requiring a summary of the epidemiology of the disease situation that links the designated geographic area with the herd of origin should establish the nexus to justify treating the nonadjacent herd with a product derived from the original microorganism. Additional testing of the isolate is required after the first serial of product as described above.

Fifteen oral comments were received at the public hearing that was held in Ames, Iowa, on August 23, 1990, to discuss the original proposed rule (Docket No. 89-200). Five of these comments were not incorporated into written comments that were received by APHIS. These five oral comments requested that the time limit on the use of an isolate be eliminated or extended to 24 months. The comments recommended that the emergency requirement for the use of autogenous products be eliminated when a disease is not being adequately controlled or when there is no substitute product available from a licensed facility. The comments also recommended that reisolation of the organism be eliminated because this will cause a disease outbreak in the herd. The comments further recommended that continued use of the isolate should be allowed if there is continued presence of the disease in the herd. Periodic updates would be made on a sound medical basis at the local level.

In response to these oral comments, APHIS reproposes § 113.113(a)(4) in which continued use of an isolate is permitted after 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, without reisolation provided that additional data requirements are met. These additional data requirements include the attending veterinarian's assessment of the continued involvement of a herd with the originally isolated microorganism(s), including a summary of the diagnostic work that has been done to support this assessment; evidence of satisfactory protection from the previous use of the autogenous biologic produced from the microorganism involved; and any other information that the Administrator may require in order to determine the need to use the microorganism to make additional serials.

Definitions

APHIS proposes the following definitions to be added to § 101.2: Administrator, Animal and Plant Health Inspection Service, Herd, Herd of Origin, Adjacent Herd, and Nonadjacent Herd.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this reproposed rule in conformance with Executive Order 12291 and have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individuals, Federal, State, or local government agencies, or geographic regions, and would 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.

Currently, the regulations provide than when authorization is obtained from the Administrator, an autogenous biologic can be used in an adjacent or non-adjacent herd, and organisms that are older than 12 months can be used to make an additional serial of an autogenous biologic. The regulations, however, do not specify the data that is required to be submitted in support of such authorization. The changes that are proposed in this document would codify the data that APHIS has been requiring when the Agency receives requests to use an autogenous biologic in an adjacent or non-adjacent herd. They would also specify that the use of autogenous biologics would be restricted to a veterinarian-client-patient relationship, and that additional testing would be required after production of the first serial of product in order to continue producing subsequent serials. The requirements in the reproposed rule to use organisms older than 15 months from the date of isolation, or 12 months from the date of harvest, whichever comes first, are intended to make the regulations for continued use of an autogenous biologic consistent with the requirements under the Virus-Serum-Toxin Act.

Thus, the effect of the reproposed rule is to codify in the regulations the type of data that the Agency requires in support of the above referenced requests by practitioners and licensees. The data that would be required to be submitted in support of such requests to use

autogenous biologics in herds other than the herd of origin are data that an applicant should already have readily available. Thus, there should be no additional cost in generating such data. For continued use of an isolate beyond 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, a firm would be required to generate data and information similar to that which is currently required for veterinary biological products when one is applying for a conditional license. Based on information supplied by APHIS' Veterinary Biologics Field Operations in Ames, Iowa, the current number of requests to produce an autogenous product beyond 12 months from isolation of the microorganism have been relatively few. Only about 20 out of some 8000 autogenous products produced each year are subject to such requests.

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.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in the reproposed rule will be submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to: (1) Chief, Regulatory Analysis and Developmental Staff, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, ORIM, USDA, Room 404-W, 14th Street and Independence Avenue, SW, Washington, DC 20250.

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).

List of Subjects

9 CFR Part 101

Animal Biologics

9 CFR Part 112

Animal Biologics

9 CFR Part 113

Animal Biologics

PART 101—DEFINITIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 101.2, all paragraph designations are removed and the definitions are arranged in alphabetical order. To reflect organizational changes within APHIS, the following definitions are added in alphabetical order to read as follows:

§ 101.2 Administrative terminology.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Herd. Any group of animals, including birds, fish, and reptiles, maintained at a common location (e.g. lot, farm or ranch) for any purpose. The herd (or flock) includes all animals subsequently housed at the common location. If the principal animals of a group are moved to a different location, the group is still considered the same herd.

Herd of origin. The herd from which the microorganism used as seed for production of an autogenous biologic is isolated. Offspring and excess breeding stock (not the principal animals) moved or sold from one group of animals to another have changed herds and are no longer considered part of the herd they originated from. Groups of animals under the same ownership but at different locations are separate herds.

Adjacent herd. Adjacent herds are herds physically contiguous to the herd of origin, that is, there are no herds between an adjacent herd and the herd of origin.

Nonadjacent herd. Nonadjacent herds are all herds other than the herd of origin and other than herds adjacent to the herd of origin. Herds adjacent to the herd of origin but in a different State from the herd of origin are also considered nonadjacent herds.

* * * * *

PART 112—PACKAGING AND LABELING

3. The authority citation for 9 CFR part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 112.7, paragraph (m) is added to read as follows:

§ 112.7 Special additional requirements.

* * * * *

(m) All labels for autogenous biologics shall bear one of the following statements as appropriate:

(1) "Potency and efficacy of this product have not been established",

(2) "Potency of this product has not been established", or

(3) "Efficacy of this product has not been established".

PART 113—STANDARD REQUIREMENTS

5. The authority citation for 9 CFR part 113 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

6. Section 113.113, is revised to read as follows:

§ 113.113 Autogenous biologics.

Autogenous biologics shall be prepared from cultures of microorganisms which have been inactivated and are nontoxic. Such products shall be prepared only for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship. Each serial of autogenous biologic shall meet the requirements in this section, and if found unsatisfactory by any prescribed test shall not be used.

(a) *Seed requirements.* The microorganisms used as seed for cultures used to prepare autogenous biologics shall be microorganisms which are isolated from sick or dead animals and which are judged to be the causative agent(s) of the disease affecting such animals.

(1) More than one microorganism isolated from the same herd may be used as seed.

(2) Under normal circumstances, microorganisms from one herd shall not be used to prepare an autogenous biologic for another herd. The Administrator, however, may authorize preparation of such autogenous biologic for use in herds adjacent to the herd of origin, when adjacent herds are considered to be at risk. The following information must be submitted to the Administrator (in c/o the Deputy Director, Veterinary Biologics Field Operations, 223 South Walnut Avenue, Ames, Iowa 50010) to request authorization to prepare a product for use in herds adjacent to the herd of origin. (If any of the data are available,

the applicant should indicate that such data are unavailable and why.)

(i) Name, address, and phone number of the owner of the herd of origin.

(ii) Attending veterinarian's name, address, and phone number.

(iii) Animal species and number in herd of origin.

(iv) Identification of microorganism(s), at last to genus.

(v) Diagnosis or clinical signs of the disease observed.

(vi) Name and address of the person who isolated the microorganism(s) and the date of isolation.

(vii) Number of doses of autogenous biologic requested and vaccination schedule.

(viii) Each adjacent herd owner's name, address, and phone number.

(ix) Number of animals and species in each adjacent herd.

(x) The attending veterinarian's assessment of the involvement of the adjacent herd(s) with the disease observed.

The applicant shall give notice to the State Veterinarian or other appropriate State Official in writing when an autogenous biologic is to be used in adjacent herds.

(3) The Administrator may authorize preparation of an autogenous biologic for use in herds which are not adjacent to the herd of origin, but which he or she considers to be at risk of infection with the same organism(s). Except as provided below, the same information which is required for preparation of such product for use in herds adjacent to the herd of origin must be submitted to the Administrator (in c/o the Deputy Director, Veterinary Biologics Field Operations, 223 South Walnut Avenue, Ames, Iowa 50010) for authorization to prepare a product for use in herds not adjacent to the herd of origin. Because the recipient herd involved may not be known when autogenous biologics are to be used in other geographic areas, the following data may be used in place of the data required in paragraphs (a)(2)(viii) and (a)(2)(ix) of this section.

(i) Names and addresses of practitioners in the area in place of the name, address, and phone number of the adjacent herd owner.

(ii) The geographic designations of the area involved.

(iii) A summary of the epidemiology of the disease situation that links the designated geographic areas with the herd of origin.

In addition, an applicant for authorization under this paragraph shall provide written approval from the State veterinarian or other appropriate State official in the State in which the autogenous biologic is to be used in nonadjacent herds.

(4) Under normal circumstances microorganism used for the production of autogenous biologics may not be older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism, whichever comes first. The Administrator, however, may authorize production of additional serials from such microorganisms, *Provided*, That, the person requesting such authorization submits the following supporting information:

(i) The attending veterinarian's current assessment of the continued involvement of a herd with the originally isolated microorganism(s), including a summary of the diagnostic work that has been done to support this assessment.

(ii) Evidence of satisfactory protection from the previous use of the autogenous biologic produced from the microorganism involved.

(iii) Any other information the Administrator may require in order to determine the need to use the microorganism to make additional serials.

(b) *Restrictions.* Unless otherwise authorized by the Administrator, each serial of an autogenous biologic shall be subject to the following restrictions:

(1) Microorganisms used to prepare autogenous biologics shall not be maintained in the licensed establishment beyond the time authorized for use in production.

(2) The expiration date shall not exceed 18 months from the date of harvest.

(c) *Testing requirements for autogenous biologics.* (1) Final container samples of completed product from the first serial or subserial of an autogenous biologic produced from an isolate shall be tested for purity as prescribed in § 113.26, and for safety as prescribed in § 113.33(b) or § 113.38 except that:

(i) When the number of final containers in a serial or subserial is 50 or less, two sample containers from each serial and subserial shall be tested as prescribed in § 113.26(b): *Provided*, That, 1 ml aliquots from each sample may be inoculated into five corresponding individual test vessels of each of the test media required.

(ii) Serials which are satisfactory after the third day of observation of purity test cultures and of safety test animals may be released for shipment to the customer and the tests continued throughout the required period; and

(iii) Serials released on the basis of satisfactory results of third day observations shall be immediately recalled if evidence of contamination occurs in test cultures or if any of the test animals used to demonstrate product safety sicken or die during the observation period.

(iv) Summaries of tests shall be submitted to APHIS in accordance with § 116.7 within 4 days after the completion of required testing.

(2) Each serial or subserial of autogenous bacterial product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.100 and the special requirements prescribed in this section. Each serial or subserial of autogenous viral product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.200 and the special requirements prescribed in this section. A serial or subserial found unsatisfactory by any prescribed test shall not be released.

(i) *Purity test.* Final container samples of completed product from each serial and subserial shall be tested for viable bacteria and fungi as provided in § 113.26. When the number of final containers in a serial or subserial is 50 or less, two final container samples from each serial and subserial shall be tested as prescribed in § 113.26(b): *Provided*, That, 1 ml aliquots from each sample may be inoculated into five corresponding individual test vessels of each of the test media required.

(ii) *Safety test.* Bulk or final container samples of completed product from each serial shall be tested for safety as provided in § 113.33(b) or § 113.38.

(iii) *Identification.* All microorganisms used for the production of autogenous biologics shall be identified as follows: Bacteria, fungi, and mycoplasma shall be identified at least to genus and species and viruses shall be identified at least to family. After 15 months from the date of isolation, or 12 months from the harvest date of the first serial of autogenous product produced from a microorganism, whichever comes first, characterization and identification shall be completed to strain and/or serotype before such microorganism may be used for production.

(iv) *Antigenicity or immunogenicity and potency.* Autogenous biologics

permitted to be prepared as prescribed in paragraph (a)(4) of this section, from cultures of microorganisms that are older than 15 months from the date of isolation, or 12 months from the date of harvest of the first autogenous serial produced from such cultures, whichever comes first, shall be tested as follows:

(A) Completed product shall be tested for antigenicity or immunogenicity in the species for which the product is recommended or in another animal species whose immunological response has been shown in the scientific literature to correlate with the response of the species for which the product is recommended. Such tests shall be conducted in accordance with a protocol developed by the licensee and approved by the Administrator and the results submitted to the Deputy Director, Veterinary Biologics, BBEP, APHIS, 6505 Belcrest Road, Hyattsville, MD 20782 for review. Microorganisms not shown to be antigenic or immunogenic by such approved tests shall not be used for the preparation of such product.

(B) Bulk or final container samples of completed product from each serial of such autogenous biologics containing fractions for which standard requirement potency test procedures have been established shall be tested for potency in accordance with applicable standard requirement potency tests provided in 9 CFR part 113. If the culture of microorganisms used to produce such fractions is shown to be of a different strain or serotype than the reagent or challenge microorganisms used in the standard requirement potency test, reagents or challenges of the same strain or serotype as the microorganism used for production may be used.

(C) If no standard requirement potency test procedures have been established for a fraction(s) in the autogenous biologic, such fraction(s) of each serial of product shall be tested for potency using a developmental potency test described in the filed outline of production or shall at least be standardized to contain an antigenic mass for such fraction(s) that has been shown to be antigenic or immunogenic in accordance with paragraph (c)(2)(iv)(A) of this section.

Done in Washington, DC, this 8th day of August 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-19208 Filed 8-12-91; 8:45 am]

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Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 90-007P]

RIN No. 0583-AB31

Removal of Piece Size Requirements and Packaging Limitations of Imported Fresh or Cured Meat and Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations by removing the restrictions that prohibit the importation into the United States of individual pieces or trimmings of fresh or cured meat smaller than 2-inch cubes or pieces of comparable size. Specifically, FSIS proposes to delete 9 CFR 327.3(b) (1), (2), (3), and (4) which contain the requirements for piece size restrictions and net weight limitations for packages of imported fresh or cured meat trimmings. FSIS also proposes to delete the reference to the 2-inch cube requirement in 9 CFR 327.21(a)(1), which states "Individual pieces or trimmings must not be smaller than a 2-inch cube or a piece comparable in size." Thus, this proposed amendment would allow meat products such as ground, diced and comminuted meats, meat patties and loaves, chopped steaks, sausages and other fresh or cured meat products in less than 2-inch cubes to be imported into the United States without any net weight restrictions. FSIS would continue to conduct all reinspection activities necessary to ensure that the imported meat products are wholesome, unadulterated, and properly labeled. In addition, the proposal would have no effect on Animal and Plant Health Inspection Service's requirements concerning meat products from disease-restricted countries.

DATES: Comments must be received on or before October 15, 1991.

ADDRESSES: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. G. Edward McEvoy, Director, Program, Development Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-8435.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

During 1989, the United States imported approximately 2 billion pounds of fresh meat (exclusive of head meat, tongue, and other edible organs) of which 1.4 billion pounds was beef/veal and 0.6 billion pounds were pork and lamb/mutton. Of the 2 billion pounds, 60 percent was manufacturing meat used in the production of products such as ground and diced meat and sausage items, while the remaining 40 percent consisted of products such as carcasses and wholesale/retail cuts. Due to increasing complexity of international trade and the many factors that could affect the domestic meat market, it is difficult to determine what meat products, if any, would enter U.S. commerce as a direct result of this proposed rule. Thus, it is difficult to accurately assess the economic impact. Accordingly, FSIS seeks comments from interested parties on what type of meat products would enter the United States as well as data on the economic impact of this proposed change. However, the Administrator has examined some of the key factors concerning meat imports and the U.S. meat industry, and has initially determined that the proposal is not a "major rule" under Executive Order 12291 and will not 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 effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in foreign or domestic markets. This determination was based on the following:

Share of the U.S. Meat Market by Imports is Small

In 1989, U.S. imports of fresh meat totaled 2 billion pounds and U.S. meat production consisted of 39.6 billion pounds. With a total U.S. meat supply of 41.6 billion pounds, imports represented about 4.8 percent of this amount; a figure that has increased by only 1.7 percent since 1974.

Quantitative Limits on Imports of Fresh Meat

The U.S. government imposes access barriers on imported fresh meats through the Meat Import Act of 1964, as amended in 1979 (Pub. L. 96-177). This Act subjects beef, veal, mutton and goat imports to tariffs, an annual import

quota and, when necessary, voluntary restraint agreements. In addition to the Meat Import Act, the U.S. government imposes countervailing duties on imported products when it is determined that such product is subsidized by the exporting country. Countervailing duties, which usually are equal to the subsidy funded by the exporting country, are currently assessed on pork from Canada and lamb from New Zealand. As a result of the Meat Import Act and U.S. countervailing duties, the U.S. meat industry becomes more competitive with imported meat products, thus possibly minimizing any potential economic impact that may be caused by the proposed rule.

Increase in Imports of Fresh Meat Would Appear to be Insignificant

A. During 1989, imports of fresh beef (1.4 billion pounds) constituted nearly 70 percent of the 2 billion pounds of fresh and cured meat imported into the United States. Ninety-eight percent of the beef imports originated in five countries and was primarily grass-fed, boneless beef which usually has a narrow, well-defined U.S. market and is not competitive with U.S. grain-fed, high quality beef. This marketing constraint centers around the limited utility of grass-fed lean meat, which requires further processing to produce a product which would be considered marketable in the United States. For example, the adding of grain-fed beef to raise the fat level of grass-fed beef is usually necessary to produce an acceptable ground beef product. Even though Australia, which represents nearly 50 percent of U.S.'s imported fresh beef, has increased production of the grain-fed beef from 120,000 head in 1981 to about 600,000 in 1990, none of this product has been marketed or is intended to be marketed in United States.[1]

B. An increase in imports of boneless beef would be possible as smaller pieces of meat, e.g., wizard knife trimmings, would be acceptable under the proposed rule. However, considering that trimmings of this nature usually amount to a negligible percentage of the total carcass weight, this additional product would seem to have little impact on the U.S. meat industry.

C. Of the three major types of meat imported into the United States (beef, pork, and lamb), it could be argued that an increase in U.S. imports of fresh pork and lamb is more likely than an increase in beef imports since these products are not subject to the Meat Import Act and they are comparable to U.S. products in quality and market acceptability. However, imports of fresh/cured pork (571.1 million pounds) and fresh lamb/mutton (44.9 million pounds) during 1989 represented only 31 percent of the 2 billion pounds of U.S. fresh/cured meat imports and only 1.5 percent of the total U.S. meat supply (41.6 billion pounds). Furthermore, 80 percent of the fresh/cured pork and 32 percent of the fresh lamb/mutton were imported into the United States from countries (Canada and new Zealand, respectively) currently subject to U.S. countervailing duties.

D. Ground meat appears to be the most likely type of fresh meat product to be imported into the United States as a result of the proposed rule. This assumption is based on the size of the U.S. market for ground beef (over 40 percent of the total beef consumption) and past requests to waive packaging size limitations for imported ground meat. However, the duty is higher on processed products (e.g., ground beef) than on boneless meat. In addition, ground beef accounts for only 12.6 percent (5 billion pounds divided by 39.6 billion pounds) of the total U.S. meat production.

E. Coarse ground beef from Australia, New Zealand and other grass-fed beef producers could be seen by some importers as a higher value item; i.e., a more homogeneous product commanding a few cents more per pound than boneless beef. However, (1) the utility of coarse ground beef produced from these countries is similar to that of boneless beef, i.e., dependent upon being mixed with fat beef trimmings to produce a marketable ground beef product; (2) there is a higher duty on processed meat than boneless meat; and (3) coarse ground meat usually has a limited end-item usage and a shorter shelf life than boneless meat. Therefore, any potential market of foreign coarse ground beef in the United States, due to the proposed rule, would probably be negated by these deterrents.

The proposed rule would allow certified establishments in countries eligible to export meat products to the United States to ship, in any size package, fresh or cured meat products of less than 2-inch cubes into U.S. commerce. While the Agency believes that this action could lead to an increase in the share of the U.S. meat market held by foreign producers, it also could be an effective means of encouraging competition and assuring fair prices for U.S. consumers.

The proposed rule would also ease the reinspection burden on the Agency and importing industry by reducing the reinspection time at U.S. ports-of-entry because import inspectors would not be required to determine whether certain imported meat products meet specific piece size and net weight requirements. It should be stressed that the proposed rule will in no way diminish or compromise FSIS's role in ensuring that imported product complies with all other U.S. inspection requirements.

Effect on Small Entities

In examining the small entities in the U.S. meat industry, it appears that one group which may be affected by this proposed rule would be the ground beef processors who depend upon imported manufacturing meat for their grinding operations. Accordingly, this proposal could decrease the amount of manufacturing meat imported into the United States if the U.S. market demands imported ground beef and the import quota levels remained the same. However, because of the marketing constraints and higher duty applicable to imported ground beef, it is unlikely that there would be a decrease in manufacturing meat, thus resulting in a negative effect on U.S. ground beef processors. In addition, the Agency believes that the proposed rule could have a positive effect on U.S. companies if other countries follow the United States' lead on this restriction and remove the 2-inch cube requirement. This could result in an increase in the export market for U.S. produced ground beef and other processed meat products.

Therefore, the Administrator has made an initial determination that the proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Comments

Interested persons are invited to submit written comments concerning the proposal. Written comments should be sent to the FSIS Hearing Clerk and should refer to Docket Number 90-007P. All comments submitted in response to the proposal will be available for public inspection in the Policy Office, Room 3171, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC, between 9 a.m. to 12:30 p.m. and 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et*

[1] Farmline; U.S. Department of Agriculture, ERS; Volume XI, Number 10, October 1990.

seq.), the Secretary of Agriculture is responsible for administering the programs which ensure that meat and meat food products (including imports) distributed to consumers are wholesome, not adulterated, and properly marked, labeled and packaged. The Secretary of Agriculture has delegated to the Administrator of FSIS the authority to issue regulations which will ensure compliance with the requirements of the FMIA. Accordingly, the Federal meat inspection regulations contain requirements applicable to the importation of meat and meat food products into the United States (9 CFR part 327).

Section 9 CFR 327.3(b) of the Federal meat inspection regulations prohibits the importation into the United States of ground, diced, and comminuted meats; meat patties and loaves; sausages and other fresh or cured meat products or trimmings that consist of components smaller than 2-inch cubes or pieces comparable in size. However, such processed products may be imported provided they are in packages meeting certain net weight requirements, i.e., not more than 3 pounds net weight for ground, diced, and comminuted meats; not more than 10 pounds net weight for patties, loaves, chopped steaks and similar type products; and suitable retail size packages for sausages and canned meat.

The FSIS proposes to amend 9 CFR part 327 of the Federal meat inspection regulations to remove these restrictions in response to petitions submitted by Alsmeyer Food Consulting, Potomac, Maryland, in 1988 and 1989, and requests made by the Australian government at meetings with FSIS in September 1989, and April 1990. Alsmeyer Food Consulting requested that the regulations be amended to allow the importation of ground lamb packaged in 5-pound and 25-pound containers and diced lamb meat in 5-pound containers. The Australian government requested that the regulations be amended to remove the restrictions to import meat food products described in 9 CFR 327.3(b). The Australian government stated that it maintains an inspection system using "equal to" quality assurance programs to ensure that small pieces of meat meet U.S. standards regardless of the size of the package. Since these meat food products are inspected in Australia and data are available to verify that these products meet U.S. standards, the present restrictions on importation constitute a non-tariff trade barrier because there are no similar restrictions on these products produced in the United States.

Piece size restrictions for imported meat products were enacted as early as 1922 when the Federal meat inspection regulations stated in part that, "no meat trimmings in pieces too small to permit of adequate inspection upon arrival shall be admitted into the United States." (BAI order 211 rev., September 1, 1922.) It is believed that inspection procedures at the time were lacking the sophistication needed to detect unwholesome or unadulterated product if the meat pieces were too small. In 1970, the regulations were revised by retaining the 1922 requirement and adding the limitation that pieces or trimmings of imported meat could not be smaller than 2-inch cubes or pieces comparable in size (35 FR 15610). The 1970 rule change also added exceptions to the rule which permitted the importation of pieces of meat smaller than 2-inch cubes provided they were packaged in sizes suitable for retail sale. Because these exceptions have been in effect since 1970 without incident, FSIS believes that removing the 2-inch cube rule will not provide the U.S. meat industry or consumers any basis for concern about the safety or integrity of imported meat products.

In 1979, regulations were implemented which changed the basic principles of the import inspection program. Prior to this regulatory change, the import inspection program focused on the performance of individual foreign plants. The current program employs the "systems approach" which assesses the effectiveness of a foreign government's inspection system and holds that government primarily responsible for assuring that establishments exporting product to the United States fully comply with inspection standards and controls "at least equal to" those of the United States. This is accomplished through two major activities: (1) A review of documentary information which provides initial determination of a foreign country's eligibility to export product to the United States, and (2) continual oversight to assure that a country maintains a system of inspection controls at least equal to that of the United States. FSIS examines the laws and regulations governing the country's inspection system for equivalency to U.S. standards and requires a foreign country to respond to a series of questionnaires which focus on its inspection system in five major risk areas (residue control, prevention of diseased meat, processing, contamination, and compliance/economic fraud). If the information proves to be satisfactory, FSIS performs an on-site review to evaluate all aspects of the country's inspection operations. When this review is satisfactorily concluded, rulemaking is undertaken to certify that the country is eligible to import meat and/or poultry products into the United States. The country's meat inspection officials then may certify individual plants as meeting U.S. standards. Only after such certification is received by FSIS may these plants export product to the United States.

Once a country is certified, FSIS monitors its import inspection program through a continuing oversight function to assure that the foreign inspection system maintains the "at least equal to" requirements. This includes quarterly or semiannual on-site reviews of the foreign inspection system, and reinspections of a sample of foreign meat products at U.S. port-of-entry locations. The latter function is directed by a computerized system (Automated Import Information System) which stores daily reinspection results and uses the data to establish a performance-based sampling frequency for products presented for importation. A country's eligibility status may be revoked whenever the Administrator determines that the foreign inspection system does assure compliance with "at least equal to" requirements. At that point, rulemaking is again undertaken to withdraw the country's eligibility to import meat into the United States. With the implementation of the "systems approach," FSIS has been able to operate a more effective import inspection program by emphasizing that foreign governments and producers have primary responsibility for ensuring product to be exported to the United States complies with U.S. requirements.

In the last decade, technological advancements in meat inspection, such as analytical testing, have further increased the efficiency and effectiveness of the import inspection program. For example, the species identification field test (SIFT) has provided the Agency with a rapid means to screen ground, comminuted and similar types of fresh meat products for economic adulteration. As a result, SIFT has been highly successful in verifying the effectiveness of foreign inspection systems as well as safeguarding consumers from incorrectly labeled meat products.

Partial quality control (PQC) programs have also proven to be beneficial in verifying the effectiveness of foreign inspection systems. As part of FSIS's label approval process, a foreign establishment must have an approved

PQC program in place before certain meat products (e.g., mechanically separated products) can enter U.S. commerce (9 CFR 319.5(c)(2)). PQC programs, which are systematic procedures describing the stages of preparation of a product, are designed to hold processors accountable for the compliance of that product with the requirements of the Federal Meat Inspection Act and the regulations promulgated thereunder. Similar programs are used to ensure that boneless meat complies with U.S. requirements before grinding. These PQC programs allow FSIS to operate a more effective import inspection program by placing more responsibility on foreign governments and producers.

FSIS concludes that with the implementation of the "systems approach", the modernization of inspection techniques, and the effectiveness of PQC programs, there is no longer a need to restrict the importation of pieces of meat smaller than 2-inch cubes into the United States. Therefore, FSIS is proposing to amend 9 CFR part 327 of the Federal meat inspection regulations by deleting the piece size and packaging size limitations applicable to imported fresh or cured meat products.

List of Subjects in 9 CFR Part 327

Imported products; Meat inspection; Packaging and containers.

For the reasons set forth in the preamble, part 327 of the Federal meat inspection regulations would be amended as set forth below:

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 327.3 [Amended]

2. Section 327.3 would be amended by requiring paragraph (b) and redesignating paragraph (c) as (b).

§ 327.21 [Amended]

3. Section 327.21 would be amended by removing the second sentence of paragraph (a)(1).

Done at Washington, DC, on June 28, 1991.

R.J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 91–19207 Filed 8–12–91; 8:45 am]

BILLING CODE 3410-DM-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Computer Programming, Data Processing and Other Computer Related Services

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to increase to a uniform level, the size standards for all industries in industry group, "Computer Programming, Data Processing, and Other Computer Related Services Industries." There are nine industries in this group, and they are proposed to have a common size standard of $14.5 million in average annual receipts or, as an alternative 150 employees. The current size standard is $7 million for six of these industries and $12.5 million for the three others. This action is being proposed to establish the same size standard for all industries in the group and to better define small business.

DATES: Comments must be submitted on or before October 15, 1991.

ADDRESSES: Send Comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, SW.—5th Flr., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray or Harvey D. Bronstein, Economist, Size Standards Staff, tel. (202) 205–6618.

SUPPLEMENTARY INFORMATION: The structure of SBA's size standards in the Computer Programming, Data Processing and Other Computer Related Services Industry Group (Standard Industrial Classification (SIC) Industry Group 737 composed of SIC codes 7371–7379) has been a subject of increased concern in recent years as a greater number of Federal purchases have been awarded in this category. At the same time that the Federal government has expanded its contracting in these areas, new industries have been created which have resulted in classification uncertainties. The following table illustrates these changes; it lists revisions in industry group 737 (hereafter referred to as the computer service industries) that occurred in the 1987 SIC revision that took into account technological and institutional changes in industry structure since 1977.

TABLE 1.—RELATION OF 1977 TO 1987 COMPUTER SERVICES INDUSTRIES

1977 Industry		1987 Industry	
SIC code	Short title	SIC code	Short title
7373	Computer Programming and Software ($7.0M)	7371	Custom Computer Programming Svs. ($7.0M).
		7372	Prepackaged Software ($7.0M).
		7373	Computer Integrated Systems Design ($7.0M).
7374	Data Processing Services ($7.0M)	7374	Data Processing and Preparation ($7.0M).
		7375	Information Retrieval Services ($7.0M).
		7376	Computer Facilities Management ($7.0M).
7379	Computer Related Services, NEC. ($12.5M)	7377	Computer Rental & Leasing ($12.5M).
		7378	Computer Maintenance & Repair ($12.5M).
		7379	Computer Related Services, NEC ($12.5M).

NOTE: Size standards in parenthesis.
SOURCE: Standard Industrial Classification Manual, 1987.

Instead of three computer service industries, there are now nine industries with much expanded descriptions and numbers of subcategories for each new industry. The expansion in codes has been associated with increased uncertainty in the classification of contracts, and therefore, with the size standards associated with these contracts. This is because multiple services associated with a single Government contract receives one SIC designation (and one size standard) which best matches the principal purpose of the procurement and the industry description. With two size standards ($7.0 million and $12.5 million) commonly covering the various services procured in a single government contract, classification problems commonly arise for computer services.

As can be seen from this table, firms in the computer services industries are subject to varying small business definitions, either $7.0 million or $12.5 million depending on the specific industry in which they engage. This situation has led to confusion for small businesses in terms of their eligibility for SBA assistance. This occurs because it is common for a computer services firm to operate in more than one industry. For example, a firm may be active in programming (SIC code 7371), data processing (SIC code 7374), and computer consulting (SIC code 7379). The first two industries have a $7.0 million size standard; the last is $12.5 million. A firm of $10 million in revenues would be eligible to bid on a set-aside procurement in computer consulting, but would be ineligible because of the lower size standard of $7.0 million to bid on a set-aside procurement in either programming or data processing services. It has come to SBA's attention that this is a problem for firms in these industries. For these reasons, SBA is reexamining the appropriateness of having different size standards for industries within the entire computer services industry group as well as reexamining the appropriate level of these industries' size standards.

Factors Influencing the Size Standard Decision Process

When examining a size standard, SBA considers a number of specific factors characterizing industry structure, such as: industry competition, average firm size, entry barriers related to start-up costs, distribution of firms by size and impact on SBA's programs. A brief review of each factor and its relationship to SBA's size standards follows:

As an indicator of industry competition, SBA first looks at competition within the industry as measured by the share of industry sales controlled by the producers above a certain size. If an industry's output is controlled by relatively large firms, especially when compared to other similar industries, the influence of this factor is to move the size standard upward. The result is to provide assistance to firms in a broad range of sizes that are competing with dominant firms in an industry. If an industry's output is more evenly distributed, however, SBA tends to set a lower size standard to assist relatively small firms.

Average firm size is the second factor considered by SBA. For equity reasons, SBA tends to set high size standards in industries with high average firm size and low size standards in industries with low average firm size. Average firm size can be expressed in terms of receipts or employees, but the usual pattern is to compare industries by average receipts per firm if a receipts-based size standard is being evaluated and average employment per firm if an employee based size standard is under review. For the computer services industries, therefore, average receipts will be the unit of comparison for average firm size since their size standard(s) are expressed in receipts.

Indexes of start-up costs are the third factor to evaluate size standards. High start-up costs act as an entry barrier to new entrants into an industry, because potential entrants must have sufficient capital to start a business. These costs often extend beyond expenditures on production equipment and the physical establishment itself, to include overhead equipment, marketing, research, distribution and follow-up services. High average start-up costs within an industry suggest the need for a relatively high size standard, while low average start-up costs are usually associated with low size standards.

The fourth factor—firm size distribution—evaluates the proportion of industry sales, employment and other economic activity accounted for by firms of different sizes within an industry. For example, if the preponderance of an industry's output is by the smaller firms, that is, those at the low end of the distribution, this would tend to support a lower size standard. The opposite would be the case for an industry in which firm size distribution indicates that a significant portion of industry output is controlled by large firms.

The fifth factor considers the impact on SBA's programs of a size standard revision. While virtually all of SBA's programs can be affected by changes in a size standard, the greatest impact usually occurs to the two preference programs relating to the procurement of prime contracts—the small business set-aside program and the SBA's 8(a) program for minority small businesses. Size standard revisions impact on these programs by affecting the eligibility of firms and their ability to expand output without losing eligibility.

Evaluation of Factors

Tables 2 through 5 present data on the five factors discussed above. The implications of industry structure on the computer services industries' size standard are also presented.

Table 2 compares the computer services industries with other service industries based on two factors—economic competition (measured here by the share of industry sales generated by firms with $25.0 million or more in receipts) and average firm size within the industry (measured by average annual sales per firm). This table specifically compares the computer services industries with all other industries in Major Group 73 (Business Services) and those service industries in the two-digit major group with a 7 prefix aggregated together. The SIC codes in the 7371–7376 group of industries are set off from SIC codes 7377–7379 group, since the first group of industries has a lower size standard ($7.0 million) than the second group of industries ($12.5 million) and performs activities more closely related to programming and software.

TABLE 2.—COMPUTER SERVICES CONTRASTED WITH OTHER SERVICE INDUSTRIES BY COMPETITION AND AVERAGE FIRM SIZE

SIC	Description	Percent of receipts by firms with $25.0 million or more in sales (measure of competition)	Average firm size in annual receipts 1987 data (in millions of dollars)
737(all)	Computer programming, data processing Svs. and other commuter related services.	58.8	$1.6
7371-7376	Computer programming, software, design and data processing Svs	53.9	1.7
7377-7379	Computer rental and leasing, maintenance and related service, NEC	68.1	1.3
7371	Computer programming services	43.2	1.0
7372	Prepackaged software	51.9	2.0
7373	Computer integrated systems design	51.0	2.3
7374-7375	Computer processing, information retrieval	63.1	2.5
7376	Computer facilities management	46.5	2.4
7377	Computer rental and leasing	55.1	2.3
7378	Computer maintenance and repair	76.0	2.4
7379	Computer related services, NEC	34.0	.6
All SIC 73 industries, except 737 group	Business services	29.6	.7
All SIC 70-79 industries, except 737 group	Primarily business, personal, entertainment, and repair services	29.1	.5

Source: 1987 Census of Service Industries, U.S. Bureau of the Census.

It is clear from Table 2 that economic activity in the computer service industries is more concentrated than in most service industries. Every computer services industry has a higher share of sales by firms of $25.0 million or more in sales than either the 73 industry group or all of the service industries with a 7 prefix averaged together. In general, these percentages are very high, ranging from 43 percent to 76 percent among the specific industries. These market share figures suggest, in isolation, the need for relatively high size standards in the computer services industries.

Table 2 also compares the computer services industries by average firm size. It is clear that the computer services industries are comprised of larger firms on average than most business service industries, as well as the personal, repair and entertainment service industries. In general, the computer services industries average about 3 or 4 times the size of other service-related industries, a factor which argues for relatively high size standards in the computer services industries.

Both of the indexes related to average firm size and concentration listed in Table 2 suggest the need for relatively high size standards in the computer services industries. However, there are three other key factors which SBA reviews when appraising size standards. These include entry barriers related to start-up costs, the distribution of firms and their output by size of firm, and the overall effect of SBA's programs of changing the size standard.

Table 3 compares computer services industries with business services and all industries in Division I (Services) for start-up costs using estimated capital requirements based on the Internal Revenue Service's depreciation data. Table 3 indicates that computer services industries have greater capital requirements relative to sales than most business service industries, as well as all service industries aggregated together.

TABLE 3.—CAPITALIZATION INDEXES FOR COMPUTER SERVICES CONTRASTED WITH BUSINESS SERVICES AND ALL SERVICES (SOLE PROPRIETORS)

Receipts	Business receipts (000)	Depreciation (000)	Ratio of business receipts to depreciation	Average size in receipts	Estimated capital requirement per firm (1981 dollars) [1]
Computer Services	$417,626	$35,749	11.7	$1.60M	$1.38M
Business Services	14,158,263	801,168	17.7	.70M	.48M
Services (All)	83,289,968	4,017,261	20.7	.50M	.24M

Source: Internal Revenue Service 1981 Business Proprietorship: Business Receipts, Selected Deductions, and Net Income by Industry.
[1] Assumes depreciated assets are 10 percent of total.

These differences in capital requirements become even greater when size of firms is considered. For computer services firms in general, the combination of greater output levels and a higher capital component relative to output, results in estimated capital requirements for the computer services firms of about 3 to 4 times the level of business services in general and almost six times the level of all services. Thus start-up cost requirements for the computer services industries tend to reinforce the two previous indicators suggestion that a higher size standard is needed.

The fourth factor to be considered in setting size standards is the distribution of receipts bases on size of firm. Table 4 lists the percent of receipts within computer services and other service industries for two size breaks—$3.5 million (the anchor size standard for the service and retail trade industries) and $14.5 million (the proposed size standard). This table shows a much lower percentage of computer services sales falling under these breaks than among other service industry groups. Even at a $14.5 million size standard break, the proportion of sales attributed to firms under the size standard for computer services is less than the proportion of sales at the $3.5 million size standard break for noncomputer related service industries. Findings such

as these reinforce the argument for relatively high size standards for computer services.

TABLE 4.—COMPUTER SERVICE INDUSTRIES CONTRASTED WITH OTHER SERVICE INDUSTRIES BY SHARE OF SALES BELOW SELECTED SIZE BREAKS

SIC CODE	Percent of receipts for firms below selected size standard breaks	
	Size receipts	
	$3.5M	$14.5M
737 (All)	19.5%	35.9%
7371-7376	20.0	36.6
7377-7379	15.5	33.1
7371	25.7	43.8
7372	20.4	39.6
7373	20.8	38.9
7374-7375	14.3	27.7
7376	18.0	38.9
7377	14.6	32.1
7378	12.3	19.7
7379	46.7	73.4
All 73 industries, except the 737 group	43.4	61.1
All SIC 70-79 industries, except 737 group	49.3	63.2

Source: 1987 Census of Service Industries, U.S. Bureau of the Census.

The fifth and final factor to be considered is the impact of the proposed size standard revision on SBA's programs, particularly the preference programs relating to Federal procurement. In the case of computer services, it is claimed that there has been a broad-based pattern in which contracting agencies have included in computer service contracts products that, viewed in isolation, would be listed under other industries. Some examples of these items include: Computer hardware, computer peripherals, communication equipment, construction-related activities and telephone communications. The size standards for these activities vary from $17.0 million for general contracting to the 500 to 1,500-employee range for the manufactured products industries and telephone communications—size standards much higher in real terms than the present size standard range of $7.0 million to $12.5 million for the computer services industries. SBA has attempted to monitor closely the industry classification of computer services procurements to forestall the misclassifying of computer services procurement solicitations into industries with higher size standards, but this effort, in turn, limits contracting agencies to size standards that often are viewed as too small for the size and sophisticated technology associated with computer services contracts.

Table 5 lists prime contracts during FY 1989 by computer services industries and by the major service groups for all contracts and those in excess of $500,000 and $1,000,000. This table confirms the general perception that contracts in the computer services industries are usually larger than contracts for other services. Both the percent of contracts which exceed $500,000 and $1.0 million are appreciably higher in the computer services industries than for other business services as well as the aggregation of other business, personal, repair, and entertainment services under Major Groups 70 to 79. Of significance, larger contracts are most common in the SIC codes 7371-7376 group of computer services industries in which contracting and SIC classification problems have been most in evidence. This argues for a relatively high size standard since firms of more modest size are likely to be unable to satisfy Federal contracting requirements.

TABLE 5.—FEDERAL PRIME CONTRACTS BY SIZE OF CONTRACT FOR THE COMPUTER SERVICES INDUSTRIES

[Fiscal year 1989]

Code	Description	Total prime contracts	Contracts in excess of $500,000		Contracts in excess of $1.0 million	
		Number	Number	Percent	Number	Percent
7371	Computer programming svs	1,983	281	14.2	127	6.4
7372	Prepackaged software	2,408	183	7.6	87	3.6
7373	Computer integrated systems design	961	154	16.0	88	9.2
7374	Data processing and preparation	1,428	158	11.1	75	5.3
7375	Information retrieval services	177	11	6.2	3	1.7
7376	Computer facilities management	428	81	18.9	49	11.4
7377	Computer rental and leasing	860	62	7.2	34	4.0
7378	Computer maintenance and repair	4,515	205	4.5	81	1.8
7379	Computer-related service, NEC	4,792	495	10.3	215	4.5
737 (All)	Computer and data processing	17,552	1,650	9.4	759	4.3
7371-7376	Computer programming, software, design and data processing svs.	7,385	868	11.8	429	5.8
7377-7379	Computer rental and leasing, maintenance and relates svs., NEC.	10,167	762	7.5	330	3.2
All SIC 73 industries, except the 737 group.	Business services	8,253	659	8.0	282	3.4
All SIC industries 70 to 79, except the 737 group.	Primarily business, personal, repair and entertainment svs.	12,652	851	6.7	381	3.0

Source: Federal Procurement Data System.

Review of Factors

Five factors affecting industry structure and SBA programs were evaluated for this rule. These included: (1) Industry competition (measured by the percent of receipts in an industry) (2) Average firm size in receipts in an industry, (3) start-up costs (measured by depreciation), (4) distribution of receipts by size of firm (measured by sales share within an industry of firms below

certain size thresholds), and (5) program impact (measured by the percent of Federal contracts larger than $5 million and $1.0 million). The relationship of the compute services industries to business services and other service industries using these factors is summarized in Table 6.

TABLE 6.—SUMMATION OF FACTORS

Factor	Finding	Implication
Degree of competition in the industry as measured by the percent of receipts to firms of $25.0 million or more in receipts.	The computer service industries are dominated by large firms to a much greater extent than either the business service industries or the service industries in the "70" Group of SIC codes.	A higher size standard is warranted for the computer service industries than for most service industries.
Average firm size in an industry as measured in receipts.	Average firm size in the computer service industries is twice that of other business services and three times that of all services in the "70s" group.	High average firm size suggests that a relatively high size standard is warranted for the computer service industries.
Start-up costs measured by average capital requirements per firm in an industry.	The computer service industries have significantly higher capital requirements than most service industries.	High start-up of costs indicate, in isolation, that the computer service industries should have relatively high size standards.
Distribution of receipts by size in an industry as measured by the percent of sales by firms below certain size thresholds.	The computer service industries have significantly lower proportions of sales by firms below certain standardized size thresholds than most service industries.	A low proportion of receipts among smaller firms suggests the need for a higher size standard for the computer services industries.
Program impact as measured by the proportion of Federal contracts in industries that exceed $0.5 million and $1.0 million in size.	The computer service industries generally have higher proportions of large contracts than most service industries.	High contract size argues for a relatively high size standard for the computer service industries.

Determination of Size Standard

The prior discussion has indicated the need for a higher size standard for the computer services industries. A number of factors argue specifically for a $14.5 million average annual receipts size standard.

First, as shown in Table 2, average firm size in computer services is as much as five times higher than it is in services in general. Within the service sector, the computer services industries have some of the highest average firm sizes. Compared to business services, it is as much as 3½ times higher. Specifically, for Computer Facilities Management, average firm size is five times greater than for all services; for Computer Integrated Systems it is four times greater. These data are reproduced below in Table 7.

TABLE 7.—AVERAGE FIRM SIZE

SIC	Industry	Size standard	Average firm size
I	All Services	$3.5M	$0.5M
73	Business Svs.	3.5M	0.7M
737	Computer Svs.	7.0M or 12.5M	1.6M
7373	Comp. Integr. Sys	7.0M	2.3M
7374	Data Processing	7.0M	2.5M
7376	Computer Facil. Mgmt.	7.0M	2.4M

The most common size standard for the service industries is $3.5 million, the anchor size standard for the service industry division. However, since average firm size in computer services is significantly greater than it is in comparable industries, a higher size standard seems appropriate. A five-fold increase in the size standard, based on the $3.5 million anchor, would suggest a $17.5 million size standard. A three to four times increase equates to about $12 million. As the average firm size in the computer services industries is nearly four times that of other services industries, a size standard in this range—$12 million to $17.5 million—would achieve comparability between computer services and other services for this factor.

Second as can be seen in Table 2, a higher percentage of industry sales is accounted for by larger firms in computer services than in services in general or in business services. Using $25 million as a measure to evaluate the degree of concentration in the service industry, 29% of sales in all services are accounted for by firms with annual sales of more than $25 million. By contrast in computer services 59 percent of industry sales are by firms above $25 million.

In some computer services industries, the share of sales by large firms is even greater. For example in computer maintenance and repair, 76 percent of sales are by large firms; in computer processing the figure is 63 percent. Because of the level of concentration of sales by larger firms in computer services, a higher size standard appears justifiable.

Third, start-up costs also indicate the need for a higher size standard. As shown in Table 3, the estimated capital requirement for computer services is much higher than for business services or for all services. Compared to business services, computer services start-up costs are more than twice as great. Compared to all services, they are more than five times as great. Viewed in isolation, this factor would indicate a size standard range of between $7 million (twice as great as the anchor) to $17.5 million (five times as great).

Fourth, data on Federal contract size show that in the computer services industries, there is a higher proportion of large-size contracts that in business services or in all services. This is detailed in Table 5. It shows that in some computer services industries, there are twice as many large-size contracts. In part this is due to the requirement that equipment must often be supplied in conjunction with the provision of computer services, a factor which has

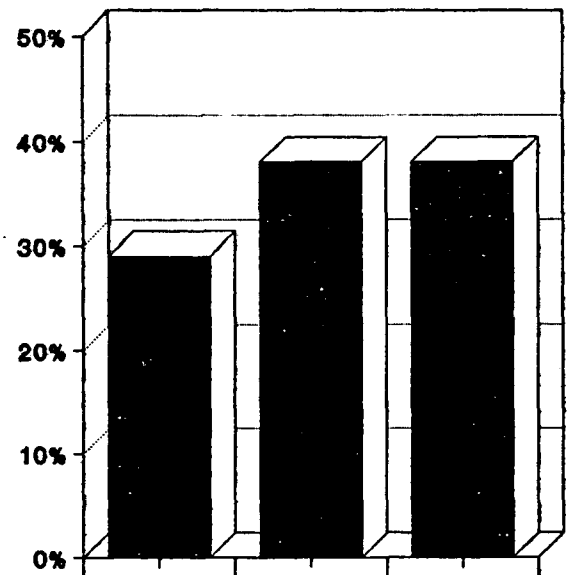
become more common over time in Federal procurement.

For example, while only 8 percent of business services contracts are greater than $500,000 in value, 16 percent of computer integrated systems contracts fall in this range. Almost 19 percent of computer facilities management contracts exceed $500,000. This factor indicates that a higher size standard is warranted in computer services. A higher size standard would also lessen the likelihood of a firm exceeding the size standard because of a single large contract. Fifth, another aspect of firm size distribution is the percent of sales which fall within an existing or proposed size standard.

While not a goal in itself, these coverage rates can be used as a guide in selecting a proposed size standard and in considering the impact of a size standard.

As a general rule, similar industries should be roughly comparable in terms of the percent of sales generated by firms below the size standard. For both business services and for small business as a whole, 38 percent of industry sales are covered under the size standards. [see Chart A]. For computer services, however, the coverage under the existing size standards is only 29 percent of industry sales. A higher size standard for computer services provides closer comparability with other industries. Some alternatives and their respective sales coverage rates are presented in Chart B.

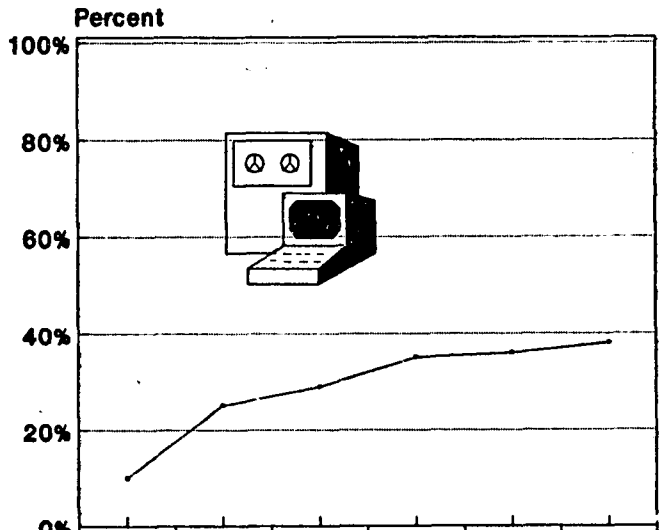
CHART A
Small Business Coverage Under Current Size Standards



	Comp. Svcs	Bus. Svcs	Sm. Bus.
Percent Sales	29%	38%	38%

Percent Sales

Chart B
Computer Services Industries
Cumulative Distribution of Sales by Size



	$1M	$5.0M	$7.0M	$12.5M	$14.5M	$17M
Sales	10%	25%	29%	35%	36%	38%

Firm Size

Sales

To sum up, SBA is proposing a $14.5 million size standard to better reflect the industry's structure of the computer services industries and to reflect program needs. SBA is also proposing a 150-employee size standard as an alternative size standard as discussed below.

Employee-Based Size Standard

SBA is considering a 150-employee standard as an alternative to a $14.5 million size standard. (A receipts-based size standard would not be used.) In part this would be desirable because a computer service firm's size is sometimes distorted by passing-through equipment from manufacturers for the convenience of their customers. This is thought to be a very common practice in Federal procurement.

For example, consider two computer service firms, each with 50 employees. On average, both firms normally generate $5 million in annual sales. However if one firm were also required in a contract to furnish computer equipment, this would increase its size if measured in dollars with little associated increase in work performed. In effect the firm is acting as a wholesaler as well as a service firm and the wholesale component of its activities inflates its receipts.

Table 8 shows how the proposed $14.5 million size standard equates to 150 employees using an average receipt per employee level of $96,890.

TABLE 8.—CONVERSION OF RECEIPTS TO EMPLOYEES COMPUTER SERVICE SIZE STANDARD

A. Industry Receipts 1987 (millions).	$54,099,096.
B. Inflation 1987-90	14.1%.
C. Receipts in 1990 dollars A* (1+.141).	$61,727,069.
D. Employees	637,409.
E. Receipts per employee in 1990 dollars (A÷D).	$96,840.
F. Proposed standard in dollars.	$14,500,000.
G. Conversion to employees (F÷E).	$14,5M/$96,840.
H. Size standard equivalent in employees (line G).	149.7 employees.

Source: Receipts and employees for SIC code 737: 1987 Census of Services, U.S. Bureau of the Census, Table 4a, p. 1-160. Implicit Price Deflator for GNP, Table B-3, p. 290: Economic Report of the President, February 1991.

(The analysis included in this proposed rule is based on the $14.5 million proposal. Should SBA adopt as final the 150 employees size standard, the estimated impact of this change is approximately the same as for a change of $14.5 million.) SBA invites comments on the proposed size standard and whether a receipts or employee-based size standard is preferable. Some questions to consider are:

(1) Would a receipts-based size standard have a different impact than an employee-based size standard?

(2) How would contract eligibility be affected?

(3) Would one measure be preferable to the other for purposes of performing a size determination?

SBA specifically invites comment on the appropriateness of this standard and on alternative standards (either higher or lower). Comments suggesting other standards should address the questions of: (1) The interaction of this size standard with SBA's programs; (2) the relative levels of participation at different size standards; (3) the effect of the proposed size standard or other alternative size standard on the businesses within this industry; and (4) the prospect of significant new entries into these businesses in response to this program.

Compliance With Regulatory Flexibility Act, Executive Order 12291 and 12612, and the Paperwork Reduction Act

General

SBA considers that this proposed rule, if promulgated in final form, will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). In addition, this proposed rule, if promulgated in final form, would constitute a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth a preliminary regulatory impact analysis and an initial regulatory eligibility analysis of this proposal.

(1) Description of Entities to Which the Rule Applies

SBA estimates that 336 additional firms out of a total of 33,000 firms active in the computer service industries will be considered small as a result of this proposed rule. These firms would become eligible to seek assistance offered by SBA programs, provided they meet other program requirements for assistance. The proposed size standards would not impose a regulatory burden because they do not regulate or control business behavior.

(2) Description of Potential Benefits of the Rule

Firms which would be newly considered small business if the proposed rules became final would be eligible for a variety of business development, financial assistance and procurement assistance programs offered by SBA. The benefits of the business development program help a small business to improve its competitiveness in the market. While it is difficult to precisely quantify the benefits of this proposed rule, based upon previous statistics, estimates of the beneficial effect on SBA's financial and procurement programs can be made.

During the 1989 fiscal year, there were a total of 123 guaranteed business loans totalling $29.7 million made to firms in the computer services industries under the 7(a) Loan Program. Since only slightly more than 1 percent of firms in the industry will become newly eligible under the proposed $14.5 million size standards, proportionately the number of business loans should increase by about one percent, or only by two or perhaps three loans. Based on the average loan amount of $241,000 to firms in this industry, approximately $500,000 to $750,000 more in loans may be guaranteed to computer service firms by SBA.

A greater impact is anticipated in the Government contracting programs set aside for small business. In fiscal year 1989, the Federal government purchased $4 billion in computer services of which $1.2 billion (31 percent) was from small business. Data derived from the 1987 Census of Service Industries indicate that firms ranging from $7 million to $14.5 million in gross receipts (the area of the size standard increase) account for 8 percent of computer service sales. If the newly designated small firms are as successful in Federal contracting as they are in the industry in general, they would be awarded 8 percent of $4 billion in Federal computer services contracts, equal to about $320 million in additional total Federal outlays to firms defined as small by the SBA. This figure, while significant and clearly meriting the classification of the rule as a major rule requires some additional clarification for proper perspective.

Probably the greatest impact of most size standard increases is entirely passive; it involves the reclassification of unrestricted dollar awards from formerly nonsmall firms to newly defined small firms. SBA estimates that 8 percent of sales revenues in the computer services industries are generated by firms that would be newly considered small under the proposed size standard of $14.5 million. Since 75 percent of Federal contracting for computer services is presently unrestricted, most of the $320 million projected impact would involve a reclassification of awarded unrestricted contract dollars from nonsmall to small firms. SBA estimates that approximately two-thirds of the $320 million projected

impact (or more than $200 million) would involve this shift with perhaps an additional $100 million increase in total set-aside and 8(a) contracting.

(3) Description of Potential Costs of the Rule

The potential costs of these size standard changes are expected to be minimal. With respect to SBA's loan program, its lending authority is fixed by Congress, and the total dollar amounts loaned or guaranteed cannot exceed certain statutory limits. Once these lending limits are enacted, no additional costs to program administration is, therefore, incurred by the newly eligible small firms. The costs on Federal procurement would also be expected to be minimal for two reasons: First, competition between two or more small firms must exist before a contract may be set aside for small business. Second, set-asides are expected to be awarded at reasonable prices. If competition and reasonable pricing do not exist on the proposed set-asides, the procuring agencies are expected to issue unrestricted procurement. Thus losses in the form of increased costs to the Government are not expected to be significant. In addition, the proposed size standards are not expected to have significant adverse effects on competition, employment, investment, price, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

The competitive effects of size standard revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs profits, growth, innovation, mergers, and foreign trade. Size standards are not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefit to the Rule

From the above discussion, SBA believes that, because the potential costs of this proposed rule are minimal, the potential net benefits would equally approximately the potential benefits. The impact of the proposed size standard, would, if adopted, be concentrated in the Federal procurement arena.

(5) Description of Reasons Why This Action is Being Considered and Objectives of Rule

SBA has provided above in the supplementary information a description of the reasons why this action is being considered and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for Proposed Rules

The legal basis for the proposal is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a) and 634(b), and Public Law 100–656, 102 Stat. 3853 (1988).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this final rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

The proposed changes set forth in this rule from the current size standard attempt to establish the most appropriate definition of small businesses eligible for SBA's assistance programs. There are no significant alternatives to defining a small business other than developing an alternative size standard, as discussed in the supplementary information.

SBA certifies that this rule will not have federalisms implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA certifies that this proposed rule, if promulgated in final will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, small business.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

(1) The authority citation for part 121 continues to read as follows:

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634 (b)(6) and Public Law 100–656, 102 stat. 3853 (1988).

§ 121.601 [Amended]

(2) In § 121.610 for Major Group 73, SIC codes 7371–7397, are proposed to be revised to read as follows (EITHER a receipts size standard or employee size standard pursuant to one of the following alternatives):

§ 121.601 [AMENDED]

* * * * * *

ALTERNATIVE 1

SIC (*-New SIC Code in 1987, not used in 1972)	Description (N.E.C.-Not Elsewhere Classified	Size [1]
7371*	Computer Programming Services.	$14.5
7372	Prepackaged Software	14.5
7373*	Computer integrated Systems Design.	14.5
7374	Data Processing and Preparation Processing Service.	14.5
7375*	Information Retrieval Services.	14.5
7376*	Computer Facilities Management Services.	14.5
7377*	Computer Rental and Leasing.	14.5
7378*	Computer Maintenance and Repair.	14.5
7379	Computer Related Services, N.E.C.	14.5

[1] Size standards in number of employees or millions of dollars.

ALTERNATIVE 2

SIC (*-New SIC Code in 1987, not used in 1972)	Description (N.E.C.-Not Elsewhere Classified	Size [1]
7371*	Computer Programming Services.	$150
7372	Prepackaged Software	150
7373*	Computer Integrated Systems Design.	150
7374	Data Processing and Preparation Processing Service.	150
7375*	Information Retrieval Services.	150
7376*	Computer Facilities Management Services.	150
7377*	Computer Rental and Leasing.	150
7378*	Computer Maintenance and Repair.	150
7379	Computer Related Services, N.E.C.	150

[1] Size standards in number of employees or millions of dollars.

* * * * *

Dated: June 20, 1991.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 91–19077 Filed 8–12–91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM91-11-000]

Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation

July 31, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing changes to its regulations to restructure both the sales and transportation services provided by interstate natural gas pipelines. The proposed changes are intended to ensure that transportation service offered by pipelines is comparable in quality for all gas supplies, whether the customer purchases the gas from the pipeline or from another supplier. This should maximize the consumer benefits of the competitive wellhead gas market by allowing buyers of natural gas to reach as many sellers as possible, thereby ensuring that the most efficient and beneficial transactions take place.

DATES: Comments are due on or before September 30, 1991. Reply comments are due on or before October 30, 1991.

ADDRESSES: An original and 14 copies of the written comments on this proposed rule must be filed in Docket No. RM91-11-000. All filings should refer to Docket No. RM91-11-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, (202) 208-2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

On May 10, 1991, the Federal Energy Regulatory Commission (Commission) held a public conference which afforded members of the natural gas industry an opportunity to discuss with the Commission the role of interstate natural gas pipelines in today's natural gas markets. In addition, in connection with the conference, the Commission received over ninety written comments from entities representing all segments of the natural gas industry. Those comments addressed a wide variety of topics in response to the Commission staff paper attached to the Notice of Public Conference.[1]

The written and oral comments, the Commission's own experience since the implementation of open access transportation in 1985,[2] and the passage of the Natural Gas Wellhead Decontrol Act of 1989 [3] to eliminate price controls on wellhead and field sales of natural gas have led the Commission to conclude that the structure of interstate pipeline sales services may no longer be well suited to the present economic environment of the natural gas industry. In addition, the Commission believes that it is necessary to take action to improve the competitive structure of the pipeline industry to maximize the consumer benefits of the competitive wellhead gas market. This will be accomplished by amending the Commission's open access transportation regulations. The goal, simply put, is to recognize the current characteristics of the natural gas industry—which is now dominated by pipeline transportation, not by traditional merchant service—and to create a regulatory framework that will accommodate the meeting of as many gas sellers and gas buyers as possible.

For these reasons, the Commission proposes to amend and adopt regulations governing interstate pipelines that perform self-implementing, open access transportation under either the Natural Gas Act [4] or the Natural Gas Policy Act of 1978.[5] Among other features, the Commission proposes generally to require pipelines to eliminate their bundled city gate sales services by unbundling (*i.e.*, separating) their sales services from their transportation services. This unbundling of services, if adopted, would affect significantly the way that pipelines sell natural gas and would require a major restructuring of the pipeline/firm customer relationship.

In addition, in connection with the restructuring of pipeline services, it is necessary to take action to ensure that pipelines and their customers know what will happen to their contractual sales and transportation arrangements upon expiration of their contracts. Only with this knowledge will the pipelines and their customers be able to enter into meaningful discussions in order to restructure their service relationships in light of the Final Rule adopted by the Commission. Hence, the Commission proposes in part VI: of this Notice of Proposed Rulemaking (NOPR) to revise § 284.221(d) of the Commission's regulations in further response to the remand of the U.S. Court of Appeals for the District of Columbia Circuit in *American Gas Association* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990) ("*AGA-II*"),[6] and to take other action with respect to issues concerning pregranted abandonment.

The Commission also proposes to adopt several rules to ensure that a pipeline subject to part 284 of the Commission's regulations provides

[1] The conference notice was issued in three dockets: In Re Pipeline Service Obligations, Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Revisions to the Purchased Gas Adjustment Regulations, Docket Nos. RM91-11-000, RM91-3-000, and RM90-15-000, respectively, 56 F.R. 15,532 (April 17, 1991). The Commission is issuing this Notice of Proposed Rulemaking only in Docket No. RP91-11-000. Docket No. RM91-3-000 is terminated.

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 F.R. 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,665 (1985), vacated and remanded, *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), readopted on an interim basis, Order No. 500, 52 F.R. 30,334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶ 30,762 (1987), remanded, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), readopted, Order No. 500-H, 54 F.R. 52,344 (Dec. 21, 1989), III FERC Stats. & Regs. § 30,867 (1989), reh'g granted in part and denied in part, Order No. 500-I, 55 Fed. Reg. 6605 (Feb. 26, 1990), III FERC Stats. & Regs. ¶ 30,880 (1990), aff'd *in part and remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[3] Pub. L. No. 101-60, 103 Stat. 157 (1989).

[4] Section 7, 15 U.S.C. 717f (1988).

[5] Section 311, U.S.C. 3371 (1988).

[6] As discussed below, on February 13, 1991, the Commission's initial response to the AGA II remand was to issue an order staying in part Section 284.221(d). Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 56 F.R. 6962 (Feb. 21, 1991); III FERC Stats. & Regs. ¶ 30,915 (Feb. 13, 1991) (Order No. 500-J).

comparable transportation services with respect to all gas supplies, whether purchased from the pipeline or from other merchants.[7] The proposed regulations would apply to all interstate pipelines providing transportation services under part 284, independent of their gas pricing mechanism for their sales services.[8] The proposed regulations would not apply to intrastate pipelines.

The restructuring of pipeline services required by the Final Rule will not be a simple matter. Among other things, this restructuring will require the reworking of current bundled sales services into unbundled sales and transportation services in the context of the requirements of the Final Rule. Shortly after issuance of the Final Rule, the Commission will institute restructuring proceedings for each pipeline, with a new docket number, for use as the forum within which the issue of how the pipeline is to comply with the Final Rule can be decided. In addition, in the Final Rule, the Commission will direct the pipelines to initiate discussions with their customers, other shippers, producers, marketers, end-users, and other interested participants about the terms and conditions of new services in the context of the restructuring proceedings. These discussions must be initiated no later than 30 days after the effective date of a Final Rule in this proceeding. The Commission will encourage all participants to enter into voluntary settlements to implement expeditiously the Final Rule. The results of these restructuring discussions must be completed in time for the pipeline to file on or before the date set forth in the filing schedule for implementing the Final Rule set forth below in proposed § 284.8(f)(4)(i). Pipelines will file their tariff sheets on a staggered basis beginning October 1, 1992, as discussed below. Anyone who does not intervene in the restructuring proceeding discussions will be precluded from intervening in the filing phase of the restructuring proceeding.[9]

II. Public Reporting Requirements

The Commission estimates the public reporting burden for the collection of information in the proposed rule to average 4,810 hours per response. The total reporting burden associated with the proposed rule is estimated to be 408,850 hours. The estimate includes time for reviewing the requirements proposed by this NOPR, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and filing this information with the Commission. Interested persons may send comments regarding this burden estimate or other aspects of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, (202) 208-1415); and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

The natural gas industry has changed significantly since the passage of the Natural Gas Act (NGA) in 1938.[10] Congress adopted the NGA because it "considered that the natural gas industry was heavily concentrated and that monopolistic forces were distorting the market price for natural gas." [11] Congress' "primary aim * * * was to protect consumers against exploitation at the hands of natural gas companies" [12] to ensure consumers "access to an adequate supply of gas at a reasonable price." [13]

Three significant, interrelated changes have occurred in the natural gas industry in recent years.

First, in 1978, Congress enacted the Natural Gas Policy Act.[14] The NGPA began the process of decontrolling wellhead prices of natural gas. Equally important, with passage of Section 311 it began to break down historic barriers between the intrastate and interstate markets for natural gas. Section 601 also removed much of the nation's natural gas supplies from the Commission's regulatory jurisdiction upon decontrol.[15]

Second, in 1985, the Commission adopted Order No. 436 [16] to institute open access transportation in furtherance of the NGPA's purpose to permit a competitive wellhead market where market forces play a "more significant role in determining the supply, the demand, and the price of natural gas." [17] As a result of Order No. 436, the role of pipelines changed from primarily a merchant of natural gas in the distribution area to both a merchant of natural gas and a transporter of natural gas, owned by others, on a nondiscriminatory basis.[18] Indeed, pipeline transportation now accounts for about 80 percent of total interstate pipeline throughput.[19] This reverses the historical function of pipleines, which, prior to Order No. 436 acted primarily as gas merchants. Today, gas transported on behalf of non-pipeline shippers plays a major role in providing service to customers, including base load service during the winter heating season. Thus, the Commission must recognize this service transformation and take steps to ensure that its regulations and policies reflect current market realities.

Third, Congress enacted the Natural Gas Wellhead Decontrol Act of 1989, [20] "to repeal all remaining price controls on wellhead or 'field' sales of natural gas." [21] The House Committee Report described the importance of the Commission's open access transportation as follows:

> The Committee stresses that these new rules, and especially the wide adoption of blanket certificates for non-discriminatory open access interstate transportation of non-pipeline gas, are essential to its decision to complete the decontrol process. All sellers must be able to reasonably reach the highest-bidding buyer in an increasingly national market. All buyers must be free to reach the

[7] 18 CFR part 284 (1991). Unless otherwise indicated, all references to firm and interruptible transportation service and to firm and interruptible shippers are to firm and interruptible transportation service provided under part 284 of the Commission's regulations and to firm and interruptible shippers receiving firm or interruptible transportation service under part 284 of the Commission's regulations.

[8] The Commission is not proposing here to amend the purchased gas adjustment (PGA) regulations. This is because the proposals set forth in this Notice of Proposed Rulemaking, if adopted, make it unnecessary to revise the PGA regulations with respect to Account No. 858 (transmission and compression by others) or standby charges as discussed in the Commission staff paper, *supra* n.1. The Commission requests comments on whether this assumption—that the changes here moot the need to amend the PGA regulations—is correct.

[9] See also part XI on implementation.

[10] 15 U.S.C. 717 (1988).

[11] FPC v. Texaco Inc., 417 U.S. 380, 397-98 (1974).

[12] FPC v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944).

[13] Tejas Power Corp. v. FERC, 908 F.2d 998, 1003 (D.C. Cir. 1990).

[14] 15 U.S.C. 3301 (1988).

[15] See Pennzoil Co. v. FERC, 645 F. 2d 380, 380-383 (5th Cir. 1981), *cert. den.*, 454 U.S. 1145 (1982). See also III FERC Stats. & Regs. ¶ 30,867 at p. 31,537 (1989).

[16] See n.2, *supra*.

[17] *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Miss.*, 474 U.S. 409, 422 (1986). As discussed below, Congress reaffirmed this policy by enacting the Natural Gas Wellhead Decontrol Act in 1989. Pub. L. No. 101-60, 103 Stat. 157 (1989).

[18] 18 CFR 284.8(b) and 284.9(b) (1991).

[19] EIA/Natural Gas Monthly (June, 1991); DOE/EIA—0130 (91/106), From: Table 15. Natural and Other Gas Produced and Purchased by Major Interstate Natural Gas Pipeline Companies (around 80 percent transportation); Interstate Natural Gas Association of America, Issue Analysis: Carriage Through 1990 (July 1991), From: Table A-1, Carriage for Distributors, End-Users, and Marketers and Sales Summary (79 percent transportation).

[20] Pub. L. No. 101-60, 103 Stat. 157 (1989).

[21] H.R. Rep. No. 29, 101st Cong., 1st Sess., at p. 2 (1989).

lowest-selling producer, and obtain shipment of its gas to them on even terms with other supplies.

Both the FERC and the courts are strongly urged to retain and improve this competitive structure in order to maximize the benefits of decontrol. [22]

This legislation, relying on Order No. 436, effectively changes the Commission's mission under the NGA. The Commission must still protect the consumers of natural gas from the exercise of monopoly power by pipelines. However, in light of the decontrolled gas commodity market, and the dominance of transportation services, the Commission must regulate pipelines in a manner that promotes competition in light of market realities. The Commission must regulate pipelines as merchants and as open access transporters in ways that achieve the goal of a national gas market where a buyer can reach many sellers, by meaningful access to the pipeline transportation grid. In the Commission's judgment this will ensure that the most efficient and beneficial transactions take place. This will facilitate deals where the seller can meet the buyer that best meets the needs of the seller, and conversely, where the buyer can meet the seller that best meets the needs of the buyer. For in the final analysis, the competitive marketplace—not the Commission's regulations—should be the primary incentive that determines which transactions take place between willing buyers and sellers. Regulation which biases these decisions on a non-market basis must be eliminated.

IV. Future Structure of the Pipeline Merchant Service

The threshold issue before the Commission is the appropriate future structure of the pipeline when it performs a merchant service. At present, most pipelines still provide some level of traditional bundled, city gate, sales services. In addition, the pipelines are transporting gas sold by others which may compete with the pipeline's own sales. As noted earlier, the historical mix of sales to transportation has been reversed. Based upon experience to date, the Commission finds that, owing to different regulatory treatment between pipeline sales and third party sales and transportation, competition between pipelines and other gas merchants is not occurring on an equal basis.

The first problem is that open access shippers are not receiving transportation services comparable in quality to the transportation services embedded within a pipeline's bundled, city gate, sales services. For example, on many pipelines, shippers have no right to contract storage on an open access basis.[23] This limits their ability to aggregate supplies for future use and therefore provides an advantage to the pipeline as merchant where it has access to and control of storage. This impedes the implementation of the goal that a purchaser of gas supplies should make its purchasing decision without regard to the identity of the seller.

Achieving comparability raises more than tactical complexities in securing comparability between bundled sales services and open access transportation services. The comparability problem raises the question of the appropriate structure of the pipelines' merchant services. In their present merchant capacity, pipelines offer sales services that differ from those of their competitors (producers and marketers and brokers). The pipeline offers regulated sales services that include transportation. Producers and marketers offer unregulated sales services that often do not include transportation. Indeed, producers and marketers do not have direct access to contract for firm transportation capacity in most markets. They must instead rely on another entity's control over capacity—such as the LDC—to gain access to firm capacity. This difference in the nature of pipeline and producer/marketer/broker sales services is a structural difference which not only raises complex comparability problems, but also prevents regulated pipelines and their unregulated merchant competitors from competing on a head to head, level, basis.

There are, therefore, two main problems as a result of the current regulatory and structural regime. The first is that of comparability. The Commission must adopt measures so that the gas sellers and purchasers can sell and purchase third party gas supplies and use open access transportation on a meaningful and timely basis, in the same manner as a pipeline's bundled, city gate, sales service.

The second is that, on many systems, pipelines and the unregulated competitors are not selling the same product. The pipelines are selling a regulated bundled sales and transportation service. Their competitors are generally selling decontrolled gas only.

Based upon this analysis, the Commission finds that the present structure of the remaining pipeline merchant service (*i.e.*, bundled city gate sales service) may be anticompetitive and inhibits full realization of an efficiently-operating national wellhead market. Hence, it is appropriate to restructure the regulations governing the pipelines' remaining sales services by requiring that pipeline sales be separated (*i.e.*, unbundled) from transportation, consistent with reliability and operational concerns. The extent to which unbundling should be mandated, as proposed below, and therefore the future role of the traditional pipeline merchant service, is one of the main issues on which the Commission requests comments.

V. Proposed Action in a Nutshell

The Commission proposes to adopt several rules in order to further competition for natural gas at the wellhead. First, a new Subpart J would be added to part 284 of the Commission's regulations. Subpart J would issue by rule a blanket sales certificate to all interstate pipelines offering transportation service certificated under § 284.221 of the Commission's regulations. Those pipelines that choose to sell gas would be required to do so on an unbundled basis. This would be subject to one exception under which a pipeline may continue bundled city gate firm sales service for certain, generally smaller, customers.

Second, in light of the proposed unbundling of sales and transportation services, the Commission will take a fresh look at the pipeline service obligation issue as it pertains to both transportation and sales services. In brief, the Commission proposes to retain pregranted abandonment for interruptible and short-term (one year or less) firm transportation. The Commission, however, proposes to permit pregranted abandonment for long-term (over one year) firm transportation only when the customer does not exercise a right of first refusal as described below in part VI. In addition, the Commission proposes pregranted abandonment in connection with unbundled sales services.

Third, the Commission proposes new §§ 284.8(f)(l) and 284.9(f)(l), which would provide that a pipeline that offers firm and interruptible transportation services under Part 284 must provide such services on a basis that is comparable in quality for all gas supplies whether purchased from the pipeline or elsewhere. This comparability

[22] *Id.* at p. 6.

[23] The Commission has not required open access to storage on a contract basis. Order No. 436, *supra* n.2 at p. 31,507.

requirement would ensure that the pipeline's reasonable operational conditions imposed on its transportation services under §§ 284.8(c) and 284.9(c) of the Commission's regulations result in no undue preference in service for any source of gas, consistent with reliability concerns.[24] If a pipeline is permitted to impose unreasonable restrictions on the firm shippers' ability to be served by third party gas as opposed to pipeline gas, the pipelines' firm sales service would have a preference. This would render the firm transportation service inferior in quality. The Commission finds this preference to be undue under sections 4 and 5 of the NGA. The comparability principle will ensure that availability and quality of a pipeline's transportation services are a neutral factor in influencing the gas purchaser's decision whether to purchase gas from the pipeline or from another gas merchant.

Fourth, the Commission, as discussed below, proposes to amend part 284 to define transportation as including storage and to amend part 284 to authorize and require open access pipelines to provide firm shippers on downstream pipelines with access to upstream pipelines. These amendments would ensure that pipeline shippers have access to sources of gas in the same manner as pipelines as merchants. Moreover, as an additional measure to make firm capacity available, the Commission proposes to amend part 284 to institute a voluntary capacity reallocation program for the permanent and temporary release of firm capacity.

Fifth, the Commission will partially modify the Rate Design Policy Statement.[25] The Commission proposes to use its authority under section 5 of the NGA to amend part 284 to require pipelines to derive transportation rates using a Straight Fixed Variable (SFV) (as opposed to Modified Fixed Variable) rate design method [26] unless the parties (the pipeline, its customers, interested state commissions, producers, marketers, brokers and end-users) otherwise agree as set forth below. This will allow the Commission to ensure that competition at the wellhead and in the field is not adversely affected by transportation rates that were developed when pipelines were dominant gas suppliers. At the same time, this approach will not preclude flexibility should the parties agree that a different approach is warranted.

Sixth, the Commission intends to permit flexibility and staggered compliance in implementing the Final Rule so long as the pipelines make their restructuring filings no later than the dates indicated in the proposed regulations. As stated above, the Commission will launch restructuring proceedings for each pipeline shortly after issuance of the Final Rule. A pipeline will be permitted to consolidate the new proceeding with an existing or a later proceeding to use as the vehicle for its restructuring proceeding. As discussed above, the Commission will direct the pipelines, their customers, and other interested parties (*i.e.*, producers, brokers, marketers, end-users, state commissions, *etc.*) to hold discussions and negotiations in order to facilitate their entering into and complying with the new service relationships created by the Final Rule in an expeditious manner.[27]

VI. Pipeline Service Obligation

A. Introduction

This NOPR is concerned with the role that pipelines should play in the competitive natural gas industry. In particular, this NOPR addresses the pipelines' dual functions as merchants and transporters of natural gas and has concluded that the pipelines should generally perform those roles on an unbundled basis. This restructuring of pipelines' sales requires a fresh look at the pipeline service obligation for both its sales and transportation services. The Commission believes that in the first instance the service obligations should be determined by contract. As a part of this reexamination, the Commission is examining what should occur when the parties' contract term expires. In addition, the Commission considers it appropriate to reexamine the role of LDCs as holders of firm capacity on pipelines and whether the pipeline or firm capacity holders should administer the permanent and temporary release of interstate pipeline capacity rights.

B. Pregrant of Abandonment of Capacity Rights

On August 24, 1990, the United States Court of Appeals for the District of Columbia Circuit affirmed in most part the Commission's Final Rule with respect to open-access transportation under part 284 of the Commission's regulations.[28] This part of the NOPR deals with the court's limited remand or the issue of pregranted abandonment of transportation service under § 284.221(d) of the Commission's regulations.[29]

As adopted in the Final Rule, § 284.221(d) provided for the abandonment of all transportation services upon the expiration of the contractual term of each individual transportation arrangement authorized under a blanket transportation certificate.[30]

On February 13, 1991, the Commission issued Order No. 500-J.[31] Order No. 500-J stayed the "operation of Section § 284.221(d) of the Commission's regulations where a customer converts firm sales service to firm transportation service whether under § 284.10 of the Commission's regulations or as a result of separate agreement (to the extent of conversion of pre-existing sales volumes)" after February 13, 1991.[32] These converted transportation arrangements will never be subject to pregranted abandonment and may only be abandoned by the pipeline upon receipt of Commission approval under section 7(b) of the Natural Gas Act.[33]

At the outset, there is no question that the Commission has the legal authority to permit the pregranted abandonment of transportation under blanket certificates. The D.C. Circuit held this in its decision.[34] Moreover, subsequently,

[24] 18 CFR 284.8(b) and 284.9(b) prohibit undue preferences in the quality of service provided. United Gas Pipe Line Co., 55 FERC § 61,330 at p. 61,974 (1991).

[25] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295, *order on reh'g*, 48 FERC § 61,122 (1989). The Rate Design Policy Statement set forth Commission policies for designing transportation rates. To the extent not discussed here, all other aspects of the Rate Design Policy Statement remain effective.

[26] Under SFV, all fixed transmission and storage costs are recovered in the demand charge.

[27] See part XI for details about implementation of the Final Rule.

[28] American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 500-H, 54 FR 52,344 (Dec. 21, 1989), III FERC Stats and Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500-I, 55 FR 6605 (Feb. 26, 1990), III FERC Stats & Regs. ¶ 30,880 (1990).

[29] 18 CFR 284.221(d) (1991).

[30] Section 284.221(d) provides: (d) *Pre-grant of abandonment.* Pursuant to section 7(b) of the Natural Gas Act abandonment of transportation services is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a certificate granted under this section.

[31] 56 FR 6982 (Feb. 21, 1991); III FERC Stats. & Regs. ¶ 30,915. On March 18, 1991, the court denied the motion of a Gas Marketer, *et al.*, for an order to vacate Section 284.221(d) and direct compliance. The court ordered the Commission to "file a progress report with the court no later than ninety days from the date of [its] order." *American Gas Association* v. *FERC*, No. 87-1588 (D.C.C. Mar. 15, 1991). The Commission made this filing on May 21, 1991.

[32] III FERC Stats. & Regs. at p. 31,913.

[33] The Commission will require all customers to notify the Commission of all transportation arrangements subject to this stay in each pipeline proceeding implementing the Final Rule.

[34] American Gas Association v. FERC, 912 F.2d 1496, 1515, *citing* FPC v. Moss, 424 U.S. 494 (1976).

in *Mobil Oil Exploration & Producing Southeast Inc.* v. *United Distribution Companies,*[35] the Supreme Court has held that the Commission has the authority under section 7(b) of the Natural Gas Act to give advance, generic approval to the abandonment of service.[36]

The question is, rather, how the Commission should exercise its authority to allow pregranted abandonment of the pipeline's transportation for individual customers under a blanket certificate.[37] Said another way, the Commission's task here is to define the criteria under which pregranted abandonment will be generically permitted under this authority.

The Commission has discussed above the restructuring of the role that it believes pipelines should take in the natural gas industry. That role would mainly be as the provider of an unbundled sales service in competition with producers and marketers at upstream points of sale and the provider of an open access transportation service to move gas from those upstream points of sale to the market areas. Seen in this light, it is necessary to distinguish between an upstream, unbundled sales service operated in competition with sellers of gas that are not subject to statutory service obligations and the traditional certificated downstream merchant function which includes a transportation service. The pipeline's provision of an open access firm transportation service is comparable to the transportation service provided as part of the traditional bundled firm sales service. The Commission has in the past required a pipeline to secure individual abandonment of its bundled firm sales service under section 7(b) of the NGA. This is because of the need to address the LDC's concern about the continuity of service. The key to the continuity of service is the right to capacity, which is why the LDC pays a demand charge. This assurance of service is needed when firm transportation is provided for gas acquired upstream from whatever source. Hence, the Commission concludes that the present pregrant of abandonment rule is not appropriate for firm transportation for any shippers of a term of over one year. Long term firm transportation differs from short-term firm transportation because a contractual short-term arrangement by its very nature indicates that continuity of service is not a concern.

Accordingly, the Commission proposes to retain pregrant of abandonment of interruptible transportation and of firm transportation with a contractual term of one year or less. The Commission believes that the nature if interruptible and short-term firm transportation, joined with the avoiding of the administrative burden of dealing with a large number of abandonment filings for those transportation arrangements under NGA section 7(b), justifies pregrant of abandonment as in the present or future public interest or necessity.

As noted, the Commission's policy for pregranted abandonment has different implications in connection with long-term (over one year) firm transportation. That is, the current pregrant of abandonment regulation is not appropriate in connection with long term (over one year) firm transportation service. The Commission will, however, adopt pregranted abandonment for longterm firm transportation contracts when the customer does not exercise a right of first refusal for its capacity by giving appropriate notice to the pipeline that it wants to continue its transportation arrangement and agreeing to match and pay any greater rate up to the maximum rate under § 284.7 and to match the most favorable contract term offered to the pipeline by other customers desiring the capacity when the long-term contract's fixed term expires.[38] This pregrant of abandonment will promote administrative and economic efficiency without harm to the customer's need for continuity of service and is in the present or future public interest or necessity.[39] If the firm capacity holder does not want to retain some or all or its capacity upon expiration of its contractual term, the pipeline would be entitled automatically to abandon the service arrangement with the firm capacity holder. Hence, the pipeline will have capacity which it must put on the market.

The Commission proposes to require firm capacity holders during each restructuring proceeding to exercise a right of first refusal to retain their capacity by agreeing to match and pay any greater rate up to the maximum rate under § 284.7 and to match the most favorable contract term offered by other persons seeking firm capacity. If the capacity holder exercises its right of first refusal as described above, it may retain its capacity. If the capacity holder does not exercise its right of first refusal as described above, it would lose its firm capacity to other persons seeking capacity. However, if there are no other persons seeking firm capacity at such rates and terms during the restructuring proceeding, the firm capacity holder must retain capacity until the termination of its contract with the pipeline unless the customer and pipeline are able to negotiate a reasonable exit fee. If the firm capacity holder does not exercise its right of first refusal or negotiates a reasonable exit fee or some other modification or termination of its agreements, the pipeline will be entitled to pregranted abandonment.

Last, the Commission proposes that revised 18 CFR 284.221(d), with respect to pregranted abandonment, will become effective on the effective date of the Final Rule rather than under the staggered implementation procedure set forth in Part X.

C. Capacity Brokering and Reallocation

The proposed new treatment of long-term transportation raises an important matter. This occurs when the firm capacity holder elects to continue service by exercising its right of first refusal for long-term capacity either during the restructuring proceeding or later when the contract expires. The Commission will view this exercise of the right of first refusal as conclusive evidence that the firm capacity holder needs the retained firm interstate capacity to meet its own needs and service obligations. The Commission believes it is necessary that this interstate transportation capacity remain under exclusive federal jurisdiction to maximize the benefits of the decontrol of wellhead or field prices of natural gas through nondiscriminatory open-access transportation. An unlimited capacity brokering program coupled with the right of first refusal granted to LDCs could have the effect or shifting the control and the allocation of interstate pipeline capacity from the FERC to the

[35] 59 U.S.L.W. 4054 (Jan. 8, 1991).

[36] Slip op. at 13–16.

[37] The Commission notes that the proposal to amend part 284 to define transportation as including storage would subject open access contract storage to pregranted abandonment under § 284.221(d) as revised.

[38] The prudence of the LDC's decision to match and pay any greater rate up to the maximum rate under § 284.7 and to match the most favorable contract term offered to the pipeline by other customers to retain firm service would be subject to review by its state regulatory commission. *Pike County Light & Power Co.* v. *Pennsylvania Public Utility Comm'n,* 77 Pa. Commw. 268, 465 A.2d 735 (1983).

[39] Order No. 500–J made all transportation converted from pre-existing sales during the period the stay is in effect subject to abandonment approval under NGA section 7(b). See n.31, *supra.* That result would not be changed by this proposed rule.

state commissions in their oversight of the LDCs. Therefore, the Commission is not proposing in this NOPR to mandate unlimited capacity brokering. We announce our intention to terminate all certificated capacity brokering services, if we determine after reviewing the comments here that the proposed capacity reallocation programs discussed below are appropriate alternatives to the current capacity brokering program and can be operated without some of the perceived problems associated with unlimited capacity brokering. The Commission believes that the benefits of capacity brokering—the making available of unneeded firm capacity—can and should be achieved by other means. In that vein, as discussed below, the Commission is proposing in this NOPR to require open access pipelines to (1) provide firm shippers on downstream pipelines with capacity on upstream pipelines and (2) institute a capacity reallocation program so that potential shippers can obtain capacity from current capacity holders willing to surrender capacity on a permanent or temporary basis. Moreover, the Commission encourages pipelines to offer a wide menu of services. An example is Columbia Gas Transmission Corporation's off-peak firm transportation service.[40]

Interested commenters should address the Commission's intention to terminate unlimited capacity brokering. The Commission is especially interested in comments on: (1) Whether unlimited capacity brokering can be accomplished in a manner consistent with the Commission's open access regulations; (2) whether other aspects of the Commission's proposals here will achieve many of the same benefits of unlimited capacity brokering without running afoul of the Commission's part 284 regulations; (3) whether termination of capacity brokering will have a negative impact on independent power producers or qualifying facilities who may be receiving gas service for electric generating purposes through, so-called, "buy/sell" arrangements. If so, should the Commission provide some form of grandfathering of existing transactions as part of the transitional phase contemplated under the Final Rule? For example, should the Commission provide a one-time conversion right to capacity releasing for the "buy/sell" or similar arrangements?

[40] Columbia Gas Transmission Corp., 54 FERC ¶ 61,226, *reh'g* granted in part and denied in part, 55 FERC ¶ 61,366 (1991). See also Columbia Gas Transmission Corp., 55 FERC ¶ 61,167 (1991) (compliance order).

D. Pregranted Abandonment of Unbundled Sales Obligations

The next issue is whether there should be pregranted abandonment in connection with sales services. As discussed above, pipelines as merchants may compete with producers and marketers upstream. This competition should be on an even or level basis. Producers and marketers are not subject to a certificated service obligation under the NGA. Their service obligation is determined by contracts negotiated in a competitive environment. Hence, it follows that the pipeline as merchant of an unbundled sales service should be subject only to a contractually-determined service obligation. Accordingly, the Commission proposes to pregrant abandonment for unbundled sales services because it is in the present or future public interest or necessity. To the extent bundled sales service still exists, a pipeline would still be required to receive individual abandonment authority for bundled sales pursuant to NGA section 7(b).

VII. Matters Related to Unbundling

A. General

The Commission proposes to require pipelines to unbundle their sales and transportation services at a place or places upstream. The Commission realizes that there may be certain customers, especially small sales customers, that may want to retain their bundled, city gate, sales service and that they and other sales customers may want some form of an unbundled service that still provides the equivalent of one-stop shopping. Accordingly, the Commission will exempt from the proposed unbundling requirement the provision of a bundled sales service for customers purchasing under a small customer rate schedule on the date a Final Rule is effective. Currently, most pipelines have such a rate schedule on file, usually labelled a G, SG, or SGS tariff.

The Commission recognizes that this is a significant shift in its regulation. However, this change reflects the current service and forseeable service status of the pipeline industry. The Commission, therefore, requests comments on the following matters with respect to unbundling. Is it appropriate to mandate unbundling? Conversely, can the Commission's goal regarding open access be achieved without mandating unbundling? Are there customers other than small customers who want to retain some elements of traditional merchant service as part of their overall mix of supply services? Should providing a traditional, city gate bundled service remain an option on each pipeline? Are any efficiencies lost by elimination of the traditional bundled sales service? Are there adequate substitutes for complete unbundling such as the sales customer rebundling by appointing the pipeline to act as the sales customers' agent in arranging transportation?[41] Can the pipeline's providing of both a bundled and unbundled service be reconciled from a system operation basis and market perspective? Does it make sense from a market perspective if one pipeline into a market provides a totally unbundled service while another pipeline into that market performs a partially unbundled service? With respect to the exception proposed for small customers, the Commission is interested in receiving comments on the extent to which unbundling should be mandated without this exception. Conversely, the Commission solicits comments on whether the small customer rate schedule is the appropriate cut-off for the exemption to unbundling to apply. Should the exemption occur at some other threshold? Should the Commission mandate the appropriate threshold? In addition, can the Commission and industry practically mandate and implement full unbundling for all customers and services, and exempt some customers from full unbundling? Can these two policies be reconciled and implemented for rate design purposes? Last, should the Commission take action to prevent manipulation aimed at obtaining bundled service under the small customer exception?

In providing this bundled service to small customers, the proposed regulations will require the pipeline to consider itself as a shipper in all respects (see discussion *infra*). In addition, as a matter of policy, we will consider and approve reasonable agreements where a pipeline will be able to make all arrangements for transportation on behalf of any sales customer which wants this package service. The pipeline must, however, permit other merchants to market similar services and must not favor its own packaged service over other

[41] See Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,448 (1991). Under Transco's program, its sales customers under their contracts with Transco will appoint Transco as their agent for arranging transportation on Transco of the sales volumes purchased from Transco to the buyer's downstream delivery point. To do that, Transco will be able to nominate and schedule transportation under the sales customers' transportation agreements. This program therefore provides sales customers with services that *in toto* are similar to the traditional bundled sales service. Interested commenters should discuss any other similar proposals.

shippers. For example, if the pipeline agrees to assume responsibility for penalties, it must actually penalize itself and credit those penalties to its customers.[42] Finally, nothing proposed here is intended to prohibit or discourage the pipeline from continuing to serve as a gas merchant after it unbundles.

B. Place of Unbundling

Where should unbundling occur? There are several possibilities. For example, unbundling could occur at the wellhead, at production area receipt points into mainline facilities, at receipt points at the intersection of separate mainline systems,[43] or at several of those places. For example, if operationally feasible, pipelines may use pooling areas to facilitate the aggregation of supplies by all merchants. Pooling areas may be places where title passes from the gas merchant to the shipper or they may be places where aggregation and balancing and penalties are determined ("paper" pooling areas). Another possibility is the development of downstream hubs or market centers for the meeting of gas purchasers and sellers. The Commission requests comments on these unbundling related issues. In addition, we encourage all parties in the restructuring case to discuss and develop these types of novel proposals. The Commission believes that issues about places of unbundling and potential pooling areas and market centers should be determined on a case-specific basis in light of the particular operations and configurations of the pipelines and their attached sources of supplies. Hence, under the proposed regulations, the principle requirement will be that all gas, whatever the source, be given equal treatment in gaining access to the pipeline, consistent with reliable and efficient services.

C. Pricing of Unbundled Firm Sales

While we are interested in receiving comments on the extent to which unbundling should be mandated for all customers and services, the Commission is proposing (with one exception) to mandate the unbundling of sales and transportation services. How should an unbundled firm sales service be priced where the transportation will be separately provided under the pipeline's open access transportation service (as amended by this proposed rule) for gas purchased from the pipeline or from other merchants?

As a general matter, the Commission believes that a pipeline should be allowed to adopt a market-based sales pricing or gas inventory mechanism for its unbundled firm sales. The pipeline could therefore earn a profit or suffer a loss on its gas sales based on its performance in a competitive market place. The Commission has previously concluded that it has the legal authority to approve market-based, unbundled, sales rates upon a finding that a pipeline's sales market is sufficiently competitive to prevent a pipeline from exercising significant market power.[44] The Commission has found that a pipeline's sales are made in a sufficiently competitive market when the pipeline provides comparable transportation service with respect to all gas supplies from whomever purchased and when adequate divertible gas supplies exist. Commission is proposing in this NOPR to establish comparable transportation service by amending Part 284 of the Commission's regulations. Further, the Commission proposes to conclude that adeguate divertible gas supplies exist in all pipeline gas markets. Accordingly, a pipeline would be able to establish a market-based pricing mechanism as part of its unbundled sales service.[45]

The Commission's proposed conclusion that adequate divertible gas supplies exist is grounded in the first place on Congress' passage of the Natural Gas Wellhead Decontrol Act of 1989.[46] As the Commission has stated:

> That act reflects Congress's finding that the natural gas sales market is competitive * * *. The sale of pipeline gas which is * * * unbundled from any transportation service is now part of the same natural gas market which Congress deregulated, and is competing directly against the producers and marketers whose gas sales Congress deregulated.[47]

In short, Congress has determined that gas sales at the wellhead or in the field are sufficiently competitive to justify decontrol of all first sales of gas supplies.[48] It is true that Congress did not decontrol or deregulate gas pipelines or gas pipeline sales. However, Congress had before it the traditional bundled sales environment and not the unbundled sales environment proposed by this NOPR. The Commission believes that the Congressional finding of a competitive wellhead or field market applies to all sellers in that market and that it is reasonable to infer that Congress believed that the market for natural gas is competitive on a national level without regard to the status of a particular gas merchant as first seller or non-first seller.

It is important to note that the Commission is not proposing the deregulation of pipeline sales. Rather, the Commission proposes to institute light-handed regulation relying upon decontrolled market forces at the wellhead or in the field to constrain pipeline sale for resale gas prices within the NGA's "just and reasonable" standard. Moreover, the Commission's proposal is premised on the implementation of comparable transportation service for all gas regardless of the seller's identity.

In addition, the Commission now finds that the issue of whether sufficient divertible gas supplies exist should not be part of its analysis to determine whether a pipeline possesses market power over sales. Throughout the country, there is a significant amount of uncommitted supplies available at extremely competitive rates. In many areas, uncommitted supplies exceed the largest amount of gas controlled by any pipeline connected to the areas. Indeed, our experience with pipeline/producer contract renegotiation in the past few years demonstrates that uncommitted gas supplies are available throughout North America. This means that sellers of uncommitted supplies could replace pipeline sales, and that it will not be profitable for a pipeline to attempt to exercise market power over the sale of natural gas.

Given this assumption we conclude that sellers of long-term firm gas supplies (whether they be individual pipelines or other sellers) will not have market power over the sale of natural gas. There is no doubt, as Congress

[42] Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991).

[43] See also the discussion of third party pipeline capacity, *infra*.

[44] Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991); El Paso Natural Gas Co., 54 FERC ¶ 61,316 (1991); Transwestern Pipeline Co., 53 FERC ¶ 61,298 at pp. 62,114–15 (1990); Transcontinental Gas Pipe Line Corp., 48 FERC ¶ 61,199 at p 61,753 (1989); Transwestern Pipeline Co., 43 FERC ¶ 61,240 at p. 61,650 (1988), reh'g granted in part, 44 FERC ¶ 61,164 (1988), remanded on other grounds, 897 F.2d 570 (D.C. Cir. 1990). Such market-based rates are consistent with the Commission's obligation to determine just and reasonable rates under the NGA and are consistent with the Natural Gas Wellhead Decontrol Act. See Transwestern Pipeline Co., 53 FERC ¶ 61,298 at pp. 62,114–15 (1990).

[45] A market-based pricing mechanism under the blanket sales certificate would allow gas inventory charges and as-billed recovery of producer demand charges.

[46] See *supra*. n.20.

[47] Transwestern Pipeline Co., 53 FERC ¶ 61,298 at p. 61,115 (1990).

[48] S. Rep. No. 39, 101st Cong. 1st Sess. at p. 3 (1989) ("* * * partial wellhead decontrol under the NGPA has helped to create an environment in which competition, not public utility-type regulation, is the dominant force in determining prices and supplies in the natural gas sales markets * * *.")

expressly found and confirmed, that a competitive market exists for gas at the wellhead and in the field. The Commission requests comments on whether this proposed finding is correct. If so, the Commission will eliminate its divertible supply study from its market power analysis from individual cases.

The Commission proposes to implement the market-based gas pricing by amending part 284 to include a blanket certificate for both firm and interruptible unbundled sales to all on or off system sales customers. The blanket sales certificate would provide for the pregrant of abandonment of the unbundled sales services provided under the blanket sales certificates.[49]

D. Blanket Interruptible Sales Service

The Commission's proposals to require upstream unbundling of sales services and to conclude that unbundled pipelines do not possess significant market power raise the question of whether there should be any limitations or restrictions on pipeline interruptible sales services (other than standards of conduct, see *infra.*) The Commission concludes that there should be no additional restraints on interruptible sales. The unbundling of pipeline sales services should enable producers/marketers and pipelines to compete for long-term sales on an even basis. There is no reason why the Commission should prohibit pipelines from competing on an even basis with producers/marketers for short-term (spot) sales.

The Commission's adoption of the proposals in this NOPR in a Final Rule may render moot the Interruptible Sales Service issues considered during the May 2, 1990 technical conference in *Arkla Energy Resources, Inc., et al.*, 50 FERC ¶ 61,366 (1990). Parties who participated in the May 2, 1990 technical conference are specifically asked to comment on whether the adoption of the proposals in this NOPR will cause the ISS issues they raised at the technical conference to be moot.

E. Standards of Conduct

Order No. 497 [50] adopted standards of conduct and reporting requirements for interstate pipelines with marketing affiliates.[51] In brief, the pipeline is prohibited from preferring its marketing affiliate over nonaffiliated shippers with respect to transportation matters, access to information, and transportation discounts.[52] In addition, pipelines are required to establish and file with the Commission procedures to enable shippers and the Commission to determine how the pipeline is complying with the standards of conduct.

The Commission proposes to continue Order No. 497's standards of conduct and reporting requirements for interstate pipelines with marketing affiliates even though the pipelines will be providing sales on an unbundled basis with transportation separately provided. This is because there is no change in the competitive relationship between the marketing affiliate and other shippers and the need to protect nonaffiliated customers from preferences that could be given to affiliated shippers.

The Commission also believes that Order No. 497's standards of conduct and reporting requirements should apply to the pipeline as provider of unbundled sales services. The pipeline as merchant would be the functional equivalent of a marketing affiliate. Therefore, it is self-evident that the non-pipeline suppliers and other customers need protection from preferences that could be given to the pipeline as merchant just as much as protection is needed from potential preferences that could be given to marketing affiliates. Accordingly, the Commission proposes to include standards of conduct and reporting requirements as part of the regulations with respect to blanket sales certificates for unbundled pipeline sales.

Pipelines offering unbundled blanket sales services would be required to organize their sales and transportation operating emloyees so that they function to comply with § 161.3 (a), (b), (d), and (l) and to comply with (e), (f), (h), and (i) by considering their sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.[53] In addition, those pipelines would be required to conduct their businesses in conformity with the comparability requirements of §§ 284.8(f) (1) and (4) and 284.9(f)(1) by not giving shippers of gas sold by the pipeline any preference over shippers of gas sold by any other merchant in matters relating to Part 284 transportation.[54] Moreover, the pipelines would be required to file procedures [55] and to comply with Section 250.16 by considering their sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.[56]

VIII. Comparable Matters

A. General

The Commission's aim in adopting Order No. 436 was to prevent pipelines from discriminating in their selection of transportation customers in order to prefer their own sales.[57] In codifying the open access transportation program, the Commission required pipelines to offer their transportation services without undue discrimination or preference in the quality of service provided.[58] Since 1985, when Order No. 436 was adopted, the Commission has grappled with complex problems associated with approving reasonable operational conditions for pipelines [59] in light of the need to guard against undue discrimination. In addition, this task was thrust to the forefront in gas inventory charge proceedings where it was vital to ensure that the pipeline's transportation services were provided on a basis comparable in quality to the quality of the transportation service provided as part of, or embedded within, the pipeline's sales services.[60] In essence, this comparability principle implements the Congressional aim that all gas supplies must be shipped on even terms under open access transportation.[61]

The Commission proposes to amend part 284 of the Commission's regulations in several ways as discussed below in order to implement comparability.

B. The Comparability Principle

The Commission first proposes to amend part 284 to codify the

[49] See parts X (Blanket Sales Certificates) and VI (Pregranted Abandonment of Unbundled Sales Obligations).

[50] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, 53 FR 22,139 (June 14, 1988), III FERC Stats. and Regs. ¶ 30,820 (1988), order on reh'g, Order No. 497-A, 54 Fed. Reg. 52,781 (Dec. 22 1989), III FERC Stats. and Regs. ¶ 30,868 (1989), order extending sunset date, Order No. 497-B, 55 FR 53,291 (Dec. 28, 1990), III FERC Stats. and Regs. ¶ 30,908 (1990).

[51] 18 CFR parts 161 and 250 (1990). See also Algonquin Gas Transmission Co., *et al.*, 55 FERC ¶ 61,261 (1991) with respect to pipeline compliance with the reporting requirements of § 250.16 of the Commission's regulations.

[52] 18 CFR 161.3 (1991).

[53] This requirement would be similar to that of 18 CFR 161.3(g).

[54] This requirement would be in lieu of 18 CFR 161.3(c).

[55] This requirement would be similar to that of 18 CFR 161.3(j).

[56] Section 250.16 sets forth reporting requirements.

[57] Order No. 436, *supra* n.2 at p. 31,495 ("Examples of discrimination that the Commission finds to be undue or preferential within the context of self-implementing authorizations are refusals to transport for existing sales or non-fuel switchable customers and preference for affiliates.")

[58] 18 CFR 284.8(b) and 284.9(b) (1991).

[59] 18 CFR 284.8(c) and 284.9(c) (1991).

[60] *E.g.*, Transcontinental Gas Pipe Line Corp., 55 FERC § 61,446 (1991).

[61] See text at n.22, *supra*. The Commission notes that comparable may be defined as either similar or the same. Here, in light of Congress' aim, comparable means the same to the maximum extent feasible.

comparability principle. The usual formulation of comparability has been that pipelines' transportation services must be comparable in quality to the transportation services provided as part of, or embedded within, their sales services. However, this definition of comparability assumes a bundled sales service. As stated above, the Commission, with one exception, and subject to the comments specifically requested on this issue, is proposing to mandate the unbundling of sales from transportation. Hence, the commission's proposed amended Part 284 would require an open access pipeline that offers transportation to provide transportation services on a basis that is comparable in quality for all gas supplies, whether purchased from the pipeline or elsewhere. This definition would cover both bundled and unbundled pipeline sales and would ensure that the pipeline's reasonable operational conditions imposed on its transportation services under §§ 284.8(c) and 284.9(c) result in non-discriminatory services for pipeline sales gas or for third party sales gas.[62] This principle would govern all of a pipeline's terms and conditions for open access service which have any meaningful impact on a decision to purchase pipeline sales gas versus third party sales gas. Those terms and conditions should be a neutral factor in influencing the gas purchaser's decision about whether to purchase gas from the pipeline or from another gas merchant.

At this stage, the Commission will not prescribe uniform terms and conditions to implement comparability because it recognizes that pipeline systems differ in many respects.[63] However, the comparability principle must be addressed and implemented in each pipeline restructuring proceeding initiated by the Final Rule to ensure that all gas is afforded equal treatment. The Commission finds that at a minimum this will require that the pipeline, in its capacity as a firm seller of gas, or a shipper that purchased gas from a pipeline, or from an affiliate of the pipeline,[64] must be given no preference over other shippers with respect to matters relating to Part 284 transportation. Therefore, in the restructuring proceedings, the parties must address aggregate receipt point capacity,[65] individual receipt point capacity,[66] receipt point flexibility,[67] mainline segment capacity,[68] storage capacity,[69] the scheduling of gas injections into the pipeline, the scheduling of gas deliveries from the pipeline, the imposition and assessment of penalties including balancing rights (such as through system storage and line pack), and the right to firm delivery points, and the instantaneous receipt and delivery of gas for all shippers.[70]

C. Capacity Reallocation

Although the Commission proposes to eliminate capacity brokering, the Commission proposes two capacity reallocation requirements as discussed below. The Commission believes that these new, capacity reallocation programs will be adequate substitutes for capacity brokering. However, the Commission will terminate capacity brokering only if it determines, after reviewing the comments here, that the proposed reallocation programs are appropriate alternatives to the current capacity brokering program and can be operated without some of the perceived problems currently associated with unlimited capacity brokering.

1. Third Party Pipeline Capacity

Many downstream mainlines are fed not only by the upstream segments owned the same pipeline but by upstream pipelines owned by other pipelines. The first question is whether firm shippers on a downstream pipeline need capacity rights on the upstream or third party pipelines to achieve comparability. The second question is, if so, what should be the extent of those capacity rights? The Commission requests comments on its discussion of these issues.

Firm shippers should have access to the same production areas as the pipeline, in order to prevent any exercise of market power by the pipeline over supplies.[71] This is true whether the downstream pipeline sells gas on a bundled or unbundled basis because unbundling at the intersection of an upstream and downstream pipeline without capacity on the upstream pipeline for customers of the downstream pipeline can give an advantage to the pipeline as merchant because of its superior access to upstream supplies. This means that a downstream pipeline's capacity on an upstream pipeline should be considered as if that capacity were a mainline segment of the downstream pipeline.

The proposed regulations therefore provide that an open access upstream pipeline must permit a downstream pipeline to assign its transportation capacity on the upstream pipeline on a non-discriminatory basis to its firm shippers. In addition, the downstream pipeline would be required to exercise its conversion rights on the upstream pipeline and to assign its upstream firm transportation capacity (both conversion and nonconversion firm transportation) and its upstream firm contract storage capacity to its firm transportation customers to the extent necessary to provide capacity to those shippers that desire upstream capacity. The downstream shippers' rights to capacity would be determined under the method used by the downstream pipeline to allocate capacity on mainline segments, with the upstream pipeline considered as if it were a mainline segment of the downstream pipeline. The upstream pipeline would charge the downstream pipeline's customers the same rates that it would have charged the downstream pipeline had there been no assignment. In addition, the downstream pipeline would not be able to charge a fee in connection with the

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[62] 18 CFR 284.8(b) and 284.9(b). United Gas Pipe Line Co., 55 FERC ¶ 61,330 at p. 61,974 (1991).

[63] *E.g.*, pipelines vary dramatically in the number of mainline receipt points.

[64] Affiliate is defined in 18 CFR 161.2 (1991).

[65] For example, the parties may choose to allocate aggregate firm receipt point capacity on the basis of each shipper's daily reservation (or contract demand) quantity and the pipeline's bundled daily firm sales service obligation. The Commission requests comments on this and other portential methods to allocate aggregate receipt point capacity.

[66] For example, the parties may choose to allocate individual firm receipt point capacity on a first-come, first-served basis. However, if there are more nominations or designations in the same place in the queue than available capacity, remaining capacity could be allocated on a pro rata basis according to the ratio of individual nominations or designations at the receipt point to total nominations or designations at the receipt point. The Commission requests comments on this and other potential methods to allocate individual receipt point capacity. The Commission has approved pipeline use of an iterative nomination process to allocate capacity when more requests for capacity are received than can be accommodated at those particular receipt points. Equitrans v. Texas Eastern Transmission Co., 49 FERC ¶ 61,397 at p. 62,469 (1989). In addition, the Commission requests comments on whether the pipelines should use an electronic bulletin board or other method to make known in advance the availability of capacity at particular receipt points. *Id.*

[67] Firm shippers must have flexibility in changing firm receipt points and in using all available receipt points on an interruptible basis.

[68] For example, the parties may choose to allocate firm mainline segment capacity on a pro rata basis. Any change in the method for allocating any capacity should address obligations incurred by firm shippers and the pipeline prior to the change (*i.e.*, should rights to capacity be grandfathered?).

[69] See discussion of storage, *infra*.

[70] As stated above, the Commission continues to support the implementation of innovative transportation services such as Columbia Gas Transmission Corporation's off-peak firm transportation service. Columbia Gas Transmission Corp., 54 FERC ¶ 61,226, reh'g granted in part and denied in part, 55 FERC ¶ 61,366 (1991). See also Columbia Gas Transmission Corp., 55 FERC ¶ 61,167 (1991) (compliance order).

[71] See text at n.22 where the House Committee emphasized the need for buyers to reach producers.

assignment of its capacity on the upstream pipeline.[72]

2. Voluntary Reallocation of Firm Transportation Capacity

A pipeline may have requests for firm capacity in excess of available firm capacity. Hence, it will not be able to fill those requests and a service queue will develop. This will occur even though some firm shippers under contract with the pipeline may no longer need all or part of their firm capacity under their contract with the pipeline. Capacity brokering permits those firm shippers to broker their firm capacity to entities who might otherwise be able to obtain only interruptible capacity from the pipeline.

The Commission continues to believe that it is essential to permit the reallocation of firm capacity as part of open access transportation. However, the Commission is proposing to replace capacity brokering with a capacity releasing mechanism because it believes that capacity releasing will be an adequate substitute for capacity brokering and is more compatible with nondiscriminatory, open access transportation and this NOPR's comparability objective. Among other things, the alternative vehicle would provide for more uniformity. The proposed program would be required under Part 284 for interstate pipelines and would, therefore, eliminate the need for a plethora of capacity brokering certificates. Also, because the pipelines would be operating the proposed program, the Commission will be in a better position to ensure that the pipelines have similar requirements with respect to the reallocation of capacity.

The capacity releasing program would provide many, if not all, of the same benefits as capacity brokering. For instance, LDCs book a certain amount of firm service all year round to guarantee service continuity for peak periods. This may be only a few months per year. The LDC may be willing to relinquish capacity for a portion of remaining periods. This serves both efficiency and load management purposes. Those points indicate that the proposed capacity releasing alternative may be the better way for achieving the essential need for a system of capacity reallocation in a manner consistent with the goals of nondiscriminatory, open access transportation and the decontrol of natural gas at the wellhead and in the field. Accordingly, the Commission proposes to amend part 284 to require that all interstate open access pipelines must provide a capacity releasing mechanism through which existing shippers can voluntarily reallocate all or a part of their firm transportation capacity rights to any person who wants to obtain that capacity by contracting with the pipeline.[73]

The Commission's proposed capacity releasing mechanism would allow firm capacity holders to permanently release some or all of their capacity and to temporarily, for any shorter period of time, release some or all of their capacity on an annual or seasonal basis. Capacity releasing would operate as follows. After the restructuring is accomplished (including the firm capacity holder's exercise of the right of first refusal as described in part VI), the firm capacity holder would inform the pipeline that it wants to release capacity on a permanent or temporary basis, the specific quantity to be released, and the period of time. The pipeline would then make this information available on its electronic bulletin board and would hold a seven business day open season. The pipeline would be required to resell that capacity under part 284 to the applicant offering the highest price not to exceed the pipeline's maximum rate. If more than one applicant offers the same top price, the pipeline would allocate the capacity among those top bidders on either a pro rata basis, or a present value of the reservation fee per unit basis, or a first-come, first-served basis.[74] Unless the pipeline otherwise agrees (such as where there is a permanent reallocation of annual capacity), the releasing customer would remain liable on its contract but would receive an offset against its bill of the resale.[75] The pipeline itself should be indifferent to the substitution because its total contract demand will remain unchanged. The details of capacity releasing, including the pipeline's recompense and operational procedures, would be determined in the individual restructuring proceedings.[76] Interested commenters should discuss whether capacity releasing is a good alternative to capacity brokering and if so, why, and if not, why not. In other words, is capacity releasing workable? The Commission also requests comments on whether it should continue to require the maximum rate for the released capacity to be limited to the rate paid by the releasing customer. For example, if a sufficient number of shippers bid for the released capacity, should the Commission consider the rate to be restrained adequately by the operation of a robust secondary transportation market? If so, are there economic benefits that may result if the price charged for released capacity is not constrained by the Part 284 maximum rate? How would such a market based rate affect each segment of the industry? Finally, the Commission is aware in some circumstances that one problem with capacity brokering is that certain customers are unable to broker capacity. This is because those customers, because of the loads that they serve, do not have any customers behind their systems who need to acquire firm capacity. The question is would a capacity releasing program address this problem any better and if not what solutions would address this problem?

D. Storage

Many pipelines have storage facilities which are an integral part of their systems. The pipelines use their storage facilities for a variety of functions. First, the pipelines utilize storage for balancing purposes. That is, a pipeline can maintain a constant flow of gas on a daily basis by diverting supplies to storage. Second, a pipeline can use storage to implement seasonal supply management. That is, a pipeline can purchase gas during off-peak periods and store it for sale during peak periods. Third, a pipeline can use storage as a supplement to transmission capacity. This occurs when mainline transmission

[72] See *infra* for a discussion of transition costs associated with upstream capacity rights.

[73] In addition to capacity releasing, the Commission is proposing to require pipelines to conduct some form of open season where during the restructuring process LDCs must exercise a right of first refusal as discussed in Part VI. That first refusal process and the proposed capacity releasing rule may play an important role in future capacity allocation in light of the elimination of unlimited capacity brokering. For instance, should an LDC not be willing to exercise its right of first refusal, then some portion of previously booked capacity will be available to new customers.

[74] See Kern River Gas Transmission Co., *et al.*, 51 FERC ¶ 61,195 at pp. 61,542–43.

[75] If the pipeline has uncommitted firm capacity available, it may, if it so chooses, assign part or all of that uncommitted capacity to the shipper or shippers who desire such capacity before it reallocates the firm capacity of existing shippers. Presumably, such assignment of the pipeline's own uncommitted firm capacity would occur as soon as a new shipper inquired about obtaining new capacity. Indeed, the blanket certificate itself requires the pipeline to provide transportation on a nondiscriminatory basis to all who request it to the full extent of its available capacity (including firm capacity).

[76] See Florida Gas Transmission Co., 51 FERC ¶ 61,309 at p. 62,013–014 (1990) and 53 FERC ¶ 61,398 at p. 62,380 (1990) for an example of a program for permanently or temporarily releasing firm capacity. ("Allowing Florida Gas Customers with excess capacity to relinquish it for use by others who are experiencing a shortage should promote maximization of throughput and efficient allocation of capacity consistent with our policies." 51 FERC at p. 62,013.)

capacity is less than the pipeline's firm obligations, with the difference delivered out of downstream (delivery area) storage. At times, storage may perform all three functions. At present, part 284 of the Commission's regulations does not require that an open access pipeline make storage available on an open access contract basis so that shippers may store their own gas. An open access pipeline, of course, may apply for a blanket certificate to provide firm and interruptible open access contract storage services.[77] However, the Commission requires that an open access pipeline must make system storage available to firm shippers on a nondiscriminatory basis to assure open access firm transportation service.[78]

As discussed above, the Commission is requiring pipelines to unbundle most of their sales at an upstream point. Hence, the pipeline should no longer need downstream storage to fulfill most of its firm sales obligations. It should only need downstream storage for load balancing and system management and to fulfill its proposed limited bundled firm sales obligations. Hence, unbundling should require, if the Commission adopts it as proposed, the pipelines to sell downstream storage to transportation customers. The Commission believes that these storage sales must be on a non-discriminatory, open access basis without regard to the identity of the upstream seller of the gas.

The pipeline may need to use its upstream production area storage to satisfy its unbundled firm sales obligations. However, the Commission believes that shipper access to upstream storage is an important comparability issue. Indeed, access to this storage illustrates the need for comparability. For example, a pipeline may have available storage capacity that is not needed to serve maximum firm requirements. However, this storage is nonetheless valuable in that the pipeline is able to buy gas off peak at cheaper prices and store it for later sale. Preventing access to storage may give the pipeline a competitive advantage over other gas merchants and may conflict with the goal of open access to maximize the benefits of competition by requiring the shipment of all gas supplies on comparable terms.

The Commission proposes to amend part 284 so that an interstate pipeline must offer firm and interruptible open access storage as part of its open access transportation program. This would be accomplished by amending § 284.1(a) of the Commission's regulations to define transportation as including storage, except for pipelines offering transportation under 18 CFR part 284, subpart C (Certain Transportation by Intrastate Pipelines). As amended, § 28.1(a) would read: " 'Transportation' includes storage (except for pipelines offering transportation under part 284 subpart C), exchange, backhaul, displacement or other methods of transportation." Storage, therefore, would be included within the other requirements of part 284 for interstate pipelines.[79] Pipelines would have to provide access to storage on a firm and interruptible basis for all shipper gas without regard to the seller in a manner that is not unduly discriminatory. The pipeline would be required to offer the open access storage on a basis that is not in any way tied to the storage customers' purchase of a particular type of transportation.

Because storage capacity (*i.e.*, daily deliveries out of storage) is less than aggregate contract demand, the pipeline would be permitted to allocate firm storage capacity under the method used to allocate mainline segment capacity. Customers currently holding firm storage rights, however, would retain those rights unless they voluntarily release them. The pipeline would be entitled to retain capacity for its limited bundled firm sales program [80] and for load balancing purposes and system management.[81] Firm shippers, whether or not they elect open access storage service, should have the same degree of balancing flexibility as the pipeline possesses when providing its sales services. Firm shippers should be able to use both storage on a non-contract basis and line pack for balancing.[82]

Finally, the unbundling of sales and the provision of open access storage would mean that a shipper would no longer be entitled to rely on pipeline system storage to assure firm transportation service where storage is used in lieu of transmission facilities.[83] It would be up to the shipper to put its own gas in its firm storage space. Last, because the proposed regulations would define transportation to include storage, open access contract storage capacity would be subject to pregranted abandonment under 18 CFR 284.221(d) as revised.

E. Curtailment

A pipeline may have to curtail deliveries to customers because of either supply or capacity constraints. NGPA Title IV requires that end users be protected when pipeline gas supplies are scarce.[84] However, the NGPA system of curtailment priorities does not apply to curtailments that result from a shortage of transportation capacity.[85] As the Commission stated in Order No. 436:

> [G]as being transported normally should not be subject to curtailment at all, because it would be the pipeline's system supply, not the shippers' gas, that would be curtailed.[86]

Accordingly, when a pipeline's gas supplies are scarce, the pipeline should curtail its sales customers without affecting its transportation customers. This is a logical extension of the Commission's proposal to mandate generally the unbundling of sales from transportation and should make it easier for the pipeline to curtail its sales customers in a supply curtailment situation without affecting its transportation customers.

With respect to capacity curtailments, the Commission has routinely authorized pipelines to have transportation curtailment plans which differ from their sales curtailment plans, and has specifically approved transportation curtailment plans which are based on *pro rata* allocations of capacity.[87] The Commission has, however, permitted parties to agree to an end-use specific transportation capacity curtailment plan.[88]

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[77] *E.g.*, Texas Eastern Transmission Corp. 52 FERC ¶ 61,424 (1990); Northwest Pipeline Corp. 50 FERC ¶ 61,341 (1990) and ANR Pipeline Co., 46 FERC ¶ 61,339 (1989), reh'g and clarification granted in part and denied in part. 49 FERC ¶ 61,046 (1989).

[78] Order No. 436, *supra* n.2, at p. 31,507. System storage includes facilities owned and used by the pipeline to store its own gas for operational reasons such as for balancing or for use in lieu of transportation capacity.

[79] *E.g.*, storage rates would be designed pursuant to Section 284.7. See n.77, *supra* for an examples of previously certificated open access storage services.

[80] *Id.* Of course, the unbundling of sales upstream of storage facilities would eliminate the pipeline's need to use this storage for unbundled sales.

[81] See Northwest Pipeline Corp. 50 FERC ¶ 61,341 at p. 62,013 (1989).

[82] Of course, if the pipeline charges its sales customers for balancing then transportation customers should likewise be charged.

[83] See text at n.78 and Order No. 436, *supra* n.2, at p. 31,507.

[84] 15 U.S.C. 3391–4 (1988); El Paso Natural Gas Co., 54 FERC ¶ 61,316 at p. 61,954 (1991).

[85] Sebring Utilities Com'n v. FERC, 591 F.2d 1003 (5th Cir.), *cert. denied*, 444 U.S. 879 (1979).

[86] Order No. 436, *supra* n.2, at p. 31,515; Order No. 436–A, *supra* n.2 at pp. 31,652–53.

[87] See Texas Eastern Transmission Corp., 37 FERC ¶ 61,260 (1986); Northern Natural Gas Co., 37 FERC ¶ 61,272 (1986); Southern Natural Gas Co., 41 FERC ¶ 61,218 (1987); Columbia Gas Transportation Corp., 41 FERC ¶ 61,122 (1987).

[88] Florida Gas Transmission Co., 51 FERC ¶ 61,309 (1990); United Gas Pipe Line Co., 46 FERC ¶ 61,314; *reh'g*, 49 FERC ¶ 61,096 (1989). Those cases involved settlements where the parties agreed to the curtailment plan. In United, the Commission did find that the capacity curtailment provision was in compliance with the requirements of Title IV of the

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The Commission believes that the above requirements and policies with respect to supply and capacity curtailment that have been developed on a case-by-case basis are generally sufficient. In addition, the Commission believes that market-based gas pricing should greatly decrease, if not eliminate, shortages of gas. However, the Commission believes that as a general matter, curtailment is part of comparability. A curtailment plan should not favor the pipeline's sales over third party sales and transportation. The Commission will require parties to design and implement plans that meet this general objective in the restructuring proceeding.

The Commission is aware of allegations that pipelines have diverted transportation gas to sales customers.[89] The Commission is concerned about those allegations. Unbundling should ameliorate concerns about gas diversion because most customers will be transportation customers. The Commission requests comments on how this will impact comparability for curtailment purposes. In addition, the Commission expects pipelines to install appropriate equipment to enable them to know on a timely basis whose gas is in the system so that there is no diversion of gas from one shipper to another and especially to a shipper that purchases its gas from the pipeline or an affiliate of the pipeline.

F. Rate Matters

1. Rate Design

Currently, section 284.7(c) of the Commission's regulations sets forth the Commission's rate objectives in designing maximum rates for both peak and off peak periods. As here pertinent, "[r]ates for firm service during peak periods should ration capacity" and "[r]ates for firm service during off peak periods and for interruptible service during all periods should maximize throughput." [90] In addition, the reservation fee for firm transportation service "may not recover any variable costs or any fixed costs in excess of those costs that would be recovered by using the same methodology used for determining the demand charge in the pipeline's sales rates." [91]

The Rate Design Policy Statement raised the question of whether the modified fixed variable (MFV) rate design method is outdated "in light of the significant changes in the pipeline industry since the adoption of Order No. 436 in 1985 and the * * * decontrol of gas under the NGPA." [92]

The MFV method recovers all fixed production and gathering costs, all variable costs, and return on equity and related taxes in the commodity component. The remaining fixed costs are recovered in the demand component.[93] The MFV demand component typically consists of two demand charges. The first, or D-1 charge, reflects peak considerations. The second, or D-2 charge, reflects annual considerations. The costs assigned to the demand component have been assigned to the D-1 and D-2 charges on a 50-50 basis. The Rate Design Policy Statement's particular concern was whether the current D-1 charges appropriately reflected the demand for firm capacity. The Rate Design Policy Statement provided:

> The central question is whether the costs assigned to the D-1 charge are appropriate in amount to ration peak capacity to those who value it the most. The answer may depend on whether there is a waiting list for firm capacity. Such a queue may indicate that the present D-1 (peak) charge is not rationing capacity. If capacity is consistently underbooked, it may be that the D-1 (peak) charge is excessive. In either event, the price is not appropriate because it produces an inefficient allocation of capacity on the pipeline.[94]

Since the Rate Design Policy Statement, the Commission has been constantly reevaluating § 284.7, the Policy Statement, and rate design in the context of the evolving natural gas industry environment. As discussed above, Congress has repealed the remaining price controls on the wellhead or field sales of natural gas in order to create a competitive national market for the sale of gas. Congress has indicated that all gas should be shipped on even terms under non-discriminatory open access transportation and that this Commission should "improve this competitive structure in order to maximize the benefits of decontrol." [95]

The Commission has concluded as a general matter that gas sales should be unbundled from gas transportation in order to improve the competitive structure of the natural gas industry by, among other things, creating direct, head-to-head competition among pipelines as merchants and other merchants and making transportation a neutral factor in the gas purchaser's choice of merchants. In light of the changes that have occurred since the Rate Design Policy Statement was issued, how does MFV comport with the Congressional mandate for a national gas market with shipment on even terms and with the Commission's proposals in this Notice to implement that mandate? [96]

MFV was devised to design bundled city gate sales rates [97] to help pipelines sell gas by shifting costs from the commodity charge to the demand charge.[98] However, the Commission did not move all costs to the demand charge, in order to promote operational efficiency by keeping the pipelines at risk in their sale of gas. Here, the Commission proposes to move the point of sale for pipeline gas upstream to the production areas. Pipeline gas sales will be priced on a market basis. Hence, MFV's original rationale of creating a more competitive city gate bundled gas price appears to be no longer relevant. Rather, a primary concern is whether MFV is inhibiting gas-on-gas competition at the wellhead or in the field by distorting the delivered price by loading up pipeline transportation usage charges with fixed transmission costs.[99]

The Commission now finds that MFV under most circumstances distorts the gas purchaser's decision by subjecting the wellhead or field prices of gas merchants (net backs) to differing pipeline equity ratios.[100] This hinders

NGPA. However, the effect of that order was to approve a specific settlement agreement, any inference that the NGPA mandates end-use specific curtailment plans is misplaced.

[89] See the Staff Summary of December 1989 Curtailment Survey Responses, Docket No. TC90-6-000, Nov. 1, 1990.

[90] 18 CFR 284.7(c)(1) and (2) (1990).

[91] 18 CFR 284.8(d) (1990).

[92] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 at p. 62,055, order on reh'g, 48 FERC ¶ 61,122 (1989).

[93] These include the rate of return on debt (interest expense), depreciation expense, and administrative and general expense.

[94] 47 FERC § 61,295 at p. 62,055 (footnote omitted).

[95] See text at n.22, *supra*.

[96] At times, the issue is framed in the context of competition between Canadian and domestic gas. See Opinion No. 357, Iroquois Gas Transmission System, L.P., *et. al.*, 53 FERC § 61,194 at pp. 61,711-12, n.91 (1990) and Tennessee Gas Pipeline Co., 51 FERC § 61,113 (1990) (NIPPS II).

[97] MFV was first adopted in 1983 in Natural Gas Pipeline Company of America, 25 FERC § 61,176 (1983), order on reh'g, 26 FERC § 61,203 (1984), aff'd in relevant part, Northern Indiana Public Service Co. v. FERC, 782 F.2d 730 (7th Cir. 1986).

[98] MFV changed the recovery of fixed costs in the commodity charge from either the United method's 75 percent or the Seaboard method's 50 percent. In almost all cases, this reduced the share of fixed costs in the commodity charge.

[99] Storage will be unbundled and separately charged except for balancing costs.

[100] In addition, pipelines might have different fixed costs (equity return and relates taxes) in their usage charge owing to the size of their depreciated rate bases.

gas-on-gas competition at the wellhead or in the field because producer competition is not based on the producers' own costs. Rather, producer competition for downstream customers is influenced by the fixed costs in the pipeline usage charges. For example, producers in different fields competing for the same market via different pipelines may have their competitive positions in that market determined by the amount of fixed costs in the pipelines' respective usage charges and not by the producers' own costs. The Commission requests comments on whether this proposed determination is correct. Accordingly, this shipment of gas on uneven rate terms may be inhibiting the development of a national gas market and does not comport with Congress' goals in enacting the Natural Gas Wellhead Decontrol Act of 1989. Under section 5 of the NGA, the Commission proposes to conclude that MFV is anticompetitive and unjust and unreasonable.

The next question is what rate design should replace the MFV rate design's assignment of fixed transmission costs between the pipeline demand and usage charges. The Commission proposes to amend § 284.8(d) of the regulations to require pipelines to design their transportation rates under the straight fixed variable (SFV) (as opposed to MFV) method of assigning all fixed transmission and any fixed storage costs related to transmission [101] to the demand charge unless the parties to a proceeding otherwise agree to a different rate design method. The Commission will not rigidly preclude the pipeline, its customers, and interested state commissions, producers, marketers, brokers, end-users, and others from agreeing to an alternative rate design that deviates from SFV and may be appropriate to that particular pipeline system.[102]

The Commission believes that SFV comports with and promotes Congress' goal of a national gas market and goes hand-in-hand with the Commission's proposal to unbundle pipeline sales. Under SFV, all gas merchants would be able to compete in a national market without regard to transportation costs.[103] This rate design parity is just as essential as comparability in the quality of service with respect to the transportation of gas. SFV would, therefore, maximize the benefits of decontrol by increasing the nationwide competition among gas merchants. This should result in head-to-head, gas-on-gas competition and in a single, decontrolled market price for gas which will achieve Congress' intent in passing the Natural Gas Wellhead Decontrol Act of 1989 to "over time force the evolution of a set of lowest-cost producers." [104] This "will yield lower prices and more abundant supplies" and benefit all consumers of gas.[105] Last, the Commission will not have to engage in the difficult and speculative task of determining exactly what portion of fixed transmission costs belong in the usage rate for each pipeline or the pipeline industry without inhibiting the fruition of Congress' goal of a national gas market.

The Commission realizes that pipelines would no longer be subject to risk for their firm service with respect to their equity return and related taxes which have been recovered in the commodity charge under MFV. In addition, the issue of cost shifting among types of customers must be addressed.

To date, when an SFV rate design has been adopted, the Commission has imposed a 25 basis point reduction in the approved rate of return on equity to reflect the possibility of lower risk.[106] In the nine recent Northeast expansion orders, the Commission committed itself to explore the impact of shifting from a MFV to a SFV approach on the cost of capital.[107] Accordingly, in the context of move to SFV, we solicit comments on the need to lower the rate of return. The Commission requests comments on whether this assumption about a decrease in risk is accurate. In addition, if the Commission moves forward with some form of incentive regulation—as is currently being examined by a Commission task force—will this provide a more reasonable recognition of the risks and rewards pipelines will face if the NOPR is adopted?

At the same time, the Commission recognizes that any change in rate design could benefit some customers and hurt other customers. Indeed, the Rate Design Policy Statement recognizes the possible need for pragmatic adjustments in the event a particular method leads to undesirable or inequitable results, and required ALJs to "consider and articulate the impacts (benefits and detriments) of the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers." [108] The questions are whether the cost shift is undue and, if so, how to mitigate it.[109]

This issue must be addressed in the restructuring proceeding where the pipeline will file to comply with the changes mandated by the Final Rule adopted by the Commission. The pipeline should consider estimating annual customer bills both as they would be if costs were allocated der traditional ttFV and if allocated under SFV. Account should be taken of the benefit to firm sales customers who, absent this rule, would have used interruptible transportation, but now will be able to ship on a firm basis. If an adjustment is warranted, one possibility would be to allocate costs among classes of customers under an MFV type method and to use the SFV method to design bills. Under this approach, fixed costs would be allocated along traditional lines. Allocation would be based on contract demand volumes for D-1 costs and actual usage for D-2 and commodity charge costs.[110] After that allocation, each class' one-part demand charge under SFV would be designed by dividing the fixed costs assigned to each class by the contract billing determinants of the class. This combined MFV and SFV approach would assign fewer fixed costs to low load factor customers than would be assigned using only SFV for cost allocation and rate design.[111]

This method will serve to mitigate the cost shifts to customer classes but may still result in cost shifts for individual customers. This is because costs would be allocated based on the average load factor of the customer class. If a customer is significantly below the

[101] See note 99, *supra*.

[102] The Commission recognizes that there is a difference between the restructuring of rates for services provided using current facilities and for services provided using new facilities. For example, the former case involves considering the impact of a change in rate design as described above. In addition, the Commission has allowed, and will under certain circumstances continue to consider, the shippers involved in new pipeline construction agreeing to a particular rate design that reflects risk allocation between the pipeline and the shippers. See, *e.g.*, Tennessee Gas Pipeline Co., 55 FERC § 61,480 (1991).

[103] Only variable costs (such as fuel) would be in the firm transportation commodity charge. Interruptible transportation rates will continue to be examined under the Rate Design Policy Statement.

[104] See n.21, *supra* at 7.

[105] *Id.*

[106] See, *e.g.*, Transcontinental Gas Pipe Line Corp., 56 FERC ¶ 61,037 (1991), slip op. at 7.

[107] See, *e.g.*, Tennessee Gas Pipeline Co., 55 FERC ¶ 61,480 (1991).

[108] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 at p. 62,054 (1989).

[109] *Id.* at p. 62,055.

[110] Throughput would include all of a customer's volumes. This would combine a firm customer's interruptible transportation volumes with firm transportation volumes to obtain an accurate allocation based on load. This use of total volume figures would be a change from using D-2 nominations.

[111] In addition, small customers previously billed on a one-part charge with an imputed load factor could continue to be billed that way.

average load factor of the class, its costs will increase. This type of problem could be examined on a case by case basis in each restructuring proceeding to determine the appropriate classes. Our expectation is that classes may need to be redefined to be more homogeneous by load factor.

Another possibility is to recognize that on some systems there is no correlation between load factor and customer size based on contract demand. As such, a measure of annual volumes could be used to allocate certain demand costs and design rates in an attempt to mitigate the cost shift created under the SFV method. Under this mitigation measure demand costs would be allocated on a peak and annual basis. The usage charge would only contain variable costs. On other pipeline systems other mitigation measures may be used depending on the load factor characteristics of the customers. We believe that by tailoring the mitigation measures, we can mitigate the cost shifts on all pipeline systems.[112]

As stated above, the Commission proposes to use its NGA section 5 authority and § 284.8(d) to require pipelines to recover fixed costs under SFV unless the parties to a proceeding otherwise agree. This amendment should not be construed as foreclosing transitional adjustments in allocations as discussed above.

In the restructuring proceedings, the pipeline, its customers, marketers, producers, and other interested parties must discuss rate design, including, as discussed above, the need for, and type of, mitigation measures. As described earlier, unless the parties otherwise agree, the Commission is proposing that the pipeline must design its rates in its restructuring filing under SFV.

2. Transition Costs

Pipelines may incur different types of transition costs in complying with the proposals set forth in this NOPR. The Commission believes that these potential costs should be addressed here as part of, and not after, a significant alteration of the pipeline's functions in the gas industry.

The Commission foresees three potential types of costs. The first type consists of costs associated with physically implementing the proposed rules (*e.g.*, more or better meters, electronic data interchange). The pipeline should file to recover those costs as part of a NGA section 4 filing to the extent costs are not otherwise borne by the parties to specific transactions. The second type of costs are those associated with the move to unbundling and market based rates. For example, the pipeline would no longer have a PGA and therefore may have unrecovered gas costs in its Account No. 191.[113] The Commission will permit pipelines to direct bill those costs.

In addition, where the pipeline retains upstream pipeline capacity even after assignment of that capacity to its customers, it might incur costs associated with that capacity beyond its needs to serve its remaining bundled sales customers. The Commission intends to allow pipelines to charge these Account No. 858 costs to all customers to the extent costs are not otherwise borne by parties to specific transactions. Similarly, the Commission intends to permit pipelines to charge unbooked open access contract storage to all customers to the extent costs are not otherwise borne by parties to specific transactions. The Account No. 858 and storage costs may be billed as a fixed charge to firm customers.

The third type of cost involves pipeline/producer contracts. The pipelines may incur take-or-pay costs or buyout or buydown costs with producers. The pipelines should continue to recover those kinds of incurred costs under Commission Order No. 528 until the effective date of a market-based pricing mechanism under the blanket sales certificate.[114] After the effective date of a market-based pricing mechanism, future costs should be recovered only pursuant to that mechanism. The pipeline may institute a market-based pricing mechanism under its blanket certificate for unbundled sales services. The pipeline's blanket certificate for unbundled sales services would be effective on the effective date of the pipeline's filing to implement the Final Rule. As stated, once the market-based pricing mechanism becomes effective, the pipeline may recover its take-or-pay costs and buyout or buydown costs only under the market-based pricing mechanism and not under Order No. 528. Of course, the pipeline may continue to recover any costs previously filed under an Order No. 528 recovery mechanism prior to the effective date of a market-based pricing mechanism.

Under the proposal, a pipeline will be granted a blanket sales certificate by operation of subpart J of part 284 of the Commission's regulations. Under that certificate the pipeline may use either a market-based pricing mechanism[115] or a cost-based pricing mechanism. In other words, the Commission is not proposing to mandate a market-based pricing mechanism. Consequently, a pipeline which uses a cost-based pricing mechanism could seek to recover take-or-pay costs and buyout and buydown costs under Order No. 528. Accordingly, this proposal does not establish a sunset date for the use of the Order No. 528 procedures. However, if the pipeline chooses to price its sales services under a market-based mechanism, it will be precluded from using those procedures because of the possibility of double recovering take-or-pay costs.

Under current Commission policy in Order No. 528–A, pipelines may file for recovery of new take or pay costs and buyout and buydown costs for which recovery was not previously sought under Order No. 500. For such new costs, the pipeline may utilize a volumetric surcharge of up to 75%, if it agrees to absorb at least 25% of the new costs. However, in light of the proposal here, the Commission requests comments on whether, during the restructuring proceeding, the pipeline and the parties should develop an appropriate mechanism for the pipeline to recover with or without an absorption requirement its prudently incurred take-or-pay costs and buyout and buydown costs that result from compliance with the Final Rule. This could include an appropriate mechanism such as an exit fee, demand charge, direct bill, or absorption.

Pipeline customers will be expected in future rates to pay the above-described costs associated with pipeline implementation of the Final Rule, and this NOPR constitutes notice of such future billing.[116]

The Commission recognizes that some LDCs have alleged that they are unreasonably incurring take-or-pay charges in the circumstance where industrial customers bypass the LDC by taking service from the pipeline. In several instances, the Commission has approved pipeline agreements to make future adjustments to their take-or-pay cost recovery mechanisms to cover the bypass situation.[117] Interested

[112] The Commission will issue in the near future an appendix prepared by the staff illustrating some potential mitigation measures.

[113] A pipeline might retain a limited PGA for its small sales customers.

[114] 53 FERC ¶ 61,163 (1990).

[115] Of course, the right to institute a market-based pricing mechanism is predicated on the pipeline's compliance with all of the requirements of the Final Rule.

[116] See *Columbia Gas Transmission Corp.* v. *FERC*, 831 F.2d 1135 (D.C. Cir. 1987), modified on reh'g, 844 F.2d 879 (1988) (court implied that required notice could be given in a rulemaking.)

[117] *E.g.*, Natural Gas Pipeline Company of America, 56 FERC ¶ 61,142 (1991), slip op. at 5;

Continued

commenters should discuss whether the Commission should adopt specific provisions for these kinds of adjustments.

The Commission recognizes that pipelines cannot predict whether transition costs will be incurred. In their comments to the NOPR, the pipelines should provide estimates of their transition costs, if any, that they expect to incur as a result of the proposed rules. In addition, the pipeline will be required to provide estimates for potential transition costs during the restructuring proceeding and with their restructuring filing.

3. Production Area Facility Rates

As discussed above, the Commission has been constantly reevaluating the designing of rates in the context of the evolving natural gas industry. In that vein, in PL 91-2-000, the Commission has issued a policy statement with respect to the recovery of gathering costs incurred in connection with jurisdictional transportation.[118]

The Commission reviewed its long-standing usual policy of categorizing production area facilities as either jurisdictional transportation or nonjurisdictional gathering in order to determine the appropriate recovery of production area costs in the interstate pipeline's rates. If the production area facilities were jurisdictional, the pipeline would be entitled to recover those costs through its demand and commodity components. However, if the production area facilities were nonjurisdictional, the pipeline would be required to recover those costs only through the commodity charge. The Commission concluded that this jurisdictional/nonjurisdictional approach was no longer appropriate for purposes of designing rates to determine how production area costs would be recovered.[119]

The Commission perceives two matters that warrant discussion in this NOPR. The first is the unbundling of production area charges from mainline transportation charges. Section 284.7(d) of the Commission's regulations requires that a "rate * * * separately identify cost components attributable to transportation, storage, and gathering costs."[120] In addition, § 284.7(d)7(4)(i) requires that rates "recover * * * solely those costs which are properly attributable to the service to which the rate applies."[121] The Rate Design Policy Statement stated the Commission's preference for "fully unbundled services."[122] The Commission reiterates its preference that pipelines separately charge customers for production area services.

The issue remains about how the pipeline should recover its production area costs. Therefore, the second matter is the impact of this NOPR's proposals on that issue. Interested commenters should address the matters of unbundling and cost recovery *vis a vis* production area facilities. In particular, interested commenters should discuss whether SFV should be used in the designing of production area rates so that all production area fixed costs would be recovered in a demand-type charge.[123]

IX. Remaining Bundled Sales

The Commission is proposing that pipelines may continue providing a bundled, city gate, firm sales service for certain customers, especially for small customers defined as such in a pipeline rate schedule as of the date of the Final Rule. For example, GS rate schedule customers would qualify. Any pipeline that continues bundled sales would be subject to the comparability principle and would have to allocate capacity to itself as a shipper at receipt points, on mainline segments, to upstream capacity, and to storage. The pipeline should do this by considering itself as a firm shipper using the small customers' aggregate firm entitlement rights to determine the pipeline's share of capacity. In addition, the pipeline must subject itself to all tariff terms and conditions applicable to firm shippers such as scheduling, nominating, delivering, and all penalties.

X. Blanket Sales Certificate

The Commission is proposing to issue to any pipeline holding a certificate under § 284.221(d) of the Commission's regulations a blanket certificate covering firm and interruptible sales services. Except for continuing bundled firm sales (see *supra*, part IX), all rights to firm and interruptible sales services would be automatically converted to unbundled service under the blanket certificate. Those sales services would be afforded pregranted abandonment (see *supra*, part VI).[124] However, the pipeline's unbundled firm sales customers will have the right to reduce their firm sales entitlements in whole or in part as part of the restructuring proceeding to implement the final rules the Commission adopts (see part XI, *infra*) effective on the effective date of the filing. This will enable the pipeline's firm sales customers to negotiate market-based gas pricing mechanisms and take advantage of other opportunities for long-term sales contracts in the competitive wellhead and field market. In addition, the Commission proposes to include standards of conduct and reporting requirements as part of the regulations with respect to blanket sales certificates for pipeline sales. To conclude, the Commission believes that the proposed blanket sales certificates will be in the present or future public convenience and necessity because they will convert pipelines to substantially unbundled sales in a competitive wellhead or field market in furtherance of Congress' aims in enacting the Natural Gas Wellhead Decontrol Act of 1989.[125]

XI. Legal Basis and Implementation

The Commission proposes to find in the Final Rule that pipeline services, terms and conditions of service, and rates that do not comport with the regulations adopted by the Final Rule are unduly anticompetitive and therefore unjust and unreasonable and unduly discriminatory.

The Commission recognizes that the restructuring filings and proceedings will not be simple affairs. The NOPR's proposals, if adopted, will require the renegotiating of all pipeline services provided to customers in light of the restructured pipeline service obligations and comparability requirements. Shortly after issuance of the Final Rule the Commission will start restructuring proceedings, with new docket number[126] for each pipeline subject to the Final Rule for use as the vehicle for complying with the Final Rule. The Commission intends to require each pipeline to inform the Commission in writing within 15 days after the effective date of the Final Rule if it intends to comply with the Final Rule in the new restructuring proceeding only or in a

Northern Natural Gas Co., 55 FERC ¶ 61,442 (1991); Southern Natural Gas Co., 48 FERC ¶ 61,336 at pp. 62,017 and 62,025-6 (1989).

[118] Interstate Natural Gas Pipeline Rate Design, 56 FERC ¶ 61,086 (1991).

[119] The Commission "may regulate rates charged for transportation on the pipeline's own gathering facilities performed in connection with jurisdictional interstate transportation." Northern Natural Gas Co., Div. of Enron, v. FERC, 829 F.2d 1261, 1263 (8th Cir. 1991), petition for cert. filed, July 2, 1991 (No. 91-14).

[120] 18 CFR 284.7(d) (1991).

[121] 18 CFR 284.7(d)(4)(i) (1991).

[122] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 at p. 62,059 (1989), order on reh'g, 48 FERC ¶ 61,122 at pp. 61,451-2 (1989).

[123] One-part rates for interruptible production area services would still be appropriate.

[124] Continuing bundled sales services would not be subject to pregranted abandonment.

[125] See n. 20, *supra*.

[126] The Commission will create a new prefix (RS) for the restructuring proceedings.

existing proceeding consolidated with the new proceeding.[127] If the pipeline believes that its existing tariffs or settlements already filed with the Commission achieve the Final Rule's objectives, the pipeline should inform the Commission of this and why with the filing described in the previous sentence. The pipeline's customers and other interested parties will then be able to respond. The Commission will thereafter act as soon as possible on a case-by-case basis to decide whether it should honor in whole or in part omnibus settlements. For example, the Commission believes that as a general matter rate moratoriums which were negotiated as part of a settlement agreement should be honored.

In addition, the Commission will require the pipelines, within 30 days after the Final Rule's effective date, to initiate discussions with their customers with respect to all details of the future service restructuring. The Commission will also require the pipelines to report on a regular basis about the status of the negotiations. The Commission expects those discussions to result in settlements which will ease the transition from the traditional to the new restructured services.

In addition, as discussed above, the Commission intends to require holders of firm capacity to exercise rights of first refusal by the effective dates of pipeline restructuring filings in order to retain their firm capacity. In that vein, the Commission intends to find in the Final Rule that all existing long-term firm transportation contracts are unjust and reasonable to the extent there is demand for firm capacity and the existing firm capacity holders do not exercise their rights of first refusal. Hence, this finding will be made only to the extent necessary to effectuate the reallocation of firm capacity from an existing firm capacity holder not exercising its right of first refusal to a new firm capacity holder. This will allow the restructuring proceeding to serve as the forum for an initial reallocation of capacity from existing holders who may not need or want it, to those who do want firm capacity. As stated in part VI, if there are no persons seeking firm capacity as described in part VI, the firm capacity holder must retain its capacity until termination of its contract unless the customer and the pipeline are able to negotiate a reasonable exit fee.

Moreover, during the restructuring proceedings, each pipeline and its customers and other interested parties will be expected to negotiate the details concerning the pipeline's conversion from a bundled sales to an unbundled sales service. Under the proposed regulations, the pipeline would be granted a blanket certificate for unbundled firm and interruptible sales to be effective on the effective date of the pipeline's filing to implement the Final Rule. On the effective date of that filing, each customer's bundled sales service would be converted to a like amount of unbundled sales service and a like amount of unbundled transportation service. However, a pipeline's unbundled firm sales customers may reduce their firm sales entitlements in whole or in part effective on the effective date of the implementation filing. The proposed regulations would not permit a customer to reduce its firm transportation quantity apart from the reallocation provisions. The restructuring proceeding is where the pipeline, its customers, and other interested parties should negotiate the pipeline's market-based pricing mechanism with respect to its unbundled sales services and the appropriate pricing of its bundled sales service for small customers.

Except for 18 CFR 284.221(d),[128] the Commission will require that each pipeline implement the Final Rule by making appropriate tariff filings in the restructuring proceeding on or before the date set forth in the regulations. Those filings should reflect the results of the negotiations begun after issuance of the Final Rule. Anyone who does not intervene in the restructuring proceeding discussions will be precluded from intervening in the consideration of the restructuring filings made in the proceedings. To intervene at the filing stage would be late in the proceeding and disruptive.[129] Pipelines that have implemented permanent market based, unbundled sales services prior to the effective date of the Final Rule may not need to make many changes to comply with the Final Rule.[130]

The implementation schedule will not force a pipeline to make more than one filing to implement the required changes. For example, if a pipeline's next scheduled rate case is due prior to the filing required by the Final Rule, it may, at its option, also file to implement the required changes or it may defer its implementation filing so long as it files no later than the required date. In the meantime, the pipeline's terms and conditions of service will remain in effect until changed by a pipeline's rate filing or, if unchanged in the filing, until Commission action, if necessary, under Section 5 of the Natural Gas Act. The NOPR should not be construed by anyone involved in an ongoing proceeding to mean that progress in individual cases should be delayed. Instead, it should be viewed as a stronger commitment to comparability by the Commission.

XII. Environmental Analysis

The Commission concludes that promulgating the proposed rule would not represent a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the Natural Environmental Policy Act.[131] The proposed rule falls within the categorical exemption provided in the Commission's regulations for the review of rates for the transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act [132] and for the sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas Act that requires no construction of facilities.[133] Consequently, neither an environmental assessment nor an environmental impact statement is required.

XIII. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) [134] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission certifies that the proposed regulations, if promulgated, will not have a significant impact on a substantial number of small entities.

XIV. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information

[127] If the pipeline elects to proceed only in the restructuring proceeding, it may later petition to consolidate that proceeding and a subsequently filed proceeding.

[128] As stated above, revised 18 CFR 284.221(d) will become effective on the effective date of the Final Rule. Pipelines should make a limited NGA section 4 filing to implement 18 CFR 284.221(d).

[129] The Commission previously has required pipeline restructuring to be accomplished in an NGA section 7 proceeding. Natural Gas Pipeline Company of America, 41 FERC ¶ 61,358 (1987). However, because the Commission is issuing blanket sales certificates effective on the restructuring filing effective dates, these filings will not be under NGA section 7.

[130] For example, El Paso Natural Gas Company, and Transcontinental Gas Pipe Line Corporation may be in this posture.

[131] 18 CFR part 380 (1991).

[132] 18 CFR 380.4(a)(25) (1991).

[133] 18 CFR 380.4(a)(27) (1991).

[134] 5 U.S.C. 601–612 (1988).

collection requirements imposed by agency rules.[135]

The information collection form affected by the proposed rule is FERC-544, Gas Pipeline Rates: Rate Change (Formal). This information collection is required in order for the Commission to carry out its legislative mandate under the NGA and the NGPA. The information required by the proposed rule would allow the Commission to ensure that firm transportation service provided under part 284 of the Commission's regulations [136] is comparable to transportation service provided as a part of, or embedded within, a pipeline's firm sales service.

An estimated 85 respondents would be affected by the proposed rule. The respondents would consist of pipeline companies subject to the Commission's jurisdiction that perform self-implementing transportation under either the NGA or the NGPA. The Commission estimates that: (a) The public reporting burden will average 4,810 hours per response and that the total reporting burden will be 408,850 hours; (b) the frequency of response will be a one-time filing by respondents; and (c) the total annual number of likely responses will vary depending on when the pipelines decide to file the modified tariff sheets required in the proposed rule. The Commission anticipates that the public reporting burden and the number of respondents will decrease within three years since many pipelines subject to the Commission's jurisdiction are required to make a new rate filing at least once every three years.

XV. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this NOPR, including any related matters or alternative proposals that commenters may wish to discuss. As much as possible, the comments should be keyed to the topic headings of this NOPR. In addition, comments must include an executive summary not exceeding five (5) pages in length. An original and 14 copies of the initial written comments must be filed with the Commission no later than September 30, 1991. An original and 14 copies of the reply comments must be filed with the Commission no later than October 30, 1991. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM91-11-000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Moler concurred with a separate statement to be issued later. Commissioner Langdon concurred with a separate statement to be issued later.

Linwood A. Watson, Jr.,

Acting Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717w; 15 U.S.C. 3301-3432; 43 U.S.C. 1331-1356; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 284.1, paragraph (a) is revised to read as follows:

§ 284.1 Definitions.

(a) *Transportation* includes storage (except for pipelines offering transportation under subpart C of this part), exchange, backhaul, displacement or other methods of transportation.

* * * * *

3. In § 284.8, paragraph (d) is revised and a new paragraph (f) is added to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(d) *Reservation fee.* Where the customer purchases firm service, a pipeline may impose a reservation fee or charge on a shipper as a condition for providing such service. Except for pipelines subject to subpart C and unless parties otherwise agree, the reservation fee will recover all fixed transmission and storage costs attributable to the firm transportation service and may not recover any variable costs or fixed costs not attributable to the firm transportation service. Except as provided in this paragraph, the pipeline may not include in a rate for any transportation service provided under subpart B, C, or G of this part any minimum bill or minimum take provision, or any other provision that has the effect of guaranteeing revenue.

* * * * *

(f)(1) *Comparability of service.* An interstate pipeline or that offers transportation service on a firm basis under subpart B or G of this part must provide such service on a basis that is comparable in quality for all gas supplies whether purchased from the pipeline or another seller.

(2) *Upstream pipeline assignment of capacity.*

(i) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must exercise its conversion rights on upstream pipelines that offer a transportation service under subpart B or G of this part, and must assign its upstream firm transportation capacity, including contract storage, to its shippers for which it provides firm transportation service under subpart B or G of this part, to the extent necessary to provide capacity to those firm shippers under the pipeline's method for allocating capacity on its mainline segments.

(ii) The upstream pipelines are authorized and required to permit the downstream pipelines to assign their capacity to their firm shippers.

(3) *Firm capacity releasing.* (i) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must have a mechanism for firm shippers to release firm capacity to the pipeline for resale by the pipeline on a firm basis.

(ii) The firm shippers may release their capacity in whole, or in part, on a permanent or short-term basis, without restriction on the duration of the release.

(iii) The pipeline's resale of the released capacity is subject to §§ 284.7 and 284.8(b) and (c).

(iv) If the pipeline has uncommitted firm capacity available, it may sell part or all of that capacity before resale of the released capacity.

(v) After a firm shipper notifies the pipeline in writing that it desires to release firm capacity for a particular period, the pipeline must make this information available on an electronic bulletin board and hold a seven business day open season.

(vi) The pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate). If more than one person offers the highest rate, the released capacity may be allocated on a prorata basis, or on a present value of the reservation fee

[135] 5 CFR part 1320 (1991).

[136] 18 CFR part 284 (1991).

basis, or on a first-come, first-served basis.

(vii) Unless otherwise agreed to by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect with the proceeds of any resale (minus expenses of the pipeline) credited to the releasing shipper's obligation to the pipeline.

(4) *Implementation.* (i) A pipeline must file revised tariff sheets to implement open access storage and paragraphs (d), (f) (1), (2), and (3) of this section on or before the dates set forth below.

Date: October 1, 1992
Panhandle Eastern Pipeline Company
Trunkline Gas Company
Williston Basin Interstate Pipeline Company
Williams Natural Gas Company
Colorado Interstate Gas Company
ANR Storage Company
KN Energy, Inc.
Mississippi River Transmission Corp.
Arkla Energy Resources
Questar Pipeline Company
Texas Eastern Transmission Corp.
Southern Natural Gas Company
Michigan Gas Storage

Date: November 1, 1992
Columbia Gas Transmission Corp.
Columbia Gulf Transmission Corp.
Florida Gas Transmission Corp.
ANR Pipeline Company
Tennessee Gas Pipeline Company
Texas Gas Transmission Corporation
United Gas Pipe Line Company
National Fuel Gas Supply Corp.
Equitrans, Inc.
CNG Transmission Corporation
Kentucky West Virginia Gas Company
Mid Louisiana Gas Company

Date: December 1, 1992
Northern Border Pipeline Company
Great Lakes Gas Transmission Company
Trailblazer Pipeline Company
Wyoming Interstate Company, Ltd.
Overthrust Pipeline Company
Canyon Creek Compression Company
Paiute Pipeline Company
Pacific Gas Transmission Company
Valero Interstate Transmission Company
Natural Gas Pipeline Company of America
El Paso Natural Gas Company
Northwest Pipeline Corporation
Northern Natural Gas Company
Transwestern Pipeline Company
Transcontinental Gas Pipe Line Corporation

Date: January 1, 1993
Alabama-Tennessee Natural Gas Company
South Georgia Natural Gas Company
Midwestern Gas Transmission Company
Viking Gas Transmission Company
East Tennessee Natural Gas Company
Carnegie Natural Gas Company
Algonquin Gas Transmission Company
Tarpon Transmission Company
Superior Offshore Pipeline Company
Seagull Interstate Corp.
Sabine Pipe Line Company
Blue Dolphin Pipeline Company
Black Marlin Pipeline Company
Sea Robin Pipeline Company
Stingray Pipeline Company
Texas Sea Rim Pipe Line, Inc.
Chandelur Pipeline Company
Freeport Interstate Pipeline Company
Gasdel Pipeline System, Inc.
High Island Offshore System
Pacific Interstate Offshore Company
Pacific Offshore Pipeline Company
Pelican Interstate Gas System
Point Arguello Natural Gas Line Company
U-T Offshore System
All Other Pipelines Under § 284.302(b)
Gas Gathering Corp.
Green Canyon Pipe Line Company
Gulf States Transmission Corp.
Inland Gas Company, Inc.
Moraine Pipeline Company
Delta Pipeline Company
Gas Transport Inc.
Ringwood Gathering Company
Western Gas Interstate Company
Phillips Gas Pipeline Company
Valley Gas Transmission, Inc.
Western Transmission Corporation
Louisiana Nevada Transit Company
MIGC, Inc.
Riverside Pipeline Corp.
Other part 284 subpart B and G pipelines

(ii) The pipeline's filing which implements paragraph (f)(l) of this section must, at least, include terms and conditions that provide that all firm shippers whatever the source of their gas and the pipeline in its capacity as a firm seller of gas:

(A) Have equal firm capacity rights at receipt points and equal flexibility in changing receipt points and using receipt points on an interruptible basis.

(B) Have equal firm capacity rights at pooling points, on mainline segments, and on mainlines.

(C) Have equal capacity rights to firm storage, subject to the pipeline's reservation of storage capacity necessary for load balancing and system management and firm shippers' reservation of capacity for load balancing.

(D) Are subject to the same requirements with respect to curtailment, the scheduling of deliveries, the imposition of penalties, including balancing rights (such as through system storage and line pack), and the right to firm delivery points, and provide that there be instantaneous receipt and delivery of gas for firm shippers.

(iii) Within thirty (30) days of [insert effective date of Final Rule], the pipeline must initiate formal discussions with its customers and all interested participants with respect to all details of implementing the revisions to part 284 adopted in the Final Rule.

(iv) The pipeline must file quarterly reports with the Commission with respect to the status of the negotiations required by paragraph (f)(4)(iii) of this section.

(v) Pursuant to section 7(b) the Natural Gas Act, abandonment of transportation services is authorized for each individual firm transportation arrangement authorized under a certificate granted under § 284.221 for a term over one-year if prior to the effective date of the filing required by paragraph (f)(4)(i) of this section, the recipient of the firm transportation service does not give notice that it wants to continue the transportation arrangement and agrees to match and pay any greater rate up to the maximum rate under § 284.7 and match the most favorable contract term offered to the pipeline by other persons desiring firm capacity, provided, however, that this abandonment authorization is only to the extent the pipeline resells the capacity on a firm basis to any such other person or persons.

4. In § 284.9, a new paragraph (f) is added to read as follows:

§ 284.9 Interruptible transportation service.

* * * * *

(f)(1) *Comparability of service.* An interstate pipeline or that offers transportation service on an interruptible basis under subparts B or G must provide such service on a basis that is comparable in quality for all gas supplies whether purchased from the pipeline or elsewhere.

(2) *Implementation.* A pipeline must file revised tariff sheets to implement paragraph (f)(1) of this section with its filing under § 284.8(f)(4).

5. In § 284.221, paragraph (d) is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

* * * * *

(d) *Pre-grant of abandonment.* (1) Pursuant to section 7(b) of the Natural Gas Act, abandonment of transportation services is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a certificate granted under this section, except that, if the individual transportation arrangement is for firm transportation under a contract with a term of more than one-year, the abandonment of service is only authorized if the recipient of the firm transportation service does not give notice that it wants to continue its transportation arrangement and agrees to match and pay any greater rate up to the maximum rate under § 284.7 and match the most favorable contract term offered to the pipeline by other persons

desiring firm capacity when the contractual term expires.

(2) Within 60 days of (insert effective date of final rule), a pipeline must file revised tariff sheets to implement this section with respect to firm transportation as set forth in paragraph (d)(1) of this section.

* * * * *

6. A new subpart J is added to read as follows:

Subpart J—Blanket Certificates Authorizing Certain Natural Gas Sales by Interstate Pipelines

Sec.
284.281 Applicability.
284.282 Definitions.
284.283 Sales services.
284.284 Point of unbundling.
284.285 Blanket certificates for unbundled sales services.

Subpart J—Blanket Certificates Authorizing Certain Natural Gas Sales by Interstate Pipelines

§ 284.281 Applicability.

This subpart applies to interstate pipelines that offer transportation services certificated under § 284.221(d).

§ 284.282 Definitions.

(a) *Bundled sales services* are gas sales services that are not sold separately from transportation services.

(b) *Sales Service* includes firm, interruptible or any other kinds of gas sales.

(c) *Unbundled sales services* are gas sales services that are sold separately from transportation services.

§ 284.283 Sales services.

An interstate pipeline that offers transportation service certificated under § 284.221 must offer all of its sales services on an unbundled basis except as provided below.

§ 284.284 Point of unbundling.

A sales service is unbundled when gas is sold at a point before it enters a mainline system, or at an entry point to a mainline system from a production area or intersection with an unrelated mainline system, or a reasonable distance after an entry point into the mainline when it is reasonable to unbundle at a pooling point on the mainline system.

§ 284.285 Blanket certificates for unbundled sales services.

(a) *General Rule.* An interstate pipeline granted a certificate under § 284.221 is granted a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the providing of unbundled sales services in accordance with this section.

(b) *General condition.* Any pipeline issued a blanket certificate under this section may provide only unbundled sales services, except as provided in paragraph (f) of this section.

(c) *Conversion of bundled firm sales services to unbundled firm sales services.* (1) On the effective date of the pipeline's blanket certificate for unbundled sales services as set forth in paragraph (i) of this section firm sales entitlements under any firm sales service agreement for a bundled sales service (except those continuing with bundled service as provided in paragraph f of this section) are converted to an equivalent amount of unbundled firm sales service and an equivalent amount of unbundled firm transportation service, provided, however, that a pipeline's unbundled firm sales customers may reduce their firm sales entitlements in whole or in part at any time effective on the effective date of a filing as provided in paragraph (i) of this section.

(2) *Reservation fee.* When a customer under this section has been converted to firm transportation service, the pipeline may impose a reservation fee as provided in § 284.8(d).

(d) *Conversion of bundled interruptible sales services to unbundled interruptible sales services.* On the effective date of the pipeline's blanket certificate for unbundled sales services as set forth in paragraph (i) of this section interruptible sales volumes under any interruptible sales service agreement for a bundled sales service are converted to an equivalent amount of unbundled interruptible sales service and an equivalent amount of unbundled interruptible transportation service.

(e) *Abandonment of bundled sales service.* (1) On the effective date of the pipeline's blanket certificate for unbundled sales services as set forth in paragraph (i) of this section, the pipeline's existing bundled sales service obligations converted pursuant to paragraphs (c) and (d) of this section are amended by authorizing abandonment of the sales services to the extent they are bundled.

(2) Abandonment of bundled sales services under this paragraph is permitted by the present or future public convenience and necessity.

(f) *Continued bundled sales service.* Any pipeline issued a blanket certificate under this section may continue to provide a bundled firm sales service only for customers which are receiving a bundled firm sales service under a small customer rate schedule on the date the pipeline files to implement this subpart J. Fixed costs must be recovered under the same ratemaking methodology used for determining the reservation charge under § 284.8(d), except that a pipeline may charge a one-part volumetric rate which is computed using an imputed load factor.

(g) *Pregrant of abandonment of unbundled sales services.* Pursuant to section 7(b) of the Natural Gas Act, abandonment of unbundled sales services is authorized upon the expiration of the contractual term of each individual sales arrangement authorized under this section.

(h) *Standards of conduct for unbundled sales service.* (1) To the maximum extent practicable giving due consideration to the continuation of bundled firm sales services, the pipeline must organize its unbundled sales and transportation operating employees so that they function independently of each other.

(2) The pipeline must conduct its business to conform to the requirements set forth in §§ 284.8(f) (1) and (4) and § 284.9(f)(1) with respect to comparability of service by not giving shippers of gas sold by the pipeline any preference over shippers of gas sold by any other merchant in matters relating to part 284 transportation.

(3) The pipeline must comply with § 161.3 (a), (b), (d) and (l) of this chapter and comply with § 161.3 (e), (f), (h), and (i) of this chapter by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(4) With its filing to implement this subpart J, the pipeline must file procedures that will enable shippers and the Commission to determine how the pipeline is to comply with the standards of this section.

(5) The pipeline must comply with § 250.16 of this chapter by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(i) *Implementation and effective date.* (1) Except as provided in paragraph (i)(2) of this section, a pipeline certificated under § 284.221(d) must file revised tariff sheets to implement this subpart J in a filing no later than the date indicated in § 284.8(f)(4)(i).

(2) A pipeline certificated under § 284.221(d) that is only providing transportation services as of the date of its required filing under § 284.8(f)(4) need not file to implement this subpart J with its filing under § 284.8(f)(4), but prior to offering any sales service such a

pipeline must file revised tariff sheets to implement this subpart J.

(3) The effective date of a blanket certificate issued under this section will be the effective date of a pipeline's filing to implement this subpart J.

(j) *Reporting requirements.* An interstate pipeline that engages in a sales transaction under a certificate granted by this section is subject to the reporting requirements of § 284.223(f), except for § 284.223(f)(1) (iii) and (iv), with the words "sales" and "sold" substituted for the words "transportation" and "transported" in § 284.223(f).

[FR Doc. 91-18771 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0022]

RIN 0905-AA06

Phenylpropanolamine Hydrochloride for Over-the-Counter Weight Control Use; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to September 6, 1991, the comment period on the safety and effectiveness of phenylpropanolamine hydrochloride for over-the-counter (OTC) weight control use. FDA is taking this action in response to a request to reopen the comment period to allow additional time to submit new data and information on the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use subsequent to the May 9, 1991 public meeting and reopening of the administrative record (April 1, 1991 (56 FR 13295)).

DATES: Written comments by September 6, 1991.

ADDRESSES: 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: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 1, 1991 (56 FR 13295), FDA published a notice of the reopening of the administrative record for OTC weight control drug products and announced a public meeting to be held on May 9, 1991 to discuss the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use. The notice contained a detailed list of questions related to phenylpropanolamine hydrochloride for OTC weight control use and requested data and comments on these issues. The agency considers it necessary to resolve these issues before publishing its tentative final monograph for OTC weight control drug products in the Federal Register. Interested persons were given until August 7, 1991 to submit comments regarding matters raised at the public meeting.

On July 26, 1991, the Nonprescription Drug Manufacturers Association (NDMA), a trade association, requested a 45-day extension of time beyond the August 7, 1991 deadline for the submission of data. NDMA contended that the database supporting the safety and effectiveness of phenylpropanolamine hydrochloride is quite extensive and, in relation to the questions asked by FDA, covers virtually every aspect of phenylpropanolamine hydrochloride's safety and effectiveness profile. In addition, NDMA member companies have had to generate new data, analyze these data, and prepare written reports concerning these data. More importantly, NDMA mentioned an FDA request made at a July 23, 1991 meeting (Ref. 1), for industry to reanalyze certain data in multiple ways. That meeting included a discussion of hospital discharge data to determine the background rate of cerebrovascular accidents in the general population and specifically as a result of ingestion of phenylpropanolamine hydrochloride in OTC drug products (Ref. 1). NDMA stated that reanalysis of the data will require substantial additional efforts in order to assure a full development of the database. NDMA contended that because of the short notice for this additional analysis, it is difficult to reschedule the calendars of certain key consultants to NDMA member companies as well as prepare new tabulations of data suitable for submission to the agency.

FDA has carefully considered the request and believes that an extension of time for 30 days is an appropriate time period and in the public interest. The agency notes that NDMA intends to answer questions raised by FDA in the Federal Register of April 1, 1991 and at the July 23, 1991 meeting, and the agency believes that additional time will allow for more useful comments and data analysis to be developed. Thus, the agency considers a limited extension of the comment period to be appropriate.

Interested persons may, on or before September 6, 1991, submit to the Dockets Management Branch (address above) written comments and new data and information regarding the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

(1) Minutes of meeting between FDA and NDMA, July 23, 1991, coded MM9, Docket No. 81N-0022, Dockets Management Branch.

Dated: August 7, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-19170 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement that a small business corporation have only one class of stock. Changes to the applicable law were made by the Subchapter S Revision Act of 1982. These regulations affect corporations and their shareholders and are necessary to provide them with guidance needed to comply with the applicable tax law.

DATES: Written comments and requests to appear at a public hearing scheduled for October 31, 1991, at 10 a.m. must be received by October 17, 1991. Outlines of oral comments must be recieved by October 17, 1991. See the notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (PS-4-73), room 5228, Washington, DC 20044. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage, Regulations Unit (202) 566-3935 (not a toll-free number); concerning a particular regulation section, Scott Carlson (202) 343-8459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1990, the **Federal Register** published a notice of proposed rulemaking (55 FR 40870) amending the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code. These amendments were proposed to implement section 1361(b)(1)(D) and (C) and (c) (4) and (5) as added by the Subchapter S Revision Act of 1982. The notice provided rules relating to the one class of stock requirement for small business corporations electing S status under section 1362 of the Code.

Comments responding to the notice were received, and a public hearing was held on February 15, 1991. This notice of proposed rulemaking amends the Income Tax Regulations (26 CFR part 1) under section 1361 of the Code and replaces the proposed regulations issued on October 5, 1990. The new proposed regulations set forth in this document are discussed below.

Only a small business corporation is eligible to elect S status. Section 1361(b) defines a small business corporation as a domestic corporation that is not an ineligible corporation and that does not have (i) more than 35 shareholders, (ii) as a shareholder a person (other than an estate and certain types of trusts) who is not an individual, (iii) a nonresident alien as a shareholder, and (iv) more than one class of stock. The proposed regulations set forth in this document generally provide rules relating to the one class of stock requirement. Certain provisions relating to the other requirements under section 1361 are reserved in this document. See the notice of proposed rulemaking published in the **Federal Register** (51 FR 35659) on October 7, 1986, with respect to those provisions.

Explanation of Provisions

General Rules

Under the proposed regulations, a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds and if the corporation has not issued any instrument or obligation, or entered into any arrangement, that is treated as a second class of stock.

The determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is based on the corporate charter, articles of incorporation, bylaws, applicable State law, and any binding agreements relating to distribution or liquidation proceeds (collectively, the "governing provisions"). It is the rights conferred by the governing provisions that are taken into account in determining whether the corporation has more than one class of stock. A routine commercial contractural arrangement such as a lease, employment agreement, or loan agreement is not a "binding agreement relating to distribution and liquidation proceeds" and thus is not a governing provision, unless such an agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and this regulation.

Although a corporation is not treated as having more than one class of stock if the governing provisions provide for identical distribution and liquidation rights, any distributions (including actual, constructive, or deemed distributions) that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances. For example, a payment of excessive compensation may be recharacterized as a distribution by the corporation for which no deduction is allowed; however, neither the payment nor the distribution created by the recharacterization results in a second class of stock. Similarly, a distribution may be recharacterized in whole or in part as deductible compensation (on which FICA and FUTA taxes may be due), but any difference in distribution rights resulting from such a recharacterization will not result in a second class of stock.

Exceptions to General Rules

The proposed regulations provide that certain types of state laws and binding agreements are disregarded in determining all of a corporation's outstanding shares of stock confer identical rights to distribution and liquidation proceeds. State laws that require a corporation to pay or withhold state income taxes on behalf of some or all of the corporation's shareholders are disregarded, provided that, when the constructive distributions resulting from the payment or withholding of taxes by the corporation are taken into account, the outstanding shares confer identical rights to the distribution and liquidation proceeds. The difference in timing between the constructive distributions and the actual distributions to the other shareholders does not create a second class of stock.

Agreements to redeem or purchase stock at the time of death, disability, or termination of employment are disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights. In addition, bona fide buy-sell agreements among shareholders, agreements to restrict the transferability of stock, and certain redemption agreements are disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights unless (i) the agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and the proposed regulations and (ii) the agreement establishes a redemption or purchase price that, at the time the agreement is entered into, is significantly in excess of or below the fair market value of the stock. Under the proposed regulations, agreements described in the preceding sentence that provide for the purchase or redemption of stock at book value or at a price between fair market value and book value are disregarded.

The proposed regulations also address situations in which there has been a change of stock ownership and the corporation determines the amount of its post-change distributions to its shareholders based on the allocation of income in the immediately preceding year. Agreements that provide for distributions in this manner do not result in a second class of stock. If distributions pursuant to the agreement are not made within a reasonable time after the close of the taxable year in which the ownership change occurs, however, the distributions may be recharacterized depending on the facts and circumstances.

Shares Taken into Account

Under the proposed regulations, all outstanding shares of stock are taken into account in determining whether a corporation has a second class of stock. The proposed regulations provide that, for purposes of subchapter S, stock that

is substantially nonvested within the meaning of § 1.83–3(b) is not treated as outstanding stock unless the holder makes an election with respect to the stock under section 83(b). Substantially nonvested stock with respect to which an election under section 83(b) has been made, however, is taken into account in determining whether a corporation has a second class of stock. Such stock is not treated as a second class of stock if the stock confers rights to distribution and liquidation proceeds that are identical to rights conferred by the other outstanding shares of stock.

Some S corporations have treated substantially nonvested stock for which no section 83(b) election has been made as outstanding stock for purposes of the income allocation provisions. Although the proposed regulations are proposed to be effective for corporate taxable years beginning on or after January 1, 1992, existing stock that has been treated as outstanding by the corporation (even though it is substantially nonvested) is treated as outstanding for purposes of subchapter S, and the fact that it is substantially nonvested and no section 83(b) election has been made with respect to it will not cause the stock to be treated as a second class of stock.

The proposed regulations also provide that deferred compensation arrangements that do not involve property subject to section 83 are ordinarily not treated as outstanding stock for purposes of subchapter S.

Rules Relating to Debt Obligations, Call Options, and Similar Instruments

In General

Under the proposed regulations, instruments, obligations, or arrangements may be treated as a second class of stock in certain circumstances. The proposed regulations provide a number of safe harbors or exceptions for certain ordinary business arrangements entered into by S corporations and their shareholders.

Obligations Designated as Debt

The proposed regulations generally provide that an obligation (whether or not designated as debt) is not treated as a second class of stock unless two conditions are met: (1) The obligation constitutes equity or otherwise results in the holder being treated as the owner of stock under general principles of Federal tax law, and (2) the obligation is used to contravene the rights conferred by the corporation's outstanding stock with regard to distribution or liquidation proceeds or to contravene the limitation on eligible shareholders contained in this subchapter. This rule is consistent with case law holding that purported debt which would ordinarily be recharacterized as equity does not always constitute a second class of stock for purposes of subchapter S.

Certain Safe Harbors for Obligations Designated as Debt

The proposed regulations also set forth certain safe harbors for obligations issued by a corporation. First, unwritten advances from a shareholder that do not exceed $10,000 in the aggregate at any time, are treated as debt by the parties, and are expected to be repaid within a reasonable time are not treated as a second class of stock, even if the advances are considered equity under general principles of Federal tax law. Second, proportionately-held obligations are not treated as a second class of stock. Proportionately-held obligations are any class of obligations that are considered equity under general principles of Federal tax law, but are owned solely by the owners of, and in the same proportion as, the outstanding stock of the corporation. Obligations owned by the sole shareholder of a corporation are always held proportionately to the corporation's outstanding stock.

The failure of an obligation to meet either of these safe harbors will not necessarily result in a second class of stock. As stated above, an unwritten advance or another obligation will not be treated as a second class of stock unless it is considered equity under general principles of Federal tax law and is used to contravene the rights conferred by the outstanding stock or the limitation on eligible shareholders.

Call Options

The proposed regulations also provide that a call option (or similar instrument) is not treated as a second class of stock unless, taking into account all the facts and circumstances, the call option is substantially certain to be exercised and has a strike price substantially below the fair market value of the underlying stock on the date that the call option is issued, transferred to a person who is not an eligible shareholder, or materially modified. For purposes of this rule, if an option is issued in connection with a loan and the time period in which the option may be exercised is extended in connection with (and consistent with) a modification of that loan, the extension of the time period in which the option may be exercised is not a material modification. The determination of whether an option is substantially certain to be exercised takes into account not only the likelihood that the holder may exercise the option, but also the likelihood that a subsequent transferee may exercise the option. For example, a corporate holder may be unlikely (or unable) to exercise an option, but the option would still be substantially certain to be exercised if it could be transferred to an individual who would be substantially certain to exercise the option. A call option does not have a strike price substantially below fair market value if the price at the time of exercise cannot, pursuant to the terms of the instrument, be substantially below the fair market value of the underlying stock at that time.

If a convertible debt instrument embodies rights equivalent to those of a call option, it is evaluated both as debt and as a call option under the proposed regulations.

Exceptions for Certain Call Options

The proposed regulations set forth two exceptions for call options. First, a call option is not treated as a second class of stock if it is issued by a corporation to a person that is actively and regularly engaged in the business of lending and is issued in connection with a loan to the corporation that is commercially reasonable. Second, a call option that is issued to an individual who is an employee or an independent contractor in connection with the performance of services (and that is not excessive by reference to the services performed) is not treated as a second class of stock if the call option is nontransferable within the meaning of § 1.83–3(d) and the call option does not have a readily ascertainable fair market value as defined in §1.83–7(b) at the time the option is issued. If the call option becomes transferable, however, the exception ceases to apply. In this event, the option is tested under the general option rule if and when it is transferred to a person who is not an eligible shareholder or is materially modified.

Safe Harbor for Call Options

The proposed regulations also provide a safe harbor for certain call options issued by a corporation. A call option is not treated as a second class of stock if, on the date the call option is issued, transferred to a person who is not an eligible shareholder, or materially modified, the strike price of the call option is at least 90 percent of the fair market value of the underlying stock on that date. For purposes of this safe harbor, a good faith determination of fair market value by the corporation will ordinarily be respected.

Straight Debt Safe Harbor

Straight debt is not treated as a second class of stock even if it would otherwise be treated as equity under general principles of Federal tax law. The regulations follow the definition of straight debt provided by section 1361(c)(5)(B) of the Code.

The proposed regulations also address certain issues relating to straight debt in the case of conversion of a C corporation to S status. If a C corporation has outstanding an obligation that satisfies the definition of straight debt but that may be considered equity under general principles of Federal tax law, the obligation is not treated as a second class of stock if the C corporation converts to S status. In addition, the conversion from C corporation status to S corporation status is not treated as an exchange of debt for stock with respect to such an instrument.

Availability of Inadvertent Termination Relief

A corporation that has elected S status and subsequently is treated as having more than one class of stock loses its S corporation status. In such a case, the corporation's S election terminates on the date the corporation is treated as having more than one class of stock. Inadvertent termination relief pursuant to section 1362(f) will be available in appropriate cases. In general, a corporation that qualifies under section 1362(f) will have its S status restored retroactive to the date the S election was terminated.

Effective Date

The proposed regulations are proposed to be effective for taxable years of corporations beginning on or after January 1, 1992. However, paragraph (l)(4) of § 1.1361–1 does not apply to instruments, obligations, or arrangements issued or entered into on or before August 8, 1991. In addition, as noted above, a grandfather rule is provided for existing stock that has been treated as outstanding even though it is substantially nonvested and no section 83(b) election has been made with respect to it.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments and requests to appear at a public hearing scheduled for October 31, 1991, at 10 a.m. must be received by October 17, 1991. Also, outlines of oral comments must be received by October 17, 1991. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, attn: CC:CORP:T:R (PS–4–73), room 5228, Washington, DC 20044. See the notice of hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal authors of these proposed regulations are David R. Haglund and Scott Carlson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1361–OA through 1.1378–3

Income taxes, Reporting and recordkeeping requirements, Small businesses.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 685A Stat. 917; 26 U.S.C. 7805 * * * Section 1.1361–1 (l) also issued under 26 U.S.C. 1361(c)(5)(C).

Par. 2. New 1.1361–1 is added to read as follows:

§ 1.1361–1 S corporation defined.

(a) [Reserved]

(b) *Small business corporation defined*—(1) *In general.* For purposes of subchapter S, chapter 1 of the Internal Revenue Code and the regulations thereunder, the term "small business corporation" means a domestic corporation that is not an ineligible corporation (as defined in paragraph (d) of this section) and that does not have—

(i) More than 35 shareholders,

(ii) As a shareholder, a person (other than an estate and other than certain trusts described in paragraph (h)(1) of this section) who is not an individual,

(iii) A nonresident alien as a shareholder, or

(iv) More than one class of stock.

(2) *Estate in bankruptcy.* The term "estate," for purposes of this paragraph, includes the estate of an individual in a case under title 11 of the United States Code.

(3) *Treatment of restricted stock.* For purposes of subchapter S, stock that is issued in connection with the performance of services for the corporation and that is substantially nonvested (within the meaning of § 1.83–3(b)) is not treated as outstanding stock of the corporation, and the holder of that stock is not treated as a shareholder solely by reason of holding the stock, unless the holder makes an election with respect to the stock under section 83(b). In the event of such an election, the stock is treated as outstanding stock of the corporation, and the holder of the stock is treated as a shareholder for purposes of subchapter S. See paragraphs (l) (1) and (3) of this section for rules for determining whether substantially nonvested stock with respect to which an election under section 83 (b) has been made is treated as a second class of stock.

(4) *Treatment of deferred compensation plans.* For purposes of subchapter S, an instrument, obligation, or arrangement is not outstanding stock if it—

(i) Does not convey the right to vote,

(ii) Is not property under § 1.83–3 of the regulations, and

(iii) Is issued to an individual who is an employee in connection with the performance of services for the corporation or to an individual who is an independent contractor in connection with and commensurate with the performance of services for the

corporation under a plan with respect to which the employee or independent contractor is not taxed currently on income.

(5) *Treatment of straight debt.* For purposes of subchapter S, an instrument or obligation that satisfies the definition of straight debt in paragraph (l)(5) of this section is not treated as outstanding stock.

(6) *Special effective date provisions.* Paragraphs (b) (3), (4), and (5) of this section (relating to the treatment of restricted stock, deferred compensation plans, and straight debt) generally apply to taxable years of a corporation beginning on or after January 1, 1992. However, stock issued on or before August 8, 1991, that has been treated as outstanding by the corporation (even though it is substantially nonvested) is treated as outstanding for purposes of subchapter S, and the fact that it is substantially nonvested and no section 83(b) election has been made with respect to it will not cause the stock to be treated as a second class of stock.

(c) through (k) [Reserved]

(l) *Classes of stock*—(1) *General rule.* A corporation that has more than one class of stock does not qualify as a small business corporation. Except as provided in paragraph (l)(4) of this section (relating to instruments, obligations, or arrangements treated as a second class of stock), a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds. Differences in voting rights among shares of stock of a corporation are disregarded in determining whether a corporation has more than one class of stock. Thus, if all shares of stock of an S corporation have identical rights to distribution and liquidation proceeds, the corporation may have voting and nonvoting common stock, a "class" of stock that may vote only in certain issues, irrevocable proxy agreements, or groups of shares that differ with respect to rights to elect members of the board of directors.

(2) *Determination of whether stock confers identical rights to distribution and liquidation proceeds*—(i) *In general.* The determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to distribution and liquidation proceeds (collectively, the "governing provisions"). A routine commercial contractual arrangement, such as a lease, employment agreement, or loan agreement, is not a "binding agreement relating to distribution and liquidation proceeds" and thus is not a governing provision unless such an agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and this paragraph (l). Although a corporation is not treated as having more than one class of stock so long as the governing provisions provide for identical distribution and liquidation rights, any distributions (including actual, constructive, or deemed distributions) that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances.

(ii) *State law requirements for payment and withholding of income tax.* State laws may require a corporation to pay or withhold state income taxes on behalf of some or all of the corporation's shareholders. Such laws are disregarded in determining whether all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds, within the meaning of paragraph (l)(1) of this section, provided that, when the constructive distributions resulting from the payment or withholding of taxes by the corporation are taken into account, the outstanding shares confer identical rights to distribution and liquidation proceeds. A difference in timing between the constructive distributions and the actual distributions to the other shareholders does not cause the corporation to be treated as having more than one class of stock.

(iii) *Buy-sell and redemption agreements.* Bona fide agreements to redeem or purchase stock at the time of death, disability, or termination of employment are disregarded in determining whether a corporation's shares of stock confer identical rights. In addition, bona fide buy-sell agreements among shareholders, agreements restricting the transferability of stock (but not providing for redemption by the corporation), and "general" redemption agreements are also disregarded in determining whether a corporation's outstanding shares of stock confer identical distribution and liquidation rights unless—

(A) The agreement is entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D) and this paragraph (l), and

(B) The agreement establishes a purchase price that, at the time the agreement is entered into, is significantly in excess of or below the fair market value of the stock.

Redemption agreements that are not "general" redemption agreements are disregarded unless the agreement establishes a purchase price that, at the time the agreement is entered into is significantly in excess of or below the fair market value of the stock. Agreements described in the preceding two sentences that provide for the purchase or redemption of stock at book value or at a price between fair market value and book value are not considered to establish a price that is significantly in excess of or below the fair market value of the stock and, thus, are disregarded in determining whether the outstanding shares of stock confer identical rights. For purposes of this paragraph (l)(2)(iii), a good faith determination of fair market value will be respected unless it can be shown that the value was substantially in error or the determination of the value was not performed with reasonable diligence. For purposes of this paragraph (l)(2)(iii), a "general" redemption agreement is an agreement that applies to substantially all the outstanding shares of the corporation and that provides that, upon the occurrence of an event that triggers redemption, substantially all the shares of a shareholder will be redeemed at a price that is uniform for all shares subject to the agreement. Although an agreement may be disregarded in determining whether shares of stock confer identical distribution and liquidation rights, payments pursuant to the agreement may have income or transfer tax consequences.

(iv) *Distributions that take into account varying interests in stock during a taxable year.* An agreement does not, within the meaning of paragraph (l)(2)(i) of this section, alter the rights to liquidation and distribution proceeds conferred by an S corporation's stock merely because the agreement provides that, as a result of a change in stock ownership, distributions in one taxable year are to be made on the basis of the shareholders' varying interests in the S corporation's income in the immediately preceding taxable year. If distributions pursuant to the agreement are not made within a reasonable time after the close of the taxable year in which the varying interests occur, the distributions may be recharacterized depending on the facts and circumstances, but will not result in a second class of stock.

(v) *Examples.* The application of paragraph (l)(2) of this section may be illustrated by the following examples. In each of the examples, the S corporation requirements of section 1361 are satisfied except as otherwise stated, the corporation has in effect an S election

under section 1362, and the corporation has only the shareholders described.

Example 1. Determination of whether stock confers identical rights to distribution and liquidation proceeds. (i) The law of State A requires that permission be obtained from the State Commissioner of Corporations before stock may be issued by a corporation. The Commissioner grants permission to S, a corporation, to issue its stock subject to the restriction that any person who is issued stock in exchange for property, and not cash, must waive all rights to receive distributions until the shareholders who contributed cash for stock have received distributions in the amount of their cash contributions.

(ii) The condition imposed by the Commissioner pursuant to state law alters the rights to distribution and liquidation proceeds conferred by the outstanding stock of S so that those rights are not identical. Accordingly, under paragraph (l)(2)(i) of this section, S is treated as having more than one class of stock and does not qualify as a small business corporation.

Example 2. Distributions that differ in timing. (i) S, a corporation, has two equal shareholders, A and B. Under S's bylaws A and B are entitled to equal distributions. S distributes $50,000 to A in the current year, but does not distribute $50,000 to B until one year later. The circumstances indicate that the difference in timing did not occur by reason of a binding agreement relating to distribution or liquidation proceeds.

(ii) Under paragraph (l)(2)(i) of this section, the difference in timing of the distributions to A and B does not cause S to be treated as having more than one class of stock. However, section 7872 or other recharacterization principles may apply to determine the appropriate tax consequences.

Example 3. Treatment of excessive compensation. (i) S, a corporation, has two equal shareholders, C and D, who are each employed by S and have binding employment agreements with S. The compensation paid by S to C under C's employment agreement is reasonable. The compensation paid by S to D under D's employment agreement, however, is found to be excessive. S and D did not enter into D's employment agreement to circumvent the one class of stock requirement of section 1361(b)(1)(D).

(ii) Under paragraph (l)(2)(i) of this section, the employment agreements are not governing provisions. Accordingly, S is not treated as having more than one class of stock by reason of the employment agreements, even though S is not allowed a deduction for the excessive compensation paid to D.

Example 4. Agreement to pay fringe benefits. (i) S, a corporation, is required under binding agreements to pay accident and health insurance premiums on behalf of certain of its employees who are also shareholders. Different premium amounts are paid by S for each employee-shareholders. The agreements were not entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D).

(ii) Under paragraph (l)(2)(i) of this section, the agreements are not governing provisions. Accordingly, S is not treated as having more than one class of stock by reason of the agreements. In addition, S is not treated as having more than one class of stock by reason of the payment of fringe benefits.

Example 5. Below-market corporation-shareholder loan. (i) E is a shareholder of S, a corporation. S makes a below-market loan to E that is a corporation-shareholder loan to which section 7872 applies. Under section 7872, E is deemed to receive a distribution with respect to S stock by reason of the loan. The loan was not entered into to circumvent the one class of stock requirement of section 1361(b)(1)(D).

(ii) Under paragraph (l)(2)(i) of this section, the loan agreement is not a governing provision. Accordingly, S is not treated as having more than one class of stock by reason of the below-market loan to E.

Example 6. Agreement to adjust distributions for state tax burdens. (i) S, a corporation, executes a binding agreement with its shareholders to modify its normal distribution policy by making upward adjustments of its distributions to those shareholders who bear heavier state tax burdens. The adjustments are based on a formula that will give the shareholders equal after-tax distributions.

(ii) The binding agreement relates to distribution or liquidation proceeds. The agreement is thus a governing provision that alters the rights conferred by the outstanding stock of S to distribution proceeds so that those rights are not identical. Therefore, under paragraph (l)(2)(i) of this section, S is treated as having more than one class of stock.

Example 7. State law requirements for payment and withholding of income tax. (i) The law of State X requires corporations to pay state income taxes on behalf of nonresident shareholders. The law of State X does not require corporations to pay state income taxes on behalf of resident shareholders. S is incorporated in State X. S's resident shareholders have the right (for example, under the law of State X or pursuant to S's bylaws or a binding agreement) to distributions that take into account the payments S makes on behalf of its nonresident shareholders.

(ii) The payment by S of state income taxes on behalf of its nonresident shareholders result in constructive distributions to those shareholders. Because S's resident shareholders have the right to equal distributions, taking into account the constructive distributions to the nonresident shareholders, S's shares confer identical rights to distribution proceeds. Accordingly, under paragraph (l)(2)(ii) of this section, the state law requiring S to pay state income taxes on behalf of its nonresident shareholders is disregarded in determining whether S has more than one class of stock.

Example 8. Redemption agreements. (i) F, G, and H are shareholders of S, a corporation. F is also an employee of S. By agreement, S is to redeem F's shares on the termination of F's employment. The redemption price is book value.

(ii) On these facts, under paragraph (l)(2)(iii) of this section, the agreement is disregarded in determining whether all outstanding shares of S's stock confer identical rights to distribution and liquidation proceeds.

(3) *Stock taken into account.* Except as provided in paragraphs (b) (3), (4), and (5) of this section (relating to restricted stock, deferred compensation plans, and straight debt), in determining whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds, all outstanding shres of stock of a corporation are taken into account. For example, substantially nonvested stock with respect to which an election under section 83(b) has been made is taken into account in determining whether a corporation has a second class of stock, and such stock is not treated as a second class of stock if the stock confers rights to distribution and liquidation proceeds that are identical, within the meaning of paragraph (l)(1), to the rights conferred by the other outstanding shares of stock.

(4) *Other instruments, obligations, or arrangements treated as a second class of stock*—(i) *In general.* Instruments, obligations, or arrangments are not treated as a second class of stock for purposes of this paragraph (l) unless they are described in paragraphs (l)(4)(ii) or (iii) of this section. However, in no event are instruments, obligations, or arrangements described in paragraph (b)(4) of this section (relating to deferred compensation plans), paragraphs (l)(4)(iii)(B) and (C) of this section (relating to the exceptions and safe harbor for options), paragraph (l)(4)(ii)(B) of this section (relating to the safe harbor for straight debt), treated as a second class of stock for purposes of this paragraph (l).

(ii) *Instruments, obligations, or arrangements treated as equity under general principles—(A) In general.* Except as provided in paragraph (l)(4)(i) of this section, any instrument, obligation, or arrangement issued by a corporation (other than outstanding shares of stock described in paragraph (l)(3) of this section), regardless of whether designated as debt, is treated as a second class of stock of the corporaiton if the instrument, obligation, or arrangement—

(*1*) Constitutes equity or otherwise results in the holder being treated as the owner of stock under general principles of Federal tax law, and

(*2*) Is used to contravene the rights to distribution or liquidation proceeds conferred by the outstanding shares of stock or to contravene the limitation on eligible shareholder contained in paragraph (b)(1) of this section.

(B) *Safe harbor for certain short-term unwritten advances and proportionately held obligations—(1) Short-term unwritten advances.* Unwritten

advances from a shareholder that do not exceed $10,000 in the aggregate at any time, are treated as debt by the parties, and are expected to be repaid within a reasonable time are not treated as a second class of stock, even if the advances are considered equity under general principles of Federal tax law. The failure of an unwritten advance to meet this safe harbor will not result in a second class of stock unless the advance is considered equity under paragraph (l)(4)(ii)(A)(*1*) of this section and is used to contravene the rights of the outstanding shares of stock or the limitation on eligible shareholders under paragraph (l)(4)(ii)(A)(*2*) of this section.

(*2*) *Proportionately-held obligations.* Obligations of the same class that are considered equity under general principles of Federal tax law, but are owned solely by the owners of, and in the same proportion as, the outstanding stock of the corporation, are not treated as as second class of stock. Furthermore, an obligation or obligations owned by the sole shareholder of a corporation are always held proportionately to the corporation's outstanding stock. The obligations that are considered equity that do not meet this safe harbor will not result in a second class of stock unless they are used to contravene the rights of the outstanding shares of stock or the limitation on eligible shareholders under paragraph (l)(4)(ii)(A)(*2*) of this section.

(iii) *Certain call options, warrants or similar instruments*—(A) *In general.* Except as otherwise provided in this paragraph (l)(4)(iii), a call option, warrant, or similar instrument (collectively "call option") issued by a corporation is treated as a second class of stock of the corporation if, taking into account all the facts and circumstances, the call option is substantially certain to be exercised (by the holder or a potential transferee) and has a strike price substantially below the fair market value of the underlying stock on the date that the call option is issued, transferred to a person who is not an eligible shareholder under paragraph (b)(1) of this section, or materially modified. For purposes of this paragraph (l)(4)(iii), if an option is issued in connection with a loan and the time period in which the option can be exercised is extended in connection with (and consistent with) a modification of the terms of the loan, the extension of the time period in which the option may be exercised is not considered a material modification. In addition, a call option does not have a strike price substantially below fair market value if the price at the time of exercise cannot, pursuant to the terms of the instrument, be substantially below the fair market value of the underlying stock at the time of exercise.

(B) *Certain exceptions. (1)* A call option is not treated as a second class of stock for purposes of this paragraph (l) if it is issued by a corporation to a person that is actively and regularly engaged in the business of lending and is issued in connection with a loan to the corporation that is commercially reasonable.

(2) A call option that is issued to an individual who is an employee or an independent contractor in connection with the performance of services (and that is not excessive by reference to the services performed) is not treated as a second class of stock if—

(i) The call option is nontransferable within the meaning of § 1.83–3 (d), and

(ii) The call option does not have a readily ascertainable fair market value as defined in § 1.83–7 (b) at the time the option is issued.

If the call option becomes transferable, this paragraph (l)(4)(iii)(B)(*2*) ceases to apply.

(C) *Safe harbor for certain options.*—A call option is not treated as a second class of stock if, on the date the call option is issued, transferred to a person who is not an eligible shareholder under paragraph (b)(1) of this section, or materially modified, the strike price of the call option is at least 90 percent of the fair market value of the underlying stock on that date. For purposes of this paragraph (l)(4)(iii)(C), a good faith determination of fair market value by the corporation will be respected unless it can be shown that the value was substantially in error or the determination of the value was not performed with reasonable diligence to obtain a fair value. Failure of an option to meet this safe harbor will not necessarily result in the option being treated as a second class of stock.

(iv) *Convertible debt.* A convertible debt instrument is considered a second class of stock if—

(A) It is treated as equity under general principles of Federal tax law governing the distinction between debt and equity and is used to contravene the rights to distribution or liquidation proceeds conferred by the outstanding shares of stock or to contravene the limitation on eligible shareholders contained in paragraph (b)(1) of this section, or

(B) It embodies rights equivalent to those of a call option that is substantially certain to be exercised, and it has a conversion price that is substantially below the fair market value of the underlying stock on the date of issuance, transfer to a person who is not an eligible shareholder under paragraph (b)(1) of this section, or material modification within the meaning of paragraph (l)(4)(iii).

(v) *Examples.* The application of this paragraph (l)(4) may be illustrated by the following examples. In each of the examples, the S corporation requirements of section 1361 are satisfied except as otherwise stated, the corporation has in effect an S election under section 1362, and the corporation has only the shareholders described.

Example 1. Transfer of call option to ineligible shareholder. (i) S, a corporation, has 35 shareholders. S issues call options to a A, B, and C, who are not shareholders, employees, or independent contractors of S. The options have a strike price of $40 and are issued on a date when the fair market value of S stock is also $40. A year later, D purchases A's option. On the date of transfer, the fair market value of S stock is $80.

(ii) On the date the call option is issued, its strike price is not substantially below the fair market value of S stock. Under paragraph (l)(4)(iii)(A) of this section, however, whether the call option is a second class of stock must be redetermined if the call option is transferred to a person who is not an eligible shareholder of S. D is not an eligible shareholder of S because S already has 35 shareholders. Because on the date the call option is transferred to D its strike price is 50% of the fair market value, the strike price is substantially below the fair market value of the S stock. Accordingly, the call option is treated as a second class of stock as of the date it is transferred to D if, at that time, it is determined that the option is substantially certain to be exercised. The determination of whether the option is substantially certain to be exercised is made on the basis of all the facts and circumstances.

Example 2. Call option issued in connection with the performance of services. (i) E is a bona fide employee of S, a corporation. S issues to E a call option in connection with E's performance of services. At the time the call option is issued, it is not transferable and does not have a readily ascertainable fair market value. However, the call option becomes transferable before it is exercised by E.

(ii) While the option is not transferable, under paragraph (l)(4)(iii)(B)(*2*) of this section if it not treated as a second class of stock, regardless of its strike price. When the option becomes transferable, that paragraph ceases to apply, and the general rule of paragraph (l)(4)(iii)(A) of this section applies. Accordingly, if the option is materially modified or is transferred to a person who is not an eligible shareholder under paragraph (b)(1) of this section, and on the date of such modification or transfer, the option is substantially certain to be exercised and has a strike price substantially below the fair market value of the underlying stock, the option is treated as a second class of stock.

(5) *Straight debt safe harbor*—(i) *In general.* Notwithstanding paragraph

(l)(4) of this section, straight debt is not treated as a second class of stock. For purposes of section 1361(c)(5) and this section, the term "straight debt" means a written unconditional obligation, regardless of whether embodied in a formal note, to pay a sum certain on demand, or on a specified due date, which—

(A) Does not provide for an interest rate or payment dates that are contingent on profits, the borrower's discretion, the payment of dividends with respect to common stock, or similar factors;

(B) Is not convertible (directly or indirectly) into stock or any other equity interest of the S corporation; and

(C) is held by an individual (other than a nonresident alien), an estate, or a trust described in section 1361(C)(2).

(ii) *Subordination.* The fact that an obligation is subordinated to other debt of the corporation does not prevent the obligation from qualifying as straight debt.

(iii) *Modification or transfer.* An obligation that originally qualifies as straight debt ceases to so qualify if the obligation—

(A) Is materially modified so that it no longer satisfies the definition of straight debt, or

(B) Is transferred to a third party who is not an eligible shareholder under paragraph (b)(1) of this section.

(iv) *Treatment of straight debt for other purposes.* An obligation of an S corporation that satisfies the definition of straight debt in paragraph (l)(5)(i) of this section is not treated as a second class of stock even if it is considered equity under general principles of Federal tax law. Such an obligation is generally treated as debt and when so treated is subject to the applicable rules governing indebtedness for other purposes of the Internal Revenue Code. Accordingly, interest paid or accrued with respect to a straight debt obligation is generally treated as interest by the corporation and the recipient and does not constitute a distribution to which section 1368 applies. However, if a straight debt obligation bears a rate of interest that is unreasonably high, an appropriate portion of the interest may be recharacterized and treated as a payment that is not interest. Such a recharacterization does not result in a second class of stock.

(v) *Treatment of C corporation "debt" upon conversion to S status.* If a C corporation has outstanding an obligation that satisfies the definition of straight debt in paragraph (l)(5)(i) of this section, but that is considered equity under general principles of Federal tax law, the obligation is not treated as a second class of stock for purpose of this section if the C corporation converts to S status. In addition, the conversion from C corporation status to S corporation status is not treated as an exchange of debt for stock with respect to such an instrument.

(6) *Inadvertent terminations.* See section 1362(f) and the regulations thereunder for rules relating to inadvertent terminations in cases where the one class of stock requirement has been inadvertently breached.

(7) *Effective date.* Section 1.1361-1 (l) generally applies to taxable years of a corporation beginning on or after January 1, 1992. However, paragraph (l)(4) of this section does not apply to instruments, obligations, or arrangements issued or entered into on or before August 8, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-19185 Filed 8-8-91; 12:44 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the requirement that a small business corporation have only one class of stock.

DATES: The public hearing will be held on Thursday, October 31, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, October 17, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS-4-73), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1361 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, October 17, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-19186 Filed 8-8-91; 12:44 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI-19-85]

RIN 1545-AQ03

Treatment of Certain Stripped Bonds and Stripped Coupons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations on the treatment of original issue discount (OID) that arises under section 1286(a) of the Internal Revenue Code. The text of these temporary regulations also service as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests to speak at a public hearing (with outlines of oral comments) must be received by Thursday, October 24, 1991. The public hearing is scheduled for Thursday, November 7, 1991, at 10 a.m. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send written comments and requests to speak at the public hearing (with outlines of oral comments) to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-19-85), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mark S. Smith, telephone 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the rules and regulations section of this issue of the Federal Register add new § 1.1286-1T to part 1 of title 26 of the Code of Federal Regulations. These temporary regulations provide guidance on the treatment of OID that arises under Code section 1286(a). For the text of the new temporary regulations, see T.D. 8358, published in the rules and regulations section of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing on these proposed regulations will be held on November 7, 1991, at 10 a.m. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mark S. Smith, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91-19230 Filed 8-8-91; 3:16 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[FI-19-85]

RIN 1545-AQ03

Treatment of Certain Stripped Bonds and Stripped Coupons; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations that apply to taxpayers holding stripped bonds and stripped coupons under section 1286 of the Internal Revenue Code.

DATES: The public hearing will be held on Thursday, November 7, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, October 24, 1991.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [FI-19-85], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that provide guidance on the treatment of original issue discount (OID) that arises under Code section 1286(a). The guidance is needed to simplify the tax treatment of certain stripped bonds and stripped coupons. These regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, October 24, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer Assistant Chief Counsel (Corporate).

[FR Doc. 91-19231 Filed 8-8-91; 3:19 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-3983-9]

Approval and Promulgation of Implementation Plans: Revision of the Visibility FIP for Arizona

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Supplemental notice requesting comment.

SUMMARY: On February 8, 1991, EPA proposed to require the Navajo Generating Station (NGS) in Page, Arizona, to meet new emission limitations to address visibility impairment in the Grand Canyon National Park (GCNP) (55 FR 5173). Over 380 comments were received during the initial comment period. Since the close of the comment period, many meetings have taken place among representatives of Salt River Project (SRP) acting on behalf of the NGS owners, and representatives of the

Grand Canyon Trust (GCT) and the Environmental Defense Fund (EDF) acting on behalf of their organizations. Representatives of the State of Arizona and EPA also have participated in most of the meetings. Very recently, representatives of the NGS owners and the environmental groups have agreed on a sulfur dioxide (SO_2) control strategy for NGS and have recommended that it be adopted by EPA. That strategy includes a 0.10 pounds per million British thermal units SO_2 emission limitation for the NGS (approximate to a 90 percent control level) based on a rolling annual average and phased in by unit in 1997, 1998, and 1999. In addition, NGS would shift its maintenance schedule such that six unit-weeks of planned maintenance would occur between November 1 and March 15 each year. They have entered into a memorandum of understanding (MOU) memorializing their agreement which they have submitted (together with associated documents) to EPA and which is printed in the appendix to this notice. In today's notice, EPA is announcing that it has reopened the public comment period on this rulemaking to solicit comments on this new information.

DATES: Comments must be received by no later than September 9, 1991. The EPA is providing a 30-day public comment period, extending 30 days from the date of signature on this notice. In order to facilitate public participation, EPA is providing actual notice of this action to persons commenting on the February 8, 1991, proposal, where addresses are available.

ADDRESSES:

Comments

Send comments to EPA's Central Docket Section, Office of the General Counsel, ATTN: A-89-02A, room 1500, 401 M Street, Washington, DC 20460.

Docket

Pursuant to section 307(d)(1)(B) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B), this rulemaking is subject to the procedural requirements of section 307(d). Therefore, EPA established Docket A-89-02A for this rulemaking. Further, materials related to the development of this notice, including summaries of the meetings EPA has participated in with the outside parties and information exchanged, have been placed in this docket. All dockets are available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 p.m. to 3:30 p.m., Monday through Friday, at EPA's Central Docket Section, Office of the General Counsel, room 1500, 401 M Street, S.W., Washington, DC. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Stonefield, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, North Carolina 27711, (919) 541-5350 or FTS 629-5350.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Act, 42 U.S.C. 7491, sets as a national goal "the prevention of any future, and the remedying of any existing, impairment of visibility" in certain national parks and wildernesses, including the GCNP. On December 2, 1980, EPA promulgated regulations (45 FR 80084, codified at 40 CFR 51.300 et seq.) to implement section 169A. The regulations required 36 affected States to revise their State implementation plans (SIP's) to implement the various elements of the visibility protection program. Among these provisions is the requirement that each affected State include in its SIP such emission limitations, schedules of compliance, and other measures as may be necessary, to make reasonable progress toward the national visibility goal (see 40 CFR 51.302(c), section 169A(b)(2)). Measures for achieving reasonable progress include best available retrofit technology (BART) and a long-term strategy (see 40 CFR 51.302(c) (1) and (2), section 169A(b)(2) (A) and (B)). Where a State fails to submit the SIP revisions necessary to meet its obligations under the visibility protection program, EPA may act in place of the State pursuant to a Federal implementation plan (FIP) under section 110(c) of the Act, 42 U.S.C. 7410(c).

The State of Arizona was among several States which failed to adopt and submit the SIP's required by those regulations. The EDF and other environmental groups filed a citizen's suit alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility FIP's for the States that had failed to submit SIP's to EPA as called for by the 1980 visibility regulations (*EDF* v. *Reilly*, No. C826850 RPA (N.C. Cal.)). The EPA and the plaintiffs negotiated a court-approved (and subsequently revised) settlement agreement and EPA initiated a program to promulgate FIP's for the States failing to submit the required visibility SIP's. As part of that program, on September 5, 1989, EPA published a notice (54 FR 36948) announcing a preliminary decision to attribute a significant portion of wintertime visibility impairment of the GCNP to emissions from the NGS. Then on February 8, 1991, EPA proposed to revise the visibility FIP for Arizona to include an emission limit for NGS to address the visibility impairment observed in the GCNP (55 FR 5173). The EPA requested comment on several control options including but not limited to the following rule elements and specific regulatory alternatives: (1) Emission limitations, including limitations ranging between 0.50 and 0.10 lbs/MMBtu; (2) averaging times, including a 3-hour, 30-day, and annual periods; and (3) implementation schedules, including one providing for plantwide compliance by the year 2000. Based on the information available to it at the time, EPA proposed to adopt an emission limitation of 0.30 lbs/MMBtu with compliance determined on a 30-day rolling average basis. The EPA proposed that the limits would be phased in by unit in 1995, 1997, and 1999.

In addition to soliciting written comments during the comment period, EPA also held a public hearing on March 18 and 19, 1991, in Phoenix, Arizona. A copy of the transcript of the hearing is in Docket A-89-02A.

A more extensive discussion of the background for this rulemaking was provided in EPA's February 8, 1991 notice of proposed rulemaking. Generally, readers should refer to that notice since only an abbreviated background has been reiterated here.

New Information After the Close of the Comment Period

After the comment period closed on April 19, 1991, at the recommendation of EPA, representatives of SRP, GCT, and EDF have and many meetings discussing alternative approaches to EPA's February 8 proposal. Very recently, the outside parties have agreed to recommend that EPA adopt an alternative which calls for promulgation of a 0.10 lb/MMBtu SO_2 emission limitation for the NGS (approximate to a 90 percent control level) based on a rolling annual average and phased in by unit in 1997, 1998, and 1999. In addition, under the agreement, NGS would shift its maintenance schedule such that a full six unit-weeks of planned maintenance would occur between November 1 and March 15 each year. Under specific conditions, less than a full six unit-weeks of maintenance between November 1 and March 15 may be allowed.

Representatives of EPA participated in many of the meetings with the parties, assisted in drafting documents to support a potential agreement between

the parties, and provided technical assistance. Representatives of the State of Arizona also attended several of the meetings and provided some technical support. New technical materials and cost information, including adjustment of the potential control costs to 1992 dollars, were exchanged between the parties and EPA. Summaries of the meetings and significant conversations in which EPA was involved and copies of the new material and information which were submitted to or developed by EPA have been included in Docket A-89-02A.

The outside parties memorialized their agreement in the MOU which they have submitted to EPA along with recommended regulatory requirements for the final rulemaking action. The SRP has estimated the total levelized annual cost (in 1992 dollars) for this alternative as $89.6 million and for the alternative EPA proposed in February 1991 as $106 million. The EPA notes that the alternative incorporated in the MOU would provide more visibility protection for the GCNP at a lower cost for NGS and its customers than the February 8, 1991 proposal. Thus, EPA is giving serious consideration to the control option recommended by the outside parties.

The text of the MOU and its attachment are reprinted as appendix A to this notice. The first attachment to the MOU sets forth the regulatory requirements to address visibility impairment that the parties to the MOU have recommended that EPA adopt as a final rule.

Legal Rationale

On July 30, 1991, attorneys for the parties wrote to EPA to provide a legal rationale that they believed would justify EPA's adoption of the control alternative eventually recommended by the parties. A letter from Patrick M. Raher, Hogan and Hartson for Grand Canyon Trust and Environmental Defense Fund, and Henry Nickel, Hunton and Williams for Salt River Project, dated July 30, 1991, is an attachment to the MOU and is set forth in appendix a to this notice. Briefly, it asserts that the regulatory alternative that SRP, EDF, and GCT have recommended to EPA meets the requirements in section 169A(b)(2) of the Act that implementation plan revisions addressing visibility impairment achieve "reasonable progress" toward the national visibility goal. The EPA's Office of General Counsel reviewed the Raher/Nickel letter and concurred in a memorandum stating that, subject to any significant points that may be raised in the reopened comment period, the "reasonable progress" argument would provide the core of a defensible rationale in support of the rulemaking alternative in question under the specific circumstances of this case. A memorandum entitled "Legal Rationale for Rulemaking Alternative in Grad Canyon Visibility Proceeding," from Gregory B. Foote, Assistant General Counsel to William G. Rosenberg, Assistant Administrator, dated August 2, 1991, is reprinted as appendix B to this notice.

EPA Discretion

Throughout the meetings with the representatives of the EDF, GCT, SRP, and the State of Arizona, EPA staff have noticed that the parties discussion in no way infringed upon the Agency's unfettered rulemaking discretion. In an August 2, 1991 letter to representatives of SRP, GCT, and EDF, EPA's General Counsel restated this explaining, in part, that while he commended the parties' efforts to reach common ground, "EPA at all times retains complete and unfettered discretion over both the substantive provisions of any final regulations and the legal rationale supporting that regulation." [1]

Solicitation of Comments

The EPA believes that the parties' agreement and associated recommendation to EPA, the underlying technical materials and cost information which has been exchanged, and the Agency's commitment to public participation constitute good cause for reopening the comment period. Accordingly, EPA requests comments on all aspects of the rulemaking alternative that is the subject of the MOU, including the regulatory terms and the legal rationale. That alternative is set forth in appendix A (and associated attachments) to this notice. Where addresses are available, commenters on the February 8, 1991 proposal will be notified by mail of this notice in order to facilitate their ability to comment on this notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 8, 1991.

William B. Rosenberg,

Assistant Administrator for Air and Radiation.

[1] Letter from E. Donald Elliott, General Counsel, to Patrick Raher and Henry Nickel, August 2, 1991.

Appendix A—Arizona Visibility Implementation Plan Memorandum of Understanding

The undersigned recommend that EPA take final action on the Navajo Generating Station ("NGS") visibility rulemaking consistent with the August 7, 1991, "Recommended Regulatory Requirements for the NGS Visibility Rulemaking," and the Raher/Nickel July 30, 1991, letter to Thomas C. Kiernan, which are attached to this memorandum and incorporated by reference.

The undersigned agree to recommend to the managements of their respective organizations [1] that their Governing or Policy-Making Bodies or Office commit not to appeal a final regulation that implements the recommendations set forth in the attachments to this memorandum nor support in any way the efforts of another interested party in such an appeal. The commitments adopted by the Governing or Policy-Making Bodies or Office of these organizations, after action on these recommendations, to abide by the terms of this memorandum will be expressed in an exchange of letters of agreement—as soon as possible and with the expectation that this will occur no later than 30 days after publication of the final rule in the Federal Register—to:

John McNamara, Salt River Project, 1521 Project Drive, Phoenix, Arizona 85281

Edward Norton, Grand Canyon Trust, suite 300, 1400 16th Street NW., Washington, DC 20036

Once EPA promulgates the final rule, EDF and the NGS participants will petition (a) the United States Circuit Court of Appeals for the Ninth Circuit to vacate the judgement below and remand the matter pending in *EDF* v. *Reilly*, No. 90-15264 to the court below with instructions to dismiss and (b) the United States District Court for the Northern District of California to dismiss *EDR* v. *Reilly*, C-6850 RPA.

John McNamara,

Authorized Representative for and Chairman of the Coordinating Committee for the Participants in NGS.

Edward Norton,

President, Grand Canyon Trust.

Robert Yuhnke,

Senior Attorney, Environmental Defense Fund.

[1] The respective organizations for John McNamara are the participants in NGS, Salt River Project Agricultural Improvement and Power District, Arizona Public Service Company, Tucson Electric Power Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, and the United States Department of the Interior; for Edward Norton are the Grand Canyon Trust, The Wilderness Society, the National Wildlife Federation, and the Sierra Club; and for Robert Yunke is the Environmental Defense Fund.

First Attachment to the MOU

Recommended Regulatory Requirements for the Navajo Generating Station Visibility Rulemaking

August 7, 1991

1. Applicable to the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3 at the Navajo Generating Station (NGS).

2. Consistent with the terms of this document, the sulfur oxides emission limitation for NGS is 0.10 lbs SO_2/MMBtu of heat input on an annual rolling average basis. Emission controls will be installed and operated on the following schedule:

—One unit by November 19, 1997;
—Two units by November 19, 1998;
—All units by August 19, 1999.

The emissions from all units subject to this emission limitation will be averaged to determine compliance.

3. Schedule of compliance—interim deadlines:

Date of binding contract for A/E firm to design and procure the control system needed for compliance	6/92
Start of on-site construction of control system for the first unit	1/95
Initiation of start-up testing:	
First unit	5/97
Second unit	5/98
Third unit	2/99

The interim deadlines will be extended if it can be demonstrated to the Administrator that compliance with the deadlines in paragraph 2 would not be affected.

4. Continuous emission monitors will be installed to determine compliance with the emission limitations. This equipment will meet the specifications listed in appendix B of 40 CFR part 60 and the quality assurance procedures found in appendix F of 40 CFR part 60.

5. Recordkeeping and reporting requirements:

—Report to EPA emissions as required by the procedures found in 40 CFR 60.7;
—Maintain records according to the procedures found in 40 CFR 60.7;
—FGD unit outages must be reported to EPA by the next business day; and
—A follow-up written report must be filed within 30 days of the repair stating how the repair was accomplished and justifying the amount of time taken for the repair.

6a. Compliance with the annual rolling average shall be determined on a daily basis by dividing the total sulfur dioxide emitted by the total energy of the fuel consumed during the previous 365 boiler-operating days.

b. For each unit, in determining compliance with the annual average emission limitation during the first year of operation of the control equipment installed to comply with this emission limitation, periods during which one of the following conditions are met shall be excluded:

i. Equipment or systems do not meet designer's or manufacturer's performance expectations.

ii. Field installation including engineering or construction precludes equipment or systems from performing as designed.

The periods to be excluded shall be determined by the Administrator based on the periodic reports of compliance with this emission limitation which shall identify the times proposed for exclusion and provide the reasons for the exclusion, including the reasons for the FGD outage. The report also shall describe the actions taken to avoid the outage, to minimize its duration, and to reduce SO_2 emissions at the plant to the extent practicable while the FGD unit was not fully operational. Whenever the time to be excluded exceeds a cumulative total of 30 days for any FGD unit, the NGS owner or operator shall file a report within 15 days addressing the history of and prognosis for the performance of the control equipment.

c. In addition to the foregoing, the Administrator of EPA shall exclude from the compliance determination any periods for which the Administrator finds that the control equipment is out of service because of catastrophic failure of any FGD unit which occurred for reasons beyond the control of the NGS owners and operators and could not have been prevented by good engineering practice, including appropriate maintenance.

d. All equipment needed to comply with this emission limitation will be operated consistent with good engineering practice to reduce emissions and outages and to return the FGD system to full operation as expeditiously as practicable.

7. On 3/16/93 and every year thereafter, the NGS owner or operator will prepare a long-term maintenance plan for the grid that NGS serves covering the period from the date of the filing to 3/15 of the next year showing at least six unit-weeks of maintenance for NGS in the 11/1 to 3/15 period, except as provided below, to further reduce SO_2 emissions during the winter. This plan will be developed consistent with the criteria established by the Western States Coordinating Council of the North American Electric Reliability Council to ensure adequate reserve margin. The full six-unit weeks of winter maintenance need not occur if any of the following circumstances arise:

a. There is no need for six-unit weeks of scheduled periodic maintenance in the year covered by the plan.

b. The reserve margin on any electrical system served by NGS would fall to an inadequate level, as defined by the criteria referred to in paragraph 7 above. In such case, the scheduled maintenance may be moved out of the 11/1 to 3/15 period.

c. The cost of compliance with this provision would be excessive. Costs of compliance would be excessive when the economic savings to the owners of moving NGS' maintenance out of the 11/1 to 3/15 period exceeds $50,000 per unit-day of maintenance moved.

d. A major forced outage at a unit occurs outside the winter months, and necessary periodic maintenance occurs during the period of forced outage.

The NGS owner or operator must demonstrate to the satisfaction of the Administrator that such an event precluded the need for a full six-unit weeks of scheduled maintenance during the period specified. Where six unit-weeks of scheduled maintenance is precluded, the NGS owner or operator shall nevertheless make best efforts to conduct as much scheduled maintenance as practicable during the winter period.

8. EPA and the Arizona Department of Environmental Quality reviewed the need to reheat the exhaust gases to ensure appropriate plume rise with the lower gas exit temperatures associated with a 0.10 lb/MBtu emission limitation and found that reheating of the exhaust gas is not necessary to prevent a violation of national ambient air quality standard. Moreover, discussions with the State of Arizona indicate that the visible, water vapor plume that would be present with a scrubber without reheat, instead of the clear stacks that NGS now has, does not pose a condition that requires regulatory attention under State or federal law. The elimination of the need to reheat the exhaust gas will result in a significant reduction in capital and operational costs.

Second Attachment to the MOU

Hogan & Hartson,
Columbia Square,
555 Thirteenth Street, NW.
Washington, DC 20004–1109

July 30, 1991

Thomas C. Kiernan,
Chief of Staff to the Assistant, Administrator for Air and Radiation,
Environmental Protection Agency,
401 M Street, SW.,
Washington, DC 20460

Re: *Timing Issues in Arizona Visibility SIP*

Dear Tom: The purpose of this letter is to present our views on the legal rationale for a visibility-related emission limitation that would contain different compliance deadlines than the EPA proposal. As you know, our clients are discussing a recommendation to the Agency on an alternative to EPA's proposed rule. Specifically, EPA's proposed 0.30 lbs./MMBtu, 30-day average limitation, to be achieved on a phased basis beginning in 1995, has been compared to various 0.10 lbs./MMBtu limitations using different averaging periods and different schedules for phasing in this limitation. Among these alternatives, a 0.10 lbs./MMBtu emission limitation on a rolling annual average, phased in by unit in 1997, 1998, and 1999, achieves greater reductions at less cost than the EPA proposal.

If the Agency were to adopt such a limitation, the parties believe that the legal rationale for the final rule should be that this limitation represents "reasonable progress toward meeting the national goal [of the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas]." 40 CFR 51.300(a); 42 U.S.C. 169A(b)(2) & 169A(a)(1). The parties jointly believe that this legal

rationale is in accord with section 169A(b)(2) of the Clean Air Act. In explaining the basis for this final rule, we would hope that the Agency indicates in the preamble that the 0.10 lbs./MMBtu limitation offers a higher level of controls at a lower cost than would be provided by EPA's BART guidelines, which focus on NSPS levels of control, although the BART guidelines do provide the methodology employed in deciding the level of SO_2 reductions. Finally, we also hope that the preamble notes that by imposing a 0.10 lbs./MMBtu emission limitation, which requires the installation of a state-of-the-art SO_x scrubber, no other sulfur oxide emission controls should be required at NGS under section 169A.

Thank you for considering this matter in the development of the final rule. Please contact us if you have any questions.

Sincerely,

Patrick M. Raher,

Hogan & Hartson for Grand Canyon Trust and Environmental Defense Fund.

Henry V. Nickel,

Hunton & Williams for Salt River Project.

Appendix B

United States Environmental Protection Agency,
Washington, DC 20460,
Office of General Counsel

Memorandum

Subject: Legal Rationale for Rulemaking Alternative in Grand Canyon Visibility Proceeding

From: Gregory B. Foote, Assistant General Counsel

To: William G. Rosenberg, Assistant Administrator for Air and Radiation

Introduction

You have requested my opinion regarding a possible legal rationale in support of a rulemaking alternative for the February 1991 proposal to establish, under section 169A of the Clean Air Act, sulfur dioxide emission limitations at the Navajo Generating Station (NGS) in order to remedy visibility impairment at Grand Canyon National Park. In particular, you have asked that I review a joint letter dated July 30, 1991, from Patrick M. Raher, representing the Grand Canyon Trust and the Environmental Defense Fund (GCT/EDF), and Henry V. Nickel, representing the Salt River Project (SRP). The Raher/Nickel letter recommends that, in the event EPA adopts a final rule for NGS requiring a 0.10 lbs./mmbtu emission limitation on a rolling annual average, phased in by unit in 1997, 1998, and 1999, EPA should also adopt the legal rationale described in the July 30 letter in support of such a final rule.

At the outset, I note that General Counsel Don Elliott recently responded to Messrs. Raher and Nickel by letter dated August 2, 1991 (copy attached). Don Elliott's letter reminded those parties that EPA must at all times retain full discretion in deciding on both the substantive content of and legal rationale for its final rulemaking actions. Thus, although the General Counsel assured Raher and Nickel that EPA would carefully consider their views, he made it clear that EPA could give no assurance that those views would be adopted. The General Counsel's letter did not address the merits of the Raher/Nickel letter, a subject that I will address below.

Brief Answer

In brief, the Raher/Nickel letter would focus on the "reasonable progress" requirement in section 169A(B)(2) as the basis for EPA's final action on the NGS rulemaking. That general approach is basically sound and could, in my opinon, provide the core of a defensible rationale in support of the prospective final rule in question. My views on this rulemaking alternative are set forth in greater detail below. Please note that I have not yet discussed those views in detail with the General Counsel. Once he has reviewed them, however, this memorandum could form part of the basis for a supplemental notice advising the public that EPA is considering the specific regulatory option in question, and soliciting comment on that option.

Discussion

Section 169A(b)(2) of the Clean Air Act requires that visibility implementation plans contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward the national visibility goal. These plan provisions include, as appropriate, BART (section 169A(b)(2)(A)), and a long-term strategy (section 169A(b)(2)(B)). Thus, "reasonable progress" is the overarching requirement that implementation plan revisions under section 169A(b)(2) must address, while subparagraphs (A) and (B) are more specific expressions of rulemaking authority that are incorporated into the parent subsection (b)(2). In crafting the visibility reasonable progress requirements, Congress did not explicitly address, and apparently did not even consider, whether there could be greater visibility improvement at a lower cost in furtherance of the national goal through an implementation plan provision that relied more generally on subsection (b)(2), rather than on the specific provisions of subparagraph (A) and/or subparagraph (B). Where Congress has not directly spoken to the precise question at issue, EPA may make a reasonable construction of the statute that is appropriate in the context of the particular program at issue. *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–45 (1984).

In the notice of proposed rulemaking published in the *Federal Register* on February 6, 1991 (56 Fed. Reg. 5173), EPA proposed a 0.30 lbs/MMBtu emission limitation for NGS, to be determined on a 30-day rolling average and to be phased in by unit in 1995, 1997 and 1999. EPA explicitly requested comment on other control options permitted under the Act including, *inter alia*, the following rule elements and specific regulatory alternatives:

(1) Emission limitations, including a limitation of 0.10;

(2) Averaging times, including an annual averaging period; and

(3) Implementation schedules, including a schedule that extended to 2000. EPA also solicited comment generally on regulatory issues raised by interested parties. In my opinion, the specific rulemaking alternative now under consideration is within the scope of the February 1991 proposal. However, in order to insure full public consideration of this alternative, I strongly recommend that EPA issue a supplemental notice providing a further opportunity for public comment.

As you know, the staff of the Office of Air and Radiation has considered the rulemaking alternative consisting of a 0.10 lbs/MMBtu emission limitation, to be determined on a rolling annual average and phased in by unit in 1997, 1998 and 1999, and has reviewed supporting technical and cost information. I understand that the staff has concluded that greater visibility improvement at less cost can be achieved by this alternative, as compared to the rule proposed in the February 1991 notice, which applied the BART Guidelines focusing on NSPS levels of control to the facts of this case. I understand that the staff also referred to the BART guidelines to provide the methodology employed in developing the level of sulfur dioxide reductions in the alternative presently under consideration. See sections 169A(g) (1) and (2).

Based on the staff conclusions regarding the factual circumstances of this case, EPA could reasonably find that the present alternative, with its higher expected visibility improvement and lower expected costs (in comparison to the February 1991 proposed rule), best fulfills the overarching statutory requirement in section 169A(b)(2) (which incorporates the more specific provisions of subparagraphs (A) and (B)) that implementation plan revisions adopted under section 169A make "reasonable progress" toward the national visibility goal.

Conclusion

In sum, subject to any significant points that may be raised in the reopened comment period, I believe that under the specific circumstances of this case EPA could rely on the provisions of section 169A(b)(2) as the source of delegated rulemaking authority for the present alternative. The Agency has weighed the relevant factors and could appropriately conclude that this alternative reasonably interprets and harmonizes the statutory provisions in a way that best furthers the overarching legislative purpose to achieve reasonable progress toward the national visibility goal. *See, e.g., Public Citizen* v. *Department of Justice*, 109 S.Ct. 2558, 2566 (1989); *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459, (1898); *see also Citizens to Save Spencer County* v. *EPA*, 600 F.2d 844 (D.C. Cir. 1979).

Finally, I note that by promulgating a 0.10 lbs/MMBtu emission limitation which requires installation of state-of-the-art SO_x scrubber technology, the staff expects that no other federal implementation plan revisions requiring SO_x control should be necessary at NGS under section 169A. I express no view on this essentially technical and policy matter.

Attachment.

Attachment to Appendix B

United States Environmental Protection Agency
Washington, DC 20460
Office of General Counsel

August 2, 1991

Mr. Patrick M. Raher,
Hogan & Hartson for Grand Canyon Trust and Environmental Defense Fund,
Columbia Square,
555 Thirteenth Street, NW.,
Washington, DC 20004-1109

Mr. Henry V. Nickel,
Hunton & Williams for Salt River Project,
2000 Pennsylvania Ave., NW.,
Washington, DC 20036

RE: *Timing Issues in Arizona Visibility FIP*

Dear Mr. Raher and Mr. Nickel: This is in response to your letter of July 30, 1991 to Tom Kiernan, Chief of Staff to Assistant Administrator Bill Rosenberg.

I note with interest your views on a possible legal rationale for a final rule addressing visibility-related emission limitations for Navajo generating Station. EPA applauds your efforts to find common ground that may lead to an amicable conclusion to this important rulemaking. The Agency is giving your views careful consideration as it moves toward final action. I want to remind you, however, that of course EPA at all times retains complete and unfettered discretion over both the substantive provisions of any final regulation and the legal rationale supporting that final action.

President Bush reiterated this important principle in the Statement by the president accompanying the signing of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, 5 U.S.C. 581 (1990). A copy of the Statement is enclosed for your reference.[1] The Statement noted that under the Appointments Clause of the Constitution, Article II, Sec. 2, Cl. 2, governmental authority may be exercised only by officers of the United States. In particular, the President emphasized that "Federal officials will retain their full statutory and constitutional responsibility to make all administrative determinations on regulatory matters." Clearly, this responsibility extends to all material aspects of a final regulation under section 169A of the Clean Air Act. Accordingly, while we appreciate the views you have placed before us, EPA can give no assurances nor negotiate any binding commitments that it will ultimately adopt the regulatory approach or the legal rationale you have recommended.

Sincerely,

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91-19272 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

[1] The President's signing statement was published in the Weekly Compilation of Presidential Documents (Vol. 26, no. 48, page 1945) December 3, 1990, and is not republished in this Federal Register document.

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91-24]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; extension of time to comment.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Korea, has proposed the imposition of fees on Korean-flag vessels calling at United States ports (56 FR 26361; June 7, 1991). Korean law and regulations preclude U.S. carriers operating in the U.S./Korea trade from engaging in trucking activities and directly contracting for rail services in Korea. The effect of the proposed rule will be to adjust or meet unfavorable conditions created by those laws and regulations by imposing countervailing burdens on the Korean-flag carriers. American President Lines, Ltd. now requests a 45 day extension of time for filing comments, citing discussions held in Seoul, July 8-9, 1991, between delegations of the United States and Republic of Korea and uncertainty over the scope of the understanding reached at those discussions. The extension is requested to provide time to obtain an interpretation from appropriate officials. The Commission grants the request for a 45 day extension. Parties who have already filed comments will be allowed to supplement those comments on or before the new due date.

DATES: Comments due on or before September 16, 1991.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5740.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-19178 Filed 8-12-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket No. 84-1234]

Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision.

SUMMARY: The Commission has issued a Tentative Decision reconsidering several decisions related to the licensing of a domestic mobile satellite service (MSS) provider in the 1545-1559 MHz and 1646.5-1660.5 MHz frequency bands. This action is promptly by the decision of the Court of Appeals for the District of Columbia, which remanded of the Commission for further consideration two aspects of its decisions. (See *Aeronautical Radio, Inc.* v. *FCC*, No. 88-1009, slip op. (March 19, 1991).) This Tentative Decision concludes that the Commission possesses statutory authority to adopt a rule to require that the MSS licensee shall be a consortium comprised of qualified applicants. Further, the Commission tentatively concludes that a consortium requirement is a reasonable exercise of the Commission's rulemaking authority and compelling factors unique to this proceeding require that a consortium approach, rather than comparative hearings, be adopted. Additionally, the decision tentatively concludes that the financial requirements previously imposed for participation in the consortium should be modified and the three entities whose applications were reinstated by the court should be provided an opportunity to join the consortium at this time.

DATES: Comments may be filed on or before September 4, 1991. Reply Comments may be filed on or before September 23, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau (202) 634-1624, or Kathleen Abernathy, Office of General Counsel (202) 632-7020.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Tentative Decision regarding the Court of Appeals remand in the mobile-satellite service proceeding, adopted July 30, 1991 and released August 2, 1991.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (room

230), 1919 M Street, NW., Washington, DC and in the Domestic Facilities Public Reference Room, room 6220, 2025 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 21st Street, NW., Washington, DC 20036.

Summary of Tentative Decision

1. The Commission has issued a Tentative Decision reconsidering several orders related to the licensing of a domestic mobile satellite service (MSS) provider in the 1545-1559 MHz and 1646.5-1660.5 MHz frequency bands. This action is prompted by the decision of the Court of Appeals for the District of Columbia, which remanded to the Commission for further consideration two aspects of the orders reating to the licensing of a domestic mobile-satellite service provider. See *Aeronautical Radio, Inc.* v. *FCC*, No. 88-1009, slip op. (March 19, 1991). First, the court found the manner in which the Commission imposed the requirement that applicants demonstrate their financial qualifications through a cash contribution to be arbitrary and capricious. Second, the court vacated the Commission's consortium rules, holding that the Commission had not provided adequate justification for its decision to forego comparative hearings on the competing applications. The court also reversed the dismissal of the applications submitted by Global Land Mobile Satellite, Inc., Globesat Express and Mobile Satellite Service, Inc. (MSSI).

2. The Commission concludes that it possesses statutory authority to adopt a rule that requires that the MSS licensee shall be a consortium comprised of qualified applicants. Further, the Commission tentatively concludes that a consortium requirement is a reasonable exercise of the Commission's rulemaking authority and compelling factors unique to this proceeding require that a mandatory consortium approach, rather than comparative hearings, be adopted. Additionally, the financial requirements previously imposed for participation in the consortium should be modified and the three entities whose applications were reinstated by the court should be provided an opportunity to join the consortium at this time.

Legal Authority

3. The Communications Act does not specifically reference comparative hearings as a means of selecting a licensee. Rather it provides that the Commission may not deny an application without affording an opportunity for hearing. 47 U.S.C. 309(e). The concept of the statutory entitlement for comparative hearings stems from the Supreme's Court decison in *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945). In *Ashbacker*, the Court determined that where two *bona fide* applications are mutually exclusive, the grant of one without a hearing to both deprives the loser of the right to a hearing set forth in section 309. However, there are well-established exceptions to the entitlement in *Ashbacker*. In *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956), the Supreme Court clarified that the opportunity for hearing afforded in section 309 does not withdraw from the Commission its rulemaking authority. Thus, the *Storer* decision establishes that the Commission need not hold a full adjudicatory hearing prior to denial of an application that is inconsistent with rules enacted under the broad public interest standard. Additionally, as noted in a recent court of appeals decision, the *Ashbacker* Court also implied that the Commission could, without a hearing, grant one of two competing applications for permanent license "if it found that public interest demanded such urgency." *La Star Cellular Telephone Co.* v. *FCC*, 899 F.2d 1233, 1235 (DC Cir. 1990), citing *Ashbacker*, 326 U.S. at 333.

4. Section 303 of the Act provides that the Commission shall perform its rulemaking functions "as public convenience, interest, or necessity requires," and may "make such regulations not inconsistent with law" as necessary to carry out the provisions of the Act. 47 U.S.C. 303, 303(f), 303(r). In this instance, the Commission exercised its rulemaking authority when it determined in the MSS proceeding, after notice and full opportunity for public comment, that the public interest would best be served by licensing a consortium of all qualified, willing MSS applicants rather than selecting one applicant as a licensee from among the twelve individual applicants by comparative hearing or lottery. This procedure appears fully consistent with the *Storer* decision and thus appears to satisfy established legal requirements for denying any MSS applications that do not meet the consortium requirement. The rule itself obviates the need to hold full section 309(e) hearings, comparative or otherwise.

5. The Commission determined that under section 303's broad public interest standard it was authorized to adopt a consortium licensing rule, rather than comparative hearings or a lottery. Citing its historical process of licensing other domestic satellite services and the circumstances unique to authorizing MSS, the Commission concluded that the consortium rule was a permissible and reasonable exercise of its rulemaking authority.

Public Interest Considerations

6. The Commission set forth compelling public interest reasons for promptly authorizing an MSS licensee without the necessity of further time consuming administrative proceedings. International considerations render it very unlikely that a domestic mobile-satellite service would be implemented in the upper L-band unless the Commission is prepared to go forward with an authorizing in the very near future. In order to ensure sufficient spectrum for a domestic MSS system, the United States must successfully complete the ongoing international frequency assignments and coordination process. Effective United States participation in this coordination process is not possible without the active assistance and presence of a U.S. authorized licensee at coordination meetings. If the United States does not continue its participation, assisted by a licensee, the United States would, in all likelihood, be prevented from obtaining sufficient spectrum after other countries pursuing the coordination of their own systems continue the coordination process without the United States.

Reinstated Applicants

7. Having tentatively concluded that adoption of a mandatory consortium rule is in the public interest, the Commission next considers entry criteria. The court vacated the cash contribution requirement set forth in the Second Report and Order, 2 FCC Rcd 485 (1987), and reinstated the three applications dismissed for failure to meet this requirement. With regard to the $5 million financial eligibility standard resources for the venture to get underway and an adequate capitalization base for attracting additional financing. These goals have been met. Therefore, the Commission tentatively concludes that no minimum contribution will be required of the reinstated applicants as a condition of participation in the consortium. Rather, each applicant will have 60 days from the release of the Final Decision in the proceeding to provide AMSC with an unconditional letter of credit, performance bond or cash in the amount it wishes to invest. AMSC will be required to either modify its Stockholders Agreement or to authorize an additional subscription offer to accommodate these additional contributions within 60 days of the date

by which the intended contributions must be committed. The applicants will then have 60 days to covert their funds into investment shares. Each of the three reinstated applications will be conditioned upon each party individually providing the Commission with certification of its completed stock purchase. AMSC must certify within 10 days after the date on which the stock purchase is made that each of the new members have made an initial investment. The ownership share of each of the participating members is to be proportional to its contribution.

Conclusion

13. By this Tentative Decision, the Commission seeks to resolve the licensing issues that have been remanded to it in a manner that will best ensure the implementation of a U.S. domestic MSS system in the upper L-band. The Commission has fully considered the alternative of holding comparative hearings, but has concluded that the exigencies of the international coordination process require that it proceed immediately with a domestic licensee. If any other course is pursued, the United States will likely be unable to secure enough spectrum in the upper L-band to support a viable domestic system.

14. Pursuant to the procedures set out in § 1.415 of the Commission's rules, 47 CFR 1.415, interested parties may file comments on this Tentative Decision on or before September 4, 1991 and reply comments on or before September 23, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance is noted in the Final Decision to follow.

15. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and ten copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Comments and reply comments should be sent to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. All documents will be available for public inspection during regular business hours at the Domestic Facilities Division Public Reference Room, room 6220, 2025 M Street NW., Washington, DC. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632-7000.

16. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a tentative decision until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also take by docket number the proceeding to which it relates. See generally 47 CFR 1.1231.[1]

Ordering Clauses

17. Accordingly, pursuant to sections 4(i), 4(j), 214(c), 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j), 214(c), 303(r) and 309, we hereby give notice that the policies set forth in this document are adopted as a Tentative Decision.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-19366 Filed 8-12-91; 8:45 am]

BILLING CODE 6712-01-M

[1] Any communications regarding specific pending applications or the grant of temporary authority authorized herein are subject to the *ex parte* rules for restricted proceedings. See 47 CFR 1.1208.

Notices

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

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

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Dates: September 11-13, 1991.

Time: 8:30 a.m.-5 p.m..

Place: Cornell University, Roberts Hall Conference Room 170, Ithaca, NY.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agriculture Experiment Stations.

Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, room 328, Aerospace Building, Washington, DC 20250, Telephone: 202-401-6040.

Done at Washington, DC this 2nd day of August, 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91-19210 Filed 8-12-91; 8:45 am]

BILLING CODE 3410-22-MIT

Forest Service

Beartooth Mountains Oil and Gas Leasing EIS

AGENCY: Forest Service, USDA.

ACTION: Extension of scoping comment date.

Due to a variety of reasons numerous parties have requested that the public scoping comment for the Beartooth Mountains Oil and Gas Leasing EIS be extended. Therefore, in response to these requests, I have extended the scoping period to September 30, 1991.

The Notice of Intent to prepare an Environmental Impact Statement (EIS), published in the **Federal Register** of June 27, 1991, (56 FR 29458) is hereby amended.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Interdisciplinary Team Leader, Custer National Forest, Beartooth Ranger District, Rt. 2, Box 3420, Red Lodge, Montana 59068, (406) 446-2103.

John W. Mumma,

Regional Forester.

[FR Doc. 91-19182 Filed 8-12-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Wholesale Trade.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 659,100 hours.

Number of Respondents: 520,000.

Avg Hours Per Response: One hour and fifteen minutes.

Needs and Uses: The Census Bureau will conduct the census of wholesale trade as part of the 1992 Economic Censuses. The economic censuses are the primary source of facts about the structure and functioning of the Nation's economy. They provide essential information for government, business, and the public. In particular, census results serve as part of the framework for the national accounts; furnish sampling frames and benchmarks for economic surveys; and provide detailed, comprehensive information for use in policy making, planning, and program administration.The 1992 Census of Wholesale Trade will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of approximately one-half million business establishments classified in Standard Industrial Classification Division F. This sector is comprised mainly of establishments engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm, or professional business users; to construction contractors; or to other wholesalers.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations, Non-profit institutions, State or local governments.

Frequency: Every five years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-19232 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Marine Mammals: General Incidental Take Permits, Small Take Exemptions, and Certificates of Inclusion

Form Number: None; OMB—0648–0083

Type of Request: Revision of a currently approved collection

Burden: 25 respondents; 25 reporting hours; average hours per response—1 hour.

Needs and Uses: The only valid general permit, issued to the American Tunaboat Association, has less than ten certificates of inclusion active under it. Although no other general permit applications are expected, the information collection is required to accommodate it and any additional requests for permits or certificates of inclusion.

Affected Public: Businesses or other for profit, small businesses or organizations.

Frequency: Annual, tri-annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: August 7 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19168 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology.

Title: Advanced Technology Program.

Form Number: NIST–1262 & 1263, OMB# 0693–0009.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 500 respondents; 20,000 reporting hours. Average 40 hours.

Needs and Uses: The National Institute of Standards and Technology has established and the Advanced Technology Program (ATP) to accelerate the commercialization of technological innovations and refinement of manufacturing technologies by U.S. businesses. The information requested is necessary to assure a fair and equitable process to evaluate and fund proposals submitted to the program.

Affected Public: businesses, Federal agencies, small businesses, non-profit institutions, and state or local governments.

Frequency: One-time response.

Respondent's Obligation: Required for Benefits.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19233 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-13-M

International Trade Administration

[A-122-601]

Amendment of Notice of Preliminary Results of Antidumping Duty Administrative Review of Brass Sheet and Strip From Canada To Announce an Intent To Revoke, in Part, the Antidumping Order

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–8922.

Preliminary Determination To Revoke, in Part, the Antidumping Order

Background

On January 30, 1990, Ratcliffs/Severn Limited (Ratcliffs) requested revocation in part of the antidumping order on brass sheet and strip from Canada.

On July 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 29938) the preliminary results of the antidumping duty review for the period January 1 through December 31, 1989. The preliminary results indicated the existence of a *de minimis* margin of sales at less than fair value for the manufacturer/exporter Ratcliffs. This was the third consecutive administrative review in which the margin for Ratcliffs was *de minimis* or zero.

On the basis of Ratcliffs' having sold merchandise covered by the antidumping order at not less than foreign market value for a period of at least three consecutive years and because there is no information indicating that Ratcliffs is likely to sell the merchandise at less than fair value in the future, the Department has made a preliminary determination that there is a reasonable basis to believe that the requirements of 19 CFR 353.25 have been met for revocation of the order with respect to Ratcliffs.

Interested parties are invited to submit written comments on the Department's intent to revoke the antidumping order with respect to Ratcliffs. Any such comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration, room B099; 14th Street & Constitution Avenue NW., Washington, DC 20230. Comments must be filed no later than August 23, 1991.

This notice is in accordance with section 751 of the Tariff Act (19 U.S.C. 1675) and 19 CFR 353.25.

Dated: August 7 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19234 Filed 8–12–91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada

AGENCY: Inernational Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On December 26, 1990 and May 10, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 53026 and 56 FR 21659, respectively) the preliminary results of its administrative reviews of the antidumping duty order on oil country tubular goods ("OCTG") from Canada (51 FR 21782 (June 16, 1986)). One review covers Christianson Pipe Ltd. ("Christianson"), an exporter of this merchandise to the United States, and the period June 1, 1988 through May 31, 1989. The other review covers Christianson and Prudential Steel Ltd. ("Prudential"), a producer and exporter of this merchandise to the United States, and the period June 1, 1989 through May 31, 1990. We preliminarily found dumping margins in both reviews.

We gave interested parties an opportunity to comment on the preliminary results. We held a hearing on February 8, 1991 for Christianson and the period June 1, 1988 through May 31, 1989. No hearing was held for the period June 1, 1989 through May 31, 1990. Based on the analysis of the comments received, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph B. Kaesshaefer, Jr. or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 1990 and May 10, 1991, the Department published in the **Federal Register** (55 FR 53026 (December 26, 1990) and 56 FR 21659 (May 10, 1991)) the preliminary results of its administrative reviews of the antidumping duty order on OCTG from Canada (51 FR 21782 (June 16, 1986)). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, a amended ("the Act").

Scope of Review

Imports covered by these reviews are shipments of OCTG from Canada. This includes American Petroleum Institute ("API")-specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickeness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. During the periods of review, these shipments were provided for in Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3295, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. The Corresponding Harmonized Tariff Schedule (HTS) numbers are 7304.20, 7305.20, and 7306.20. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

One review covers one exporter of OCTG from Canada, Christianson, and the period June 1, 1988 through May 31, 1989. The other review covers Christianson and a producer and exporter, Prudential, and the period June 1, 1989 through May 31, 1990.

Cost of Production Issues

As noted in the preliminary determination for both the review period June 1, 1988 through May 31, 1989 ("the third review") and June 1, 1989 through May 31, 1990 ("the fourth review"), the Department had reasonable grounds to believe or suspect that Christianson made sales during the periods of review below the cost of production. Thus, the Department conducted cost investigations in both reviews.

In both the third and fourth reviews, petitioners alleged that Christianson, the reseller under review, sold non-prime pipe at prices below the cost of production of the unrelated producer, Prudential. The Department analyzed both allegations in accordance with section 773(b) of the Act which provides:

> Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the *cost of producing* the merchandise in question, it shall determine whether, in fact, such sales were made at less than the *cost of producing* the merchandise." [emphasis added]

In reviewing the allegations in this statutory context, the Department first needed to determine the accuracy of the cost information for non-prime pipe supplied by petitioners. In *Ipsco, Inc. and Ipsco Steel, Inc.* v. *United States*, 714 F. Supp. 1211, 1214, (1989) (*"IPSCO"*) (currently on appeal to the Court of Appeals for the Federal Circuit), the Court of International Trade ("CIT") directed the Department to "find a reasonable means of allocating the combined cost of production between [prime and non-prime OCTG] which takes into account differences in value." The Department thus conducted its cost analyses in these reviews consistent with this decision.

1. The Third Review

On November 22, 1989, petitioners submitted a cost allegation which provided the Department with reasonable grounds to believe or suspect that Christianson's home market sales were made at prices below the cost of production. The Department therefore initiated a sales below cost investigation. Because petitioners alleged that Christianson had sold non-prime pipe below the cost of production, and Prudential, a party whose sales are not subject to the third review, produced the subject merchandise, the Department sent a cost questionnaire to Prudential on September 14, 1990. However, Prudential notified the Department on November 27, 1990 that it would not respond to the cost questionnaire. Thus the Department lacked the actual cost information from the producer and had to rely upon the best information available ("BIA") in accordance with section 776(c) of the Act. Because cost of production information was not within the control of Christianson, the Department decided that rather than disregard Christianson's

full cooperation in this review and apply total BIA (*i.e.*, disregard Christianson's response in calculating dumping margins, and instead assign Christianson an overall dumping rate), it was more appropriate to use BIA to estimate Prudential's cost of producing non-prime pipe. Thus, the Department used as BIA petitioner's cost information, supplemented, where necessary to remain consistent with *IPSCO*, with limited sales information provided by Prudential.

In the preliminary results of the third review, to determine the cost of producing non-prime pipe, based on BIA, in a manner consistent with *IPSCO*, the Department multiplied petitioners' cost of producing prime OCTG by 35 percent. The Department derived this value ratio from sales information reported in an appendix to the public summary of the November 30, 1990 supplemental questionnaire response submitted by Prudential in the fourth review. This information demonstrated that the sales value of non-prime OCTG was 35 percent of the sales value of prime OCTG. See Preliminary Results of Antidumping Administrative Review, 55 FR 53026 (December 26, 1990). The Department compared petitioners' revised cost of production of non-prime pipe to Christianson's home market sales prices and found that 100 percent of the home market sales were made at prices above the cost of production.

2. The Fourth Review

On November 21, 1990, petitioners alleged that Christianson's home market sales were made at prices below the cost of production. On January 30, 1991, the Department requested that petitioners revise the below cost allegation to be consistent with the CIT's direction in *IPSCO* to account for the respective costs of production for prime and non-prime pipe. On February 15, 1991, petitioners submitted a revised cost allegation. Based no the revised allegation, the Department determined that reasonable grounds existed to believe or suspect that Christianson's home market sales were priced below the cost of production. The Department issued a cost questionnaire to the producer of Christianson's OCTG, Prudential. On March 26, 1991, Prudential notified the Department that it would not respond to the questionnaire.

Because Prudential did not respond, the Department again had to use BIA to estimate Prudential's cost of producing non-prime pipe. In following *IPSCO* in the preliminary results of the fourth review, the Department used petitioners' revised allegation as BIA. However, the Department modified the relative value ratio for prime and non-prime pipe provided in the allegation with the average of the relative value ratios derived from the sales information submitted by both Prudential and petitioners. See Preliminary Results of Antidumping Administrative Review, 56 FR 21659, 21660 (May 10, 1991).

The Department then compared the cost of producing non-prime pipe with Christianson's home market sales prices and found that a substantial quantity of the merchandise was sold at prices below the cost of production.

3. The Final Cost of Production Methodology for the Third and Fourth Reviews

In response to comments from the parties and after further consideration and review, the Department has revised the cost methodologies used in the third and fourth reviews in these final determinations. For the final results of the third and fourth reviews, the Department's cost methodology incorporates the following components of petitioners' Februrary 15, 1991 revised cost allegation and Prudential's November 30, 1990 supplemental questionnaire response as BIA to determine the cost of producing non-prime pipe in the home market:

1. Petitioners' unit cost of prime pipe for two sizes of tubing and four sizes of casing;
2. Petitioner's volume of prime and volume of non-prime production tonnages for the two sizes of tubing and the four sizes of casing;
3. Petitioners' average relative value of sales in the United States of non-prime to prime pipe for the two sizes of tubing and the four sizes of casing; and
4. Prudential's relative value of sales in the home market of non-prime to prime pipe, adjusted for costs incurred to process further Prudential's prime OCTG.

The information used was submitted on the record in the fourth review; for the third review, the Department used information from the public summaries of those submissions, which it placed on the record of the third review.

In accordance with *IPSCO*, to allocate reasonably the combined cost of production between non-prime and prime pipe, the Department sought a relative value ratio derived from the greatest possible number of products sharing common costs and the largest universe of sales experience. The Department thus averaged petitioners' and Prudential's relative value ratios to calculate a more accurate relative value ration, as that relative value ratio would be based on a greater number of products sharing common costs and incorporate the wider sales experience of both the United States and home markets than using either petitioners' or Prudential's information exclusively.

Thus, the Department was able to calculate a simple average of the relative U.S. and home market value ratios. This simple average was used to allocate the total manufacturing costs among non-prime and prime products. To the calculated per ton cost of manufacture, the Department added SG&A to obtain the cost of production for the six sizes of tubing or casing.

The two sizes of tubing and the four sizes of casing for which the Department calculated cost of production were all sold in the home market. Thus, in conducting the cost test, the Department compared the calculated cost of production of each specific size of tubing to its respective home market sales price charged by Christianson. For other sizes of tubing sold in the home market, the Department averaged the cost of production calculated for the two sizes of tubing and compared that average cost of production to the home market sales prices charged by Christianson for the respective sizes of tubing. For other sizes of casing sold in the home market, the Department averaged the cost of production calculated for the four sizes of casing and compared that average cost of production to the home market sales prices for the respective sizes of casing. As a result of these cost tests, the Department found in both reviews that a substantial number of sales of non-prime pipe in the home market were made at prices below the cost of producing non-prime pipe. Those below cost sales were disregarded in its final analyses.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioners, Lone Star Steel Company and CF&I Steel Corporation, we held a public hearing on February 8, 1991 for the period June 1, 1988 through May 31, 1989. A public hearing was not held for the period June 1, 1989 through May 31, 1990. We received comments and rebuttal comments from the petitioners and respondents for both review periods.

Analysis of Petitioners' and Christianson's Cost Comments

Comment 1: Petitioners argue that because Prudential failed to respond to

the Department's cost of production questionnaires in both reviews, the Department should have rejected Christianson's questionnaire responses in their entirety and used the highest margin previously assigned in the less than fair value investigation as BIA for Christianson. Petitioners believe that since Prudential failed to respond to the Department's cost of production questionnaires, the Department should not reward Christianson because of non-cooperation from Prudential in these reviews, and, thus, a punitive BIA should be employed.

In the alternative, petitioners argue that their cost of production information submitted in their November 22, 1989 cost allegation for the third review and their November 21, 1990 cost allegation for the fourth review, should have been used unaltered as BIA.

Christianson objects to the Department's decision to investigate its unrelated supplier's (Prudential) cost of production in determining whether its Canadian sales are below the cost of production. Christianson contends that Prudential's cost of production is irrelevant for purposes of determining whether Christianson's home market sales are below the cost of production, and that Christianson's cost of production should be based on its acquisition costs. However, Christianson believes that the Department has broad discretion to determine how and when to use BIA, and that the BIA methodologies employed in the two reviews were reasonable.

Department's Position:

We disagree with Christianson's argument that the Department should not have investigated Prudential's cost of production in determining whether its Canadian sales are below the cost of production. As noted above, section 773(b) of the Act is clear in its direction that the relevant cost involved in a below cost investigation is "the cost of producing the merchandise in question." Here, Prudential is clearly the producer of the merchandise, not Christianson. Christianson's acquisition costs would be relevant only if it were alleged that Christianson, a reseller, is selling below those acquisition costs. Because based on petitioners allegation the Department had reasonable grounds to believe or suspect that Christianson as selling below the cost of production, the statute required the Department to request cost information from the producer of the merchandise in question. See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 25, 1991) (hereinafter "Salmon").

We disagree with petitioners that the Department should have used total BIA for Christianson in these reviews, or used their cost allegations unaltered as BIA. As noted in the "Cost of Production Issues" section of this notice, the Department attempted to obtain cost of production information from the producer of the subject merchandise, Prudential. However, Prudential refused to respond in both reviews to the cost of production questionnaires sent by the Department, and thus the Department had to rely upon BIA.

It is well established that the Department possesses wide discretion in determining what constitutes BIA. *See Chemical Prods. Corp.* v. *United States*, 645 F. Supp. 289, 295 (CIT 1986). Section 353.37(b) of the Act provides that the Department may take into account whether a party refuses to provide requested information. See Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.: Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31704–05 (July 11, 1991) (hereinafter "*Bearings*"). In the exercise of its discretion, the Department could have simply used total BIA for Christianson's sales. However, because the relevant cost information was outside the control of Christianson, and in light of Christianson's full cooperation in both reviews, the Department determined it more reasonable to use BIA to calculate cost of production. *Cf. Chevron Standard Ltd.* v. *United States*, 563 F. Supp. 1387, 1389 (CIT 1983).

In thus applying BIA, the Department based its cost of production calculation on cost information submitted by petitioners. In order to follow the CIT's direction in *IPSCO* to reasonably allocate costs of production among products sharing the same pool of common costs, the Department supplemented that information with limited sales information provided by Prudential in the fourth review. See "Cost of Production Issues" section of this notice.

Comment 2: Petitioners disagree with the Department's calculation in the third review of a relative home market value for the non-prime pipe sold by Christianson based on sales information from Prudential's supplemental questionnaire response from the fourth review.

Christianson responds that in using BIA the Department has wide discretion in its choice of the information it uses.

Department's Position:

We agree with Christianson that the Department has wide discretion in its choice of the information used as BIA; however, we also agree with petitioners that the cost methodology employed in the third review preliminary determination needed improvement. Thus, we revised the cost methodology for the final determination as noted above.

Comment 3: Petitioners comment that for the fourth review if the Department insisted on employing a methodology consistent with *IPSCO*, it should not have adjusted a portion of petitioners' February 15, 1991 allegation. Adjusting petitioners' cost allegation, according to petitioners, arbitrarily benefits Prudential and Christianson.

Department's Position:

We disagree with petitioners. The portion of petitioners' allegation which the Department adjusted was the relative value of sales of non-prime and prime pipe. In its allegation, petitioners submitted data that supported a relative value ratio of non-prime and pipe derived from petitioners' average U.S. prices for a portion of its prime pipe sales and a U.S. distributor's prices for a portion of its non-prime pipe sales.

Though the Department agrees that the data submitted by petitioners provides a relative value indicative of its experience for some OCTG products produced and sold in the United States, it does not provide a complete or reasonable relative value for all of a producer's pipe products sharing common costs.

In its sales questionnaire response for the fourth review, Prudential provided sales information for a portion of its prime and non-prime pipe sales in Canada. Using the quantity and value data of OCTG produced by Prudential, the Department calculated a relative value indicative of a producer's experience for some OCTG products in Canada. This relative value, like that provided by petitioners, does not provide a comprehensive relative value for all of Prudential's products sharing common costs which are then sold in various markets, but rather provides just a portion of that relative value. Therefore, the Department determined that using both parties' sales information would result in a more accurate relative value, as that relative value derived from sales information from both petitioners and Prudential would be based on a greater number of products sharing common costs.

Comment 4: Petitioners comment that for the fourth review, the Department erred in calculating the relative Canadian market value ratio by comparing aggregate Canadian values of non-comparable products (threaded and coupled prime pipe vs. plain-end prime pipe) and ignoring certain Canadian sales information reported by Prudential on its plain-end prime products. Further, petitioners comment that Prudential made no sales of non-prime pipe in the home market during the period of review so the calculation the Department seeks to make is impossible.

Christianson responds that the Department need not adjust for the differences between the circumstances surrounding sales of the prime and non-prime products or the physical differences between the two qualities of merchandise because it adds an unreasonable level of complexity to the Department's BIA analysis.

Department's Position:

We disagree with Christianson. After further review and consideration of this matter, the Department determined that it must adjust Prudential's relative value ratio to account for the extra costs incurred to thread and couple prime OCTG in order to make a more accurate comparison of comparable products. Threading and coupling adds cost to pipe, and not adjusting for those added costs distorts the relative value between prime and non-prime pipe with different end finishes. In addition, the Department agrees with petitioners that the Department should not ignore Prudential's Canadian sales of plain-end pipe. The amounts reported by Prudential for its plain-end pipe are used in the final analysis and the value of prime OCTG is adjusted to account for threading and coupling costs.

We disagree with petitioners, however, in their assertion that the Department's Canadian relative value ratio is inaccurate because Prudential made no sales of non-prime pipe during the period of review. In order to derive a relative value ratio, the Department used as BIA information on the record concerning Prudential's sales of non-prime pipe. Though these sales were not made during the period of review, prime and non-prime pipe share a common pool of costs. Therefore, to allocate costs among those two products, a relative value ratio based upon sales value relationship of both products was required.

Comment 5: Petitioners comment that for the fourth review the Department should not have used a simple average of U.S. and Canadian relative values, and suggest methods to calculate relative values for varying sizes and grades in both markets.

Department's Position:

We disagree. We have reviewed the methods suggested by petitioners and have determined that they do not achieve a more accurate result. In producing various sizes and grades of OCTG, numerous common costs are shared; thus, a simple average of the relative values provides a reasonable approximation of the relative values in both markets.

Comment 6: Christianson comments that for the fourth review the Department should not have used petitioners' SG&A expenses in its BIA calculations, and instead should have used Prudential's reported SG&A.

Petitioners respond that the Department acted reasonably in using petitioners' data since Prudential did not respond to the Department's cost questionnaire.

Department's Position:

We agree with petitioners. As noted above, Prudential refused to respond to the Department's cost questionnaires in both reviews, whereas petitioners complied with the Department's request to revise their cost information consistent with *IPSCO*. Thus, the Department decided to use BIA to construct the cost of production for the subject merchandise. As BIA, the Department used the cost information, including SG&A, submitted by petitioners, in a manner which takes into account the differences in value of prime and non-prime pipe. However, this allocation required sales information concerning the home market which was not contained in petitioners' submissions. Therefore, the Department supplemented petitioners' information with limited sales information from Prudential's fourth review sales response.

While Prudential's fourth review sales response contains some SG&A information, the Department again notes that when asked directly in the third and fourth reviews to submit such information in response to a cost questionnaire, Prudential refused to cooperate. Due to this repeated refusal to provide cost information, the Department continued in the final results of these reviews to use only petitioners' cost information in its BIA calculation.

Comment 7: Christianson comments that for the fourth review the Department made methodological errors which overstated Christianson's sales below cost. First, Christianson argues that the Department should not have used the highest cost of production for both tubing and casing sizes, and instead should have calculated a weighted average of the cost of production for casing and tubing cost of productions. Second, Christianson argues that the Department should not have used a simple average of petitioners' and Prudential's data to calculate a relative value ratio, and instead should have used a weighted average.

Petitioners respond that the Department correctly used the highest cost of production for tubing and casing, and though they disagree with using Prudential's data to calculate a home market relative value ratio, using a simple average is more reasonable than using a weighted average one.

Department's Position:

The Department agrees in part with both petitioners and Christianson. Concerning the Department's use of the highest costs for tubing and casing, the Department agrees with Christianson that it should not have used the highest cost of production for both tubing and casing to test all sales in the home market, and therefore use average costs of production, except where cost of production information existed for a particular size of tubing or casing, as noted in the "Cost of Production Issues" section of this notice.

The Department does not agree with Christianson that the Department should take a weighted or simple average of the tubing and casing costs and compare them to the home market sales. Instead, the Department finds it more reasonable to compare the cost of production of a specific size to the same sized Canadian sale when available. Where there are no exact size comparisons, the Department finds it reasonable to compare the simple average of the cost of production of all tubing sizes or all casing sizes to the relevant Canadian sale.

Concerning the use of a simple average of the relative ratios, the Department agrees with petitioners that using a simple average is more reasonable than using a weighted average. The ratios derived from both petitioners' and Prudential's partial sales information for different grades, types, and sizes of pipe, represent a reasonable approximation of the relative values in both markets. Because this information is only partial, the Department could not accurately determine the proper weight to assign to the relative ratios. While weight averaging might have been desirable if the sales information provided by both parties was complete, in the absence of

such complete information, a simple average of those ratios better achieves the result of basing the ratio on the greatest number of products sharing common costs.

Comment 8: Christianson comments that for the fourth review the Department erred in disregarding in its analysis those Christianson home market sales which were made at prices below the cost of production. In order to disregard those sales, Christianson contends that the Department must prove that such sales were made at less than cost in substantial quantities over an extended period of time and at prices which do not permit the recovery of all costs within a reasonable period of time in the normal course of trade.

Petitioners respond that the Department correctly disregarded those sales by applying its standard 10/90 rule.

Department's Position:

We agree with petitioners. According to section 773(b) of the Act, if the Department determines that sales made at less than cost of production have been made in substantial quantities, the Department shall disregard such sales in its determination of FMV. Consistent with long-standing Department practice, because we determined that more than ten percent of Christianso's home market sales were made at prices below the cost of production, those sales constituted substantial quantities of below cost sales, and thus were disregarded. This practice has been upheld by the CIT in *Timken Co.* versus *United States*, 673 F. Supp. 495, 514 (1987).

Concerning Christianson's argument that the Department must prove that Christianson below cost sales were made over an extended period of time, the Department notes that sales below cost were made in each month during the review periods. Further, we note that Christianson submitted no data indicating that any of its below cost sales were at prices that would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade." Accordingly, we have concluded that all below cost sales did not recover such costs. See Bearings, 56 FR 31730, Salmon, 56 FR 7661.

Analysis of Petitioners' Other Comment—The Third Review

Comment 1: For the third review petitioners claim that the Department erred in using information submitted by Christianson in its preliminary analysis because the data contained in Christianson's response was unverifiable. Petitioners argue further that the Department never received a response to its cost of production questionnaire, and therefore, the Department should disregard Christianson's response completely, and rely instead on BIA. Petitioners recommend for use as BIA the highest rate for a producer previously investigated during its fair value investigation.

Department's Position:

We disagree. The data received in Christianson's response was substantially complete and was verified. Christianson brought certain calculation or programming errors to the Department's attention, and when the Department found other discrepancies and errors, Christianson corrected them and the Department verified the amended data. Therefore, the Department uses Christianson's sales data in its final analysis. When the unrelated producer of Christianson's merchandise, Prudential, failed to respond to the Department's cost of production questionnaire, the Department determined, in accordance with section 776(c) of the Act, to use BIA for the cost of production of the non-prime pipe sold by Prudential to Christianson. See "Cost of Production Issues" section of this notice.

Comment 2: Petitioners claim that the Department failed to deduct inland freight charges on eleven U.S. sales, and that the Department should deduct the highest freight charge reported by Christianson as BIA.

Christianson responds that of the 11 U.S. sales identified by petitioners, they confirm that nine incurred no freight charges and that Christianson inadvertently omitted the per unit freight charges on two of the sales. Christianson provides the actual freight charge for the two sales.

Department's Position:

The Department agrees with petitioners that the Department should deduct the highest freight charge reported by Christianson as BIA, but only on the two sales for which Christianson claims it incurred the freight charges. The Department regards Christianson's new freight claims as untimely filed because this information was provided for the first time in its rebuttal brief.

Comment 3: Petitioners claim that the Department failed to deduct a brokerage charge on one U.S. sale, and that the Department should deduct the highest brokerage charge reported by Christianson as BIA. Petitioners argue that it is inconceivable that Christianson did not incur brokerage charges on a sale which incurred U.S.Customs duty and U.S. Customs user fee charges.

Department's Position:

The Department agrees with petitioners. Christianson did not explain why this one sale would not have incurred a brokerage charge, and did not respond to petitioners' comment. Thus, the Department deducted the highest brokerage charge reported by Christianson as BIA for the one sale.

Comment 4: Petitioners argue that the preliminary dumping margin and cash deposit rates established for Christianson and new exporters are unreasonable and undermine proper enforcement of the antidumping order. Petitioners request that the Department establish a deposit rate for the manufacturer/exporter combination of Prudential/Christianson which would only apply to Christianson's exports of Prudential's product. This way, petitioners argue, the manufacturer cannot take advantage of the lower rate and export directly to the United States.

Christianson argues that the Department denied this argument in the final results of review for the periods of review January 1, 1986 through May 31, 1987 and June 1, 1987 through May 31, 1988, and should continue to do so.

Department's Position:

We agree with Christianson. The Department has determined that Prudential does not know the ultimate disposition of commercial grade pipe a the time of its sales to Christianson. Since there is no relationship between Christianson and Prudential and Christianson's pricing practices are the ones reflected in our fair value finding. Consistent with past practice, we have not reported the result of this review as a Prudential/Christianson rate solely for Prudential-made products.

Comment 5: Petitioners argue that the cash deposit rate for new exporters is unreasonable because the rate does not reflect the selling practices of Canadian OCTG producers and that the "all other" rate from the less than fair value investigation should apply to new exporters. Petitioners contend that if the new rate applies to all new exporters, OCTG producers with higher dumping margins will export their product through new unrelated exporters to take advantage of the lower cash deposit rate.

Department's Position:

The Department now applies an "all other" rate to new shippers and all non-reviewed firms. See Bearings. if petitioners believe that exporters with

low cash deposit rates are acting as a conduit for producers with a higher rate, petitioners can request an administrative review of those exporters.

Comment 6: Petitioners argue that the Department erred in its adjustment for provincial taxes, specifically the amount of taxes deducted from FMV. Petitioners cite an example where more than the reported amount of provincial tax based on a rate of six percent was deducted from FMV, and, therefore, petitioners believe that the Department should make no downward adjustment to FMV.

Department's Position:

We agree in part. The example which petitioners cite does contradict the verified six percent tax rate. However, the Department has altered the way it will treat this adjustment for this review period consistent with the methodology used in the fourth review. The Department has determined that the provincial tax is essentially the same as the federal tax in that only certain home market sales incur the tax (only those sold to purchasers in British Columbia) and that none of the sales which incur the tax are made to the United States. Therefore, the methodology employed to calculate the federal tax is used to calculate the provincial tax. (See Analysis of Petitioners' Other Comment 9 for an explanation of the methodology.)

Analysis of Petitioners' Other Comments—The Third and Fourth Reviews

Comment 7: For the third and fourth reviews, petitioners contend that the Department erred in not calculating U.S. price on the basis of Prudential's sales prices to Christianson because Prudential knew or should have known that some of its merchandise was destined for the United States. Petitioners maintain that Christianson is at best a broker for Prudential and that Prudential was involved in Christianson's resale process. Petitioners claim that this is further supported by the fact that Christianson never inventories the pipe. For these reasons, petitioners believe Prudential's prices to Christianson should have been used as the price to the United States.

Christianson argues that Prudential had no knowledge at the time of sale that the commercial grade pipe would be exported to the United States and that the relationship between Christianson and Prudential is strictly arms-length. Therefore, the Department was correct in comparing Christianson's home market sales with Christianson's sales to the United States.

Department's Position

We agree with Christianson. Christianson negotiates annually to purchase all commercial grade pipe generated by Prudential. The company sells this pipe to the Untied States as well as in Canada. Prudential, however, does not know the ultimate disposition of the merchandise it sells to Christianson at the time of its sales agreement with Christianson. Furthermore, Christianson's invoicing, shipping, and payment records indicate that the pipe is marketed solely by Christianson. The Department verified that Christianson takes title to the goods while they are on Prudential's premises and that Prudential is not involved in establishing Christianson's selling prices. Under these circumstances, the Department therefore believes it appropriate to base Untied States price on Christianson's sales to its unrelated U.S. customers.

Comment 8: Petitioners contend that the Department erred in calculating FMV based on home market sales instead of constructed value because the merchandise sold by Christianson in the home market is not such or similar to the merchandise sold to the United States. Petitioners argue that because there is a wide range of defects in commercial grade pipe, the Department should use a difference in merchandise adjustment through constructed value to account for the variety of defects. Further, petitioners state that the pipe sold by Christianson in the home market is not OCTG because it cannot be used for drilling in Canadian wells. Petitioners argue that the Department recognized that commercial grade pipe could be used in other than OCTG applications so it expressly limited the scope of the order by eliminating pipe which was not used in OCTG applications in the United States as determined by the Department's end use certification procedure.

Christianson contends that the merchandise it sells in Canada is commercially identical to the merchandise it sells in the United States, and that the Department correctly based its comparison on merchandise sold by Christianson in the home market.

Department's Position

We disagree with petitioners. The Department believes that the commercial grade pipe sold by Christianson in the home market is such or similar to the commercial grade pipe it sells in the United States within the statutory definition of "such or similar" merchandise found at section 771(16) of the Act. The merchandise Christianson sells in both markets consists of pipe possessing the same range of defects which causes all of that pipe to be classified as commercial grade pipe. Christianson sells its commercial grade pipe in both Canada and the United States without regard to the individual differences in defects between different pipe; Christianson merely sorts the pipe by size and sells it on an "as is," non-warranted basis to distributors and end users in both markets. The purchaser in both markets purchases a variety of defective pipe of the same size.

Petitioners argue that the commercial grade pipe sold by Christianson in the United States is not "such or similar" to that sold in Canada because Canadian regulations prohibit using defective pipe as OCTG without first sufficiently upgrading that pipe, whereas no such regulations exist in the United States for pipe similarly defective. At the time Christianson sells the commercial pipe in both markets, however, that pipe potentially can be applied to the same variety of uses in both markets. While sections 771(16) (B) and (C) of the Act ("such or similar merchandise") mention use, they do not indicate at what point in time use is to be taken into account. According to section 773(a)(1) of the Act, however, the foreign market value of the imported merchandise depends on the price charged for that merchandise "at the time such merchandise is first sold within the United States." Thus, if use is a factor in determining whether merchandise is "such or similar" for foreign market value purposes, the relevant uses the Department must consider are those at the time of that first sale in the United States.

As noted above, at the time of that first sale of commercial pipe in the United States, that pipe potentially can be used in the United States for the same variety of purposes as in Canada. For merchandise such as commercial grade pipe, which at the time of importation can be used in a variety of ways, the ultimate use of that merchandise cannot drive the initial determination of whether that merchandise is "such or similar" for foreign market value purposes, particularly when ultimate use may be decided in the future by a subsequent purchaser.

The Department's end use certification procedure merely provided domestic parties the opportunity to certify that certain pipe was not used in OCTG applications and, therefore, was not subject ultimately to the antidumping duty order. This procedure did not change the fact that when Christianson sold commercial grade

pipe in both markets, the variety of possible uses for that pipe was the same.

Additionally, petitioners assert that range of defects in commercial grade pipe should lead the Department to adjust for differences in merchandise. According to section 353.57 of the Department's regulations, however, the Department will adjust for differences in physical characteristics only when the Department is satisfied that "the amount of any price differential is wholly or partly due to such differences." Because Christianson did not sort or sell the various types of commercial grade pipe according to defects, the Department concluded that no price differentials existed between the various types of commercial grade pipe. Therefore, the Department did not make adjustments for physical differences.

Comment 9: Petitioners argue that the Department's adjustments for federal taxes on home market sales are incorrect.

Petitioners contend that the Department erred in its assumption that all export sales would have been subject to the tax and should not make upward adjustments to United States price on all sales.

Department's Position

We agree in part. Information on the record indicates that Canadian federal taxes are not uniformly applied to all home market sales. While Prudential states that only those sales made to end users that do not use that pipe in OCTG applications, or those sales made to resellers that do not have a federal sales tax exemption from the Canadian government, have a federal tax imposed upon them, Christianson contends that all pipe produced and sold in Canada ultimately has a federal tax imposed upon it which is paid by some party in Canada. Neither party submitted documentation on the record supporting their respective claim. However, Christianson's questionnaire response indicated that federal tax was paid on a substantial number of Christianson sales of the subject merchandise.

Pursuant to section 772(d)(1)(C) of the Act, the Department must increase United States prices by the amount of taxes imposed in the home market which is not collected on sales of OCTG to the United States. Because none of the sales to the United States had Canadian tax imposed on them, the Department must make this adjustment. In order to adjust accurately the United States price for federal taxes, the Department employed the following revised methodology for the final results for the third and fourth reviews. First, we determined an average tax per sale in the home market by deducting from the gross price of each sale in the home market upon which a tax was imposed the amount of that tax. We then calculated an average federal tax for each home market sale by dividing the total tax paid in each month by the total of all gross prices, less all adjustments (except handling in the fourth review). Next, the rate was multiplied by the gross price, less adjustments, of each sale in the U.S. market and the result was added to FMV before the margin was calculated. Pursuant to section 772(d)(1)(C) of the Act, this amount was then added to the gross price of each sale in the United States. This adjustment is needed to avoid artificially inflating or deflating margins that can result from the fact that tax amounts attributable to foreign products differ from those associated with U.S. products.

Analysis of Petitioners' Other Comments—The Fourth Review

Comment 10: Petitioners comment that the Department failed to deduct antidumping duty cash deposits from U.S. price for both Christianson's and Prudential's sales. Petitioners contend that the payment of these duties is a sales rebate benefitting the customer as a reduction in the U.S. sales price.

Department's Position

We do not consider estimated antidumping duties to be expenses related to the sales under consideration. Given the tenuous nature of these estimated rates and the possibility that they could be zero, we do not consider them to be expenses within the meaning of section 772(d)(2)(A) of the Act for the purposes of determining United States price. Thus, the Department does not deduct from United States price any estimated duties paid on behalf of, or reimbursed to, an importer. (See, *e.g.*, Color Television Receivers from Korea. 55 Fed. Reg. 26225 (1990); Anhydrous Sodium Metasilicate from France, 49 FR 43733 (1984)).

Comment 11: Petitioners comment that the Department should have made a difference in merchandise adjustment for extra costs incurred in producing the subject merchandise Prudential sold to the United States. Petitioners note that products sold to the United States are cut to lengths specified by Prudential's customers, and that products sold in the home market used for comparison purposes were not cut to lengths specified by Prudential's customers.

Prudential responds that a difference in merchandise adjustment should not be made because it always incurs the same expense in both markets.

Department's Position

The Department agrees with Prudential. The subject merchandise sold in both markets is always either cut to customer specification or to standard, industry-accepted lengths. The record indicates that for the pipe which is subject to this review, plain end pipe, the expense involved in this process is the same whichever market the pipe is sold in, so no adjustment is made.

Comment 12: Petitioners comment that Prudential included in its home market freight claim amounts associated with return of merchandise. Petitioners believe that since Prudential failed to isolate the freight amounts less return of merchandise costs attributed to the Canadian sales, the Department should not allow any home market freight claims.

Prudential responds that only one sale incurred return of merchandise costs, and the additional charges incurred on that sale were directly related to that sale. Therefore, the Department properly allowed the full amount of the freight claim.

Department's Position

We agree in part with petitioners. Movement expenses are those costs incurred by Prudential in moving the merchandise from the factory to the point of delivery and not costs incurred in moving the merchandise back to the factory. The Departmnet believes, as does Prudential, that the additional return freight charge is a warranty expense because, as Prudential states, it arose under the explicit warranty in the sales agreement. If Prudential had wanted the extra costs incurred on this sale to be adjusted for return of merchandise, then Prudential should have claimed the costs as a warranty expense. Therefore, the Department reduced Prudential's reported amount of freight for this sale by the amount of the additional charge incurred on the return of the merchandise. The Department disagrees with petitioners that all freight claims by Prudential should be disallowed. Prudential reports that only this one sale incurred this extra expense.

Comment 13: Petitioners comment that the Department should not have allowed Prudential's home market inland freight expenses to warehouse stocking points because Prudential failed to establish that the specific amounts claimed for movement were tied to specific sales of the subject merchandise.

Prudential responds that the claimed amounts are accurate and the Department properly allowed this movement expense.

Department's Position

We agree with Prudential. Prudential states that it is impossible to provide documentation which ties a specific delivery to a stocking point to a sale made to a Canadian customer because delivery to the stocking point normally occurs before the sale is made. The Department found that Prudential's reported amount of stocking point freight was based on the actual cost for shipping pipe for the mill to the stocking point and then allocated to the respective products under review.

Comment 14: Petitioners comment that the Department erred in calculating the period of time in which credit was extended to Prudential in the home market by counting the number of days from the date of the sale to the date of payment instead of the number of days from the date of shipment to the date of payment. Petitioners argue that Prudential would have extended credit at or about the time of the date of shipment.

Department's Position

Comment 15: Petitioners argue that the new cash deposit rate for Prudential is unreasonable because the products under review are not OCTG. Petitioners believe that Prudential should be assigned the "all other" cash deposit rate from the less than fair value investigation until Prudential's exports are further reviewed.

Department's Position

The Department disagrees. The physical characteristics of the pipe, which Prudential sold to the United States qualifies it as merchandise subject to the antidumping order. As such, antidumping cash deposits were properly collected on the entries of this merchandise and duties will be assessed on this merchandise in accordance with the results of these reviews. Furthermore, it is appropriate to assign a new cash deposit rate for Prudential based on the results of this review.

Comment 16: Petitioners comment that the Department improperly applied BIA for FMV is its analysis of two Christianson casing sales because the Department compared sales of the less-expensive casing to sales of the more-expensive tubing. Petitioners suggest that the Department assign a FMV of a contemporaneous sale of similar casing at the same level of trade.

Department's position

We agree with petitioners and have amended the BIA applied in the final analysis. In addition to this correction, the Department made a clerical error in the preliminary results in assigning the wrong FMV to a sale of tubing. For the final results, the Department assigned a FMV of a contemporaneous sale of tubing at the next level of trade.

Analysis of Respondent's Other Comments—The Third and Fourth Reviews

Comment 1: Christianson argues that the Department erred in comparing Christianson's Canadian distributor sales solely with its U.S. distributor sales and Christianson's Canadian end user sales solely with it U.S. end user sales. Christianson believes that its Canadian prices do not differentiate between distributor and end user customers, and, therefore, if such differences do not exist, then the Department cannot make a level of trade comparison. Christianson demonstrates that in certain cases its average monthly distributor prices are actually consistently higher than its average monthly end user prices.

Christianson comments further that for one U.S. distributor sale in the third review, the Department incorrectly compared it to a Canadian sale involving a significantly lower quantity. Therefore, this small isolated sale is sufficient in quantity and the Department should make a comparison to a sale of a more sufficient quantity at the next level of trade.

Petitioners argue that the Department consistently makes sales comparisons at the same commercial level of trade when they exist in the U.S. and foreign market and that the Department correctly made such a comparison in Christianson's case. For the one sale which Christianson claims is in sufficient in quantity to be based at the same level of trade, petitioners argue that sufficiency of sales is based on number of sales, not the quantity of a particular sale, and that the Department compared one sale in the Canadian market to one sale in the U.S. market in accordance with Department practice.

Department's Position

We agree with petitioners. According to § 353.58 of the Department's regulations, we "normally will calculate foreign market value and United States price based on sales of the same commercial level of trade." The Department only considers difference in prices between levels of trade if, because "sales at the same commercial level of trade are insufficient in number to permit an adequate comparison," the Department calculates FMV based upon different levels of trade. *Id.* The authorities cited by Christianson in support of its argument relate to instances in which the Department, because sales at the same level of trade were found to be insufficient, had to consider adjusting FMV due to differences in prices between levels of trade.

We also agree with petitioners that the Department properly compared one sale in the Canadian market to one sale in the U.S. market. According to § 353.58 of the Department's regulations, the Department will calculate FMV based on different levels of trade only if "sales at the same commercial level of trade are *insufficient in number* to permit an adequate comparison." [emphasis added] The size of the sales within the level of trade is not relevant to the analysis.

Analysis of Respondents' Other Comments—The Fourth Review

Comment 2: Christianson and Prudential comment that the Department should use U.S. dollar interest rates to calculate respondents' U.S. imputed credit costs instead of Canadian dollar interest rates. Prudential suggests that if the Department choose not to use U.S. dollar interests rates, it should use a weighted average of the rates, and not a simple average, in effect during the review period.

Petitioners argue that the Department properly calculated the interest expense based on Canadian interest rates, but petitioners would not object to a weighted average of those rates instead of a simple average.

Department's Position

The Department generally uses a home market interest rate in its imputed credit expense calculations for purchase price transactions when a company has not actually borrowed any funds since short term financing is generally made in the funds of the country where the company is located. We calculated a simple average of the home market interest rates in effect over the annual review period by Christianson's and Prudential's Canadian bank, to approximate the rate Christianson and Prudential would have paid had it borrowed money. The Department maintains that the use of a simple average is reasonable in calculating respondents' imputed credit costs since neither Christianson nor Prudential ever actually had short-term borrowings during the periods of review.

Comment 3: Prudential comments that the Canadian credit expense should be calculated before deducting the difference in merchandise adjustments from the gross price.

Department's Position

We agree. The Department normally adjusts for differences in merchandise after the credit expense has been calculated, and corrects this adjustment for the final results.

Comment 4: Prudential notes that the Department made a clerical error in applying the credit period it had calculated to determine the credit expense for one Canadian sale.

Department's Position

We agree. For the final analysis, the correct number of days between date of shipment and date of payment is used to calculate the credit expense for this sale.

Final Results of the Review

As a result of our reviews, we determine that the following dumping margins exist:

Manufacturer/exporter	Period of review	Margin
Christianson Pipe Ltd.	6/1/88-5/31/89	11.06
	6/1/89-5/31/90	15.81
Prudential Steel Ltd.	6/1/89-5/31/90	9.48

The Department shall determine, and the U.S. Customs Service shall 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 U.S. Customs Service.

The following deposit requirements will be effective upon publication of this notice for all shipments of the subject merchandise from Canada, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of the fourth review covering the period June 1, 1989 through May 31, 1990; (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in prior reviews or the final determination of sales at less than fair value (the original investigation), the cash deposit rate will continue to be the rate published in those reviews or that determination; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation, whichever is the most recent; (4) For any future entries of this merchandise from any other exporter or manufacturer, not covered in this or prior administrative reviews, whose first shipments occurred after May 31, 1990 and who is unrelated to the reviewed firm or any previously reviewed firm, the cash deposit rate shall be equal to the highest margin calculated in the fourth review covering the period June 1, 1989 through May 31, 1990.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22 (1990)).

Dated: August 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19235 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-DA-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 19, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The Review covers one manufacturer/exporter of this merchandise to the United States and the period March 1, 1988, through February 28, 1989.

We gave interested parties an opportunity to comment on our preliminary results. At the request of the respondent, we held a hearing on June 3, 1991.

Based on our analysis of the comments received, and the correction of a clerical error, we have changed the preliminary results of this review. The final margin is 77.79 percent

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Orlando Velez, David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 16072) the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed the administrative review in accordance with § 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. Prior to January 1, 1989, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedules (HTS) item numbers 8528.10.80, 8528.11.60, and 8528.20.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer and/or exporter of Japanese television receivers, Fujitsu General Limited (FGL), for the period March 1, 1988, through February 28, 1989.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of FGL, we held a public hearing on June 3, 1991. We received case briefs and rebuttal comments from one domestic party to the proceeding, Zenith Electronics Corporation (Zenith), and from the respondent, FGL.

During disclosure with FGL, the Department noted that the rate used for Teknika's short term interest was incorrect. for the final results, we revised the rate to reflect the correct

percentage as submitted in FGL's Section C response.

Comment 1: FGL submitted comments concerning certain mathematical and clerical errors in the Department's preliminary results analysis.

Department's Position: Pursuant to FGL's comments in its case brief, we have made the following corrections to the program in our final results calculations for FGL: (1) The difference in merchandise adjustment for model 21V–M2B was amended to reflect the correct figure that was illegible in FGL's original submission; (2) the final analysis memorandum was amended to indicate that total transportation costs are in thousands of yen (we note that this was only an error in the analysis memorandum, and not in the calculation); (3) the U.S. commodity tax base was adjusted to include packing costs; (4) the U.S. commodity tax base was recalculated without the deduction for foreign inland freight, since this expense was already deducted from the transfer price; and (5) entered value used to determine commodity taxes was recalculated to exclude warehousing expense.

Comment 2: Zenith contends that the Department's treatment of Japanese commodity taxes rebated or not collected by reason of exportation was unlawful. According to Zenith, the Department added the full amount of the tax to U.S. price and made a circumstance-of-sale (COS) adjustment to foreign market value (FMV) for the difference between the amount of Japanese and U.S. tax. Zenith argues that the Department should impose a tax cap on the amount of the tax determined to have been forgiven by reason of export and that no adjustment should be made to the FMV for the difference between the two tax amounts. In support of its contention, Zenith cites *Zenith Electronics Corp.* v. *United States,* 633 F. Supp. 1382 (CIT 1986), *appeals dismissed,* 975 F.2d 291 (Fed. Cir. 1989) (*Zenith*); *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989) (*Daewoo*); and *Zenith Electronics Corp.* v. *United States,* 755 F. Supp. 397 (CIT 1990) (as clarified by order dated Feb. 20, 1991).

FGL argues that to create a fair comparison between markets, it is necessary to add the full amount of tax to the U.S. price and then adjust for the difference in the tax amounts. FGL goes on to point out that the General Agreement on Tariffs and Trade obligates the United States to calculate dumping margins in such a way that the tax exemption for export models cannot be the cause of a dumping finding.

Department's Position: We do not agree with the Court of International Trade (CIT) in *Zenith* or *Daewoo,* but have not had an opportunity to appeal the issue on its merits. Because we believe that dumping margins should neither be inflated nor deflated by differences between Japanese taxes and constructed taxes applied to U.S. price, we do not agree with the CIT's position on adjustments for differences in commodity taxes. After calculating the amount of commodity tax and adding it to U.S. price, we make an adjustment to FMV for the differences in taxes by deducting the Japanese commodity tax from FMV and replacing it with the constructed U.S. commodity tax. This method has the same effect on the absolute margin calculated as would capping the amount of U.S. tax added to U.S. price. See our response to *Comment 1* in *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review* (56 FR 12702, March 27, 1991) and our response to Comment 4 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31380, July 10, 1991).

Comment 3: FGL contends that the Department's method of calculating the U.S. tax base for commodity tax purposes understates the amount of commodity tax. FGL argues that the Department must examine how the law is actually applied in Japan. According to FGL, the normal tax base in Japan is the freely offered selling price of the merchandise in the place of manufacture. However, FGL claims that different rules apply to "special selling organizations," and that, under Japanese law, a wholly owned subsidiary is, by definition, a special selling organization. Accordingly, FGL concludes that its wholly owned subsidiary, Teknika, meets the definitional requirement and, therefore, the Department must calculate commodity tax consistent with the CIT's determination in *Zenith Electronics Corp.* v. *United States,* (755 F. Supp 397) (CIT 1990). According to FGL, the Court in Zenith held that since the tax base is the special selling organization's price to its customers less an amount for profit, which would be 5 percent under Japanese law, the tax base should, therefore, be 95 percent of the wholly owned subsidiary's prices to its customers. FGL states this is directly applicable to Teknika and adds that the current methodology yields disparate results because the U.S. tax is based upon prices to the distributor, whereas the home market tax is based upon prices to retailers. FGL urges the Department to recalculate the U.S. tax base consistent with the CIT's holding in Zenith.

Department's Position: We disagree with FGL. The tax base used for determining the amount of tax which Japanese taxing authorities would have imposed on exports of merchandise to the United States is the price which is analogous to the home market tax base. The tax base used to calculate the commodity tax was the constructed ex-factory price, the tax base comparable to that used in the home market.

Moreover, whatever difference may have been introduced into the margin equation through the calculation of the imputed tax on U.S. sales, it was calculated out by the commodity tax COS adjustment to FMV described in Comment 2 above. This adjustment equalized the commodity taxes in the two markets. If the addition to U.S. price was either greater or less than the home market tax, the amount of the COS adjustment rose or fell correspondingly to offset whatever minor difference might otherwise have appeared in the margin. When the COS adjustment is taken into account, no part of FGL's absolute margin is attributable to the commodity tax.

Comment 4: Zenith argues that the Department should deduct antidumping-related legal expenses from exporter's sales price (ESP). According to Zenith, these expenses are selling expenses because they are incurred as a result of a respondent selling the merchandise under review in the United States at prices below FMV. Moreover, Zenith argues that there is no basis for retaining in ESP legal expenses incurred as a result of an antidumping proceeding when all other legal expenses incurred by a foreign company's U.S. subsidiary are deducted from ESP.

FGL states that legal expenses are not selling expenses, and that they are incurred many years after the sales under review. FGL states that its sales are not costed, priced, or otherwise affected by the fact that legal fees may eventually be incurred, and that the same cannot be said for true selling expenses. FGL argues that any deduction for antidumping-related legal expenses would be unreasonable and arbitrary.

FGL notes further that if the Department were to deduct such expenses, petitioner would, in effect, gain control over the margin calculation inasmuch as it could draw respondents into unavoidable legal skirmishes, thus creating legal expenses, and deductions from U.S. price. To avoid a dumping finding under these circumstances, FGL

argues it would be placed in the unusual position of having to capitulate to petitioner's allegations and arguments in order to avoid legal fees. FGL concludes that Zenith's position is contrary to the principles of fundamental fairness and public policy (*Daewoo Electronics Company, Ltd.* v. *United States*, 712 F. Supp. 931 (1989)).

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this order, and of the antidumping duty orders on color television receivers from the Republic of Korea and Taiwan, we do not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States. As a result, we have not deducted these expenses from ESP in these final results. Also, see our response to Comment 4 in Television Receivers, Monochrome and Color From Japan; Final Results of Antidumping Duty Administrative Reviews (54 FR 13919, April 6, 1989). We note, moreover, that whereas Zenith criticized the Department in Comment 2 for failing to follow the CIT opinion in Zenith in this instance, it is urging the Department to disregard the CIT opinion regarding this issue in Daewoo.

Comment 5: Zenith argues that the Department should deduct from U.S. price, payments of estimated antidumping duties and any expenses related to such payments. According to Zenith, these items should be deducted from U.S. price along with the estimated ordinary duties paid because the statute specifically requires that "United States import duties" be deducted from U.S. price.

FGL claims that Zenith's proposal has an illogical, illegal, and unfair implication. To illustrate, FGL states that in a given situation the Department may find that no dumping occurred during the period of review. However, while the company's pricing practices would have been vindicated, the Department might still find a dumping margin based upon the deduction to U.S. price for payments of the deposit amounts.

Department's Position: We disagree with Zenith. As we have stated in previous reviews of this finding, we believe that using estimated amounts of antidumping duties in our calculations would result in inaccurate margins. We do not consider payments of estimated antidumping duties to be expenses related to sales of merchandise under consideration for this review period. Further, given the possibility that these estimated duties could vary significantly from duties that may be assessed, we do not consider them to qualify as "expenses" within the meaning of section 772(d)(2)(A) of the Tariff Act for purposes of determining U.S. price. Finally, estimated duties and duties assessed are paid by the importer, which in some cases, is unrelated to the party whose sales are under review. As a result, we have not deducted them from U.S. price in these final results. *See* our response to Comment 5 in Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Administrative Review (55 FR 35916, September 4, 1990), our response to Comment 6 in Color Television Receivers From the Republic of Korea; Final Results of Antidumping Administrative Review (56 FR 12701, March 27, 1991), and our response to Comment 8 in Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Administrative Review (56 FR 31380, July 10, 1991).

Comment 6: FGL asserts that the Department erroneously included packing material and packing labor costs in calculating the cost of manufacture (COM) for constructed value (CV). FGL claims that the net effect of this error is an overstatement of selling, general, and administrative (SG&A) expenses because the SG&A ratio is multiplied against a COM which is overstated by the amount of packing costs. FGL notes that the Department deducted packing prior to calculating profit, in order to avoid overstating profit, and urges the Department to treat SG&A similarly.

Department's Position: We disagree. FGL presented COM information for CV models inclusive of packing costs. It then deducted packing costs to arrive at its COM figure presented in the CV questionnaire response. However, during the hearing, FGL stated that the packing charge in question is consumer packaging which occurs at the end of the assembly line, and does not represent containerization for purposes of shipment (See hearing transcript, June 3, 1991, at 43). Accordingly, we have used the COM inclusive of packing since we previously determined that consumer packaging costs (as opposed to containerization for shipment) should be considered part of the product when that cost is included in the price of the finished product (see Certain Stainless Steel Cooking Ware From Korea, Final Determination of Sales at Less Than Fair Value, (51 FR 42873, 42879, November 26, 1986).

Comment 7: FGL asserts that COM used to derive CV was calculated inclusive of royalties. FGL cites a home market sales verification report from the eight administrative review period in support of its contention that royalty expense is incurred when models are sold, not when models are produced. FGL claims that the inclusion of royalty expense in COM results in double counting because royalty is also a component of SG&A.

Department's Position: We agree in part. In FGL's June 20, 1991 response to clarification questions posed at the hearing, FGL explained that the royalties for the models in question were incurred by an independent contractor who manufactured television receivers for FGL. Because all items included in FGL's acquisition cost, including royalties, become part of FGL's COM, the royalties paid by the contractor have already been counted in acquisition costs. For these final results, we have deducted FGL's royalty fee from our calculation of SG&A, since this cost was incurred by FGL's independent contractor, and is thus not a FGL selling expense.

Comment 8: FGL claims that the Department improperly treated certain non-operating and extraordinary loss items in building up the total SG&A figure for purposes of establishing an SG&A ratio. FGL claims that certain items in non-operating loss and extraordinary loss represent company-wide expenses that are not related to the production of the merchandise under review. Therefore, FGL requests that the Department consider its April 12, 1991 submission, which was submitted for the purpose of clarifying the portion of non-operating and extraordinary items that are related to the production of the merchandise under review.

Department's Position: We agree. We requested and received clarifications which were submitted by FGL on April 12, 1991. Based on FGL's response, the Department has revised its buildup of SG&A for the purpose of calculating an SG&A ratio.

Comment 9: FGL claims that the Department should use total sales as a basis for determining the SG&A ratio for CV calculation. FGL claims that the Department was in error in calculating the SG&A ratio based upon cost of goods sold (COGS). FGL states that the Department should not make a distinction between the SG&A ratio, which was based on COGS, and the deduction made for transportation, which was based on total sales.

Department's Position: In accordance with Department practice, we calculated SG&A by multiplying the ratio of reported company-wide SG&A to reported company-wide COGS by the model-specific COM. Use of a ratio based on total sales would be incorrect

because the denominator would include an element of profit, thus creating incongruous results when multiplied by COM. By contrast, the Department determined per-unit transportation costs using the ratio of company-wide transportation costs to company-wide sales, since that ratio is applied to a CV which includes profit.

Comment 10: FGL claims that the Department should not have deducted the income statement commodity tax amount from COGS. FGL contends that the deduction does not achieve the Department's stated intent of preserving tax neutrality in the commodity tax calculations. Instead, the deduction increases FMV, which in turn exacerbates the imbalance that the Department seeks to address in making CV tax neutral.

Department's Position: We disagree. It is the Department policy to strip all commodity tax expenses, wherever they are reported, from the calculation of CV. The increase in CV caused by deducting commodity tax expense from the SG&A ratio is best understood in the following context. Where commodity tax expense is accounted for as a part of COM as opposed to a selling expense, the Department's adjustment is a two-step process. First, the Department eliminates any commodity tax expense from the reported COM. Second, it eliminates commodity tax expense from the SG&A ratio (specifically from the denominator—COGS) before applying the ratio to COM when calculating an SG&A amount to add to the CV buildup.

The effect of this adjustment is similarly two-fold. First, it decreases the COGS portion of CV, because COM is lowered by the per-unit commodity tax amount. Second, it increases the relative portion of CV which is attributable to SG&A because the SG&A ratio increases due to the deduction of commodity tax from the denominator. FGL reported COM information for CV models net of a per-unit commodity tax amount. FGL's income statement, however, indicates that commodity tax expense is charged to COGS and not to SG&A. Moreover, FGL states in its case brief that commodity tax is a *bona fide* element of cost. Since FGL reported COM for CV models net of a per-unit commodity tax charge, it was not necessary for the Department to perform the first part of the calculation which, as stated earlier, has the effect of decreasing the COGS portion of CV. The Department, however, did perform the second part of its calculation, which involved removing commodity tax expense from the SG&A ratio denominator (COGS).

Comment 11: FGL contends that with regard to adjustments to CV, the Department did not meet one of the fundamental requirements of the antidumping law, namely, that U.S. price be compared to an economically equivalent FMV, regardless of whether home market, third country, or CV is used to calculate FMV. In support of its position, FGL cites *Asociacion Colombiana De Exportadores* versus *United States* (704 F. Supp. 1114 (1989)). FGL points out that, while the Department adjusted U.S. price downward to an ex-factory price, it failed to adjust CV, which included direct and indirect selling expenses. FGL urges the Department to adjust both CV and U.S. price in order to arrive at a specific common point in the chain of commerce, and cites *Smith-Corona Group* versus *United States* (713 F.2d 1568 (Fed. Cir. 1983), cert. denied 405 U.S. 1022 (1984)) in support of its position. FGL contends that the Department is required to find that common point by way of adjustments to CV including an ESP offset.

FGL points out that the Department finds itself in the unusual situation of not having any adjustments to make to CV specifically because the Department selected CV as its model match. FGL claims that this selection resulted in the Department's not receiving cost and expense data associated with home market models. FGL concludes that the Department was, therefore, unable to reduce CV by model-specific selling expenses, as the Department would have preferred. FGL points out that the company did not cause this situation, nor did it fail to provide full and complete responses to the Department's requests.

To remedy this situation, FGL suggests that the Department implement one of three alternatives devised by FGL. In the first alternative, FGL suggests deducting all the U.S. selling expenses from CV. FGL claims the Department previously employed this method in Certain Fresh Cut Flowers from Colombia (52 FR 6842, March 5, 1987). FGL argues that the CIT held this method to be not only reasonable, but necessary under 19 U.S.C. 1677(b)(a)(4). (*Asociacion Colombiana De Exportadores* versus *United States* (704 F. Supp. 1114 (CIT 1989).)

As a second alternative, FGL suggests that the Department refrain from making any circumstance of sales adjustment to U.S. price. Alternatively, FGL requests that the Department use data previously submitted in the eighth and ninth administrative reviews. In addition, FGL specifically requests that the Department use such data for the home market costs and expenses which were not provided in this review.

In response, Zenith opposes application of each methodology and argues that FGL's position suffers from a false premise, namely that adjustments to FMV must be made. Zenith contends that adjustments should be granted only after such adjustments are satisfactorily identified and quantified by the claiming respondent. Thus, Zenith concludes, if FGL provided no quantification of home market claims, none should be made. Moreover, Zenith asserts that each alternative method set forth by FGL would be unlawful.

As to the first alternative, Zenith claims that applying U.S. sales adjustments would be divorced from the statutory requirement that adjustments be for differences, not "identicalities." With respect to the second alternative, Zenith asserts that a failure to make adjustments to U.S. price would be unlawful, since the expenses are established on record and the statute requires that they be taken into account in the dumping calculation. As for the third alternative, Zenith argues it is too late in this review for FGL to provide data submissions as support for new adjustment claims. Zenith concludes that no adjustments may be made.

Department's Position: For these final results, we did not employ and of the alternatives suggested by FGL. With respect to FGL's first suggested alternative, there is no provision in the statute instructing us to use U.S. selling expenses as a surrogate (see Color Television Receivers From Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31378, July 10, 1991, Comment 32). With respect to the second alternative, as Zenith points out, we are required by law to deduct U.S. selling expenses from U.S. price (section 772(e)(2) of the Tariff Act). We cannot apply FGL's final suggestion, to use data previously submitted for the eighth and ninth administrative reviews, because such data is not on the record of this proceeding. Further, use of such data would be less appropriate than current period data that is on the record.

For these final results, we have adjusted FGL's home market sales prices for selling expenses, using the ratio of selling expense to total sales based upon the company's consolidated financial statements. In addition, we derived the selling expense adjustment for CV by applying the ratio of company-wide selling expense to company-wide COGS to the COM of the models used for CV. We then deducted the calculated amount from CV.

Comment 12: FGL argues that the Department should have rejected Zenith's allegation of below-cost sales

in the home market as untimely. FGL claims the Department did not address this objection when it was originally raised by FGL, and requests that the Department address it at this time.

FGL also argues that, pursuant to section 1677b(b), before the Department can disregard any below-cost sales, it must first determine that such sales were made over an extended period of time, in substantial quantities, and at prices which do not permit recovery of all costs within a reasonable period of time in the normal course of trade. FGL claims that the Department only conducted a cost test for two months, March and April 1988, rather than for the entire period of review. FGL states that two months does not constitute an extended period of time, and thus the Department has failed to satisfy the first stated requirement.

Second, FGL claims that since only a small quantity of home market sales of this model occurred during the period of review, the Department has also failed to meet the requisite substantial quantity of sales below cost test.

Finally, while FGL admits that home market sales of model 21VM2B were made at prices lower than usual due to the company's close-out of the model, FGL claims that these lower prices do not prove that overall sales of the model were made below cost over an extended period of time. Therefore, FGL claims the Department should recalculate the FMV inclusive of all sales of the home market model.

Department's Position: As a procedural matter, the Department examines an allegation of sales below cost to determine whether a cost investigation is warranted. Each allegation stands or falls on its own merits. In this case, Zenith submitted its allegation in a timely manner and provided sufficient reason to believe or suspect that FGL made sales below cost of production.

Furthermore, contrary to FGL's claim that the cost test was only conducted for two months of the period, we found sales below cost in every month of the review period. Moreover, we note that there were substantial quantities of below cost sales in each month of the period. We consider the number to constitute a "substantial quantity," when more than 10 percent of the sale of a given model were sold at prices below the cost of production. Finally, with respect to FGL's argument that the model 21VM2B was an obsolete model, although the legislative history of section 1677b(b) recognizes that obsolescence may justify using infrequent sales below cost, the fact of obsolescence does not justify using systematic sales below cost as a basis for FMV. In this case, below cost sales of model 21VM2B were substantial and occurred over an extended period of time. Moreover, given the fact that the model has been discontinued, costs for this model never will be recovered. Therefore, we have disregarded below cost sales of this model.

Comment 13: FGL claims it is the Department's policy to exclude from the margin calculation those U.S. sales that are not representative of the seller's behavior. Citing *Ipsco, Inc.* v. *United States,* 714 F. Supp. 1211, in support of its position, FGL advocates application of this policy to model TF-2085 in the present review, because that model was at the very end of its sales life and was sold in insignificant quantities as compared to the television market as a whole. FGL states that, to clear out its inventory, Teknika sold this model at prices lower than the weighted average selling price from the prior review period. FGL asserts that this circumstance is a clear indication that such sales of model TF-2085 represent an aberration and should be excluded from margin calculations.

Department's Position: We disagree. The Department does not ignore U.S. sales on the basis of obsolescence (*see* Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review (56 FR 14072, April 5, 1991, Comment 27). Additionally, there is no provision in the statute to exclude U.S. sales in an administrative review, except in cases of sampling. FGL's reference to *Ipsco* is misplaced since that case involved a less than fair value investigation.

Moreover, FGL has not demonstrated that the sales at issue were not representative of the seller's behavior. FGL indicates it sold a close-out model in fewer quantities than usual. However, we do not find it unusual for a television manufacturer to close out certain older models and develop new models. Inasmuch as the development and marketing of new models and new technologies is an inherent part of the television industry, the obsolescence of older models must also be viewed as a normal part of the television business. In short, selling models which are rapidly approaching the end of their sales lives should not be construed as conduct unrepresentative of the seller's behavior in the television industry. Moreover, FGL has not demonstrated that inclusion of model TF-2085 sales would undermine the fairness of the comparison of foreign and domestic sales.

Comment 14: FGL contends that the Department incorrectly calculated FMV based on home market sales. FGL states the Department only adjusted FMV for physical differences in merchandise, differences in commodity tax amounts, royalties, and packing. FGL claims the Department failed to adjust for direct selling expenses and any ESP offset. FGL suggests the Department apply the relevant data from FGL's December 29, 1989 submission which covers this review period. Alternatively, FGL suggests applying data from its supplementary response of September 5, 1990. FGL contends that appropriate ratios can be derived by dividing these expense figures by total domestic sales. To support its claim, FGL reminds the Department that it applied this method in the previous administrative review.

In response, Zenith restates its contention that FGL's argument suffers from an erroneous premise that the Department must make adjustments to price-based FMV. Zenith contends that FGL failed to provide adjustment-specific quantification data, and thus, no adjustments are required and none should be made.

Department's Position: We requested and received additional information to determine whether FGL's reported selling expenses constituted direct or indirect expenses. Pursuant to FGL's June 26, 1991 response, which clarified the nature of the previously reported expenses, we adjusted the FMV for selling expenses, which were allocated on the basis of total sales, as reflected in the consolidated financial statements.

Comment 15: FGL contends that the Department's U.S. warranty expense adjustment is artificially inflated. FGL points out that the warranty expenses reported by Teknika are all after-sale expenses, and thus, pertain not only to sales made during the period of review, but also to sales made during earlier review periods. FGL insists that inclusion of warranty expenses pertaining to sales not under review resulted in excessive warranty expenses attributed to model TF-2085, which is in the process of being phased out. FGL contends that it defies economic logic to attribute close to half of sales value to warranty expense for a mass-produced and commercially sold television model. FGL adds that a similar situation exists for model TG-1923. To create a realistic adjustment ratio, FGL requests that the Department base the warranty expense ratio on FGL's historical warranty experience for the five years preceding the review period.

In response, Zenith argues that the excessive amounts for warranty expense in this review are irrelevant given the Department's practice of using

contemporaneous warranty expenses to quantify the adjustment in the review period. Zenith asserts that the Department cannot now refuse to use that methodology merely because, in this instance, it is adverse to a respondent. Zenith claims that the current adversity for FGL is merely indicative of the fact that in prior reviews the Department undercounted the warranty expense for these models, and that the actual expenses are now catching up with FGL. Zenith concludes that the remaining warranty expense must be charged against these current period sales.

Department's Position: Although we generally use warranty expenses incurred during the period of the review, the Department will consider longer historical periods to provide a more accurate estimate of the eventual warranty expenses for the merchandise under review. Although we recognize that the current period warranty expense methodology also captures expenses pertaining to merchandise sold prior to the review period, this is normally counterbalanced, since some warranty expenses pertaining to the subject merchandise will be incurred after the review period (see Color Television Receivers From Korea; Final Results of the Antidumping Duty Administrative Review (56 FR 12701, March 27, 1991, Comment 38). In the case of FGL, the company experienced a precipitous drop in sales from one review period to the next. In effect, substantial warranty expenses pertaining largely to sales from previous periods accumulated on the small number of sales in the current review period, resulting in excessive per unit warranty expenses. In view of the unusual circumstances, some change in methodology is warranted in order to maintain the integrity of the estimate, and to avoid overstating the warranty expenses that would result if our normal methodology were applied (see Color Television Receivers From Korea; Final Results of the Antidumping Duty Administrative Review (53 FR 24975, July 1, 1988, Comment 58). Accordingly, we have changed our methodology to include the historical warranty experience of the company for the models in question. Specifically, we allocated combined warranty expenses from the previous three years and the current review period over combined sales for the same time periods.

Comment 16: FGL contends that the inventory carrying costs should be calculated based upon the price Teknika pays for the merchandise, rather than the price it charges to its customers. FGL argues that since the expense relates to the opportunity cost of tying up money spent on inventory, the true opportunity cost to be imputed to Teknika is Teknika's cost of purchasing televisions from FGL, not the prices it eventually charges to its customers. Accordingly, FGL contends that the Department should recalculate imputed interest based upon the value of the merchandise as it entered the United States, as was done in the case of calculating the imputed cost of time-on-the-water.

Department's Position: U.S. inventory carrying costs should be calculated on the landed costs of the merchandise, rather than the transfer prices or the unit resale prices, because the merchandise is valued while in inventory based upon landed costs (see Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 24370, May 30, 1991, Comment 4)). Landed costs include the transfer price plus foreign inland freight, brokerage and handling, foreign inland insurance, ocean freight, marine insurance, and U.S. duty. Accordingly, we have recalculated inventory carrying costs using the landed costs of the merchandise as a basis for the calculation.

Comment 17: FGL contends that an interest expense adjustment based upon imputed inventory carrying costs is generally unnecessary, and should not be made for FGL in this case. Specifically, FGL admits that the company experienced an overall decline in the price of one of its models during the period of review. However, FGL represents that this price decline is due largely to the company's recognition that the value of the merchandise decreases the longer it sits in inventory. Thus, FGL argues that Teknika's pricing already contains an imputed cost element.

In response, Zenith claims that FGL's argument is an attempt to excuse dumping. Zenith claims FGL essentially admitted that it could not sell the merchandise unless it greatly reduced its prices. Zenith argues that the combination of a long inventory period and reduced prices helps to account for the dumping margin found. Zenith states that the combination of factors was created by FGL's commercial decisions, and that FGL should not be excused from the consequences of those decisions in the dumping calculations.

Department's Position: The Department imputes an interest expense for time in inventory in order to adjust for the opportunity cost of holding the merchandise in inventory. An opportunity cost arises because funds expended therefor could have been invested in alternative financial arrangements yielding interest during the inventory period. Since the interest expense associated with time in inventory cannot be isolated from other interest expenses, the Department must impute this expense amount. However, the Department's long-standing policy is to treat the opportunity cost of holding inventory as a real expense (see Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administration Review (52 FR 1504, January 14, 1987, Comment 5)).

Second, we view FGL's incremental price reduction not as a measure of inventory carrying cost, but as a measure of the value of merchandise affected by the nature of the television business, including the company's need to turn over its inventory. Accordingly, we have made an interest expense adjustment based upon imputed inventory carrying costs.

Comment 18: FGL objects to the calculation of U.S. inventory carrying cost based on actual transaction-specific inventory periods, as opposed to a calculation based on the average length of time in inventory. FGL insists that the Department made exceedingly large imputed interest deductions to U.S. price as a result of its inventory carrying cost calculations. The company claims that, as a result, it is being penalized for its U.S. subsidiary's inability to sell the merchandise "as soon as it would choose." By imputing an interest expense, FGL contends that the Department is creating dumping margins based upon circumstances which neither FGL nor Teknika can control. As a result, FGL asserts that the Department's method of imputing interest in inherently unfair and unreasonable. In support, FGL cites *Melamine Chemicals, Inc.* v. *United States*, (732 F.2d. 924 (Fed. Cir. 1984)), where the Court specifically stated that "[a] finding of LTFV sales based on a margin resulting solely from a factor beyond the control of the exporter would be unreal, unreasonable, and unfair."

FGL adds that the Department's methodology ignores the fact that businesses, including Teknika, do not account for costs in this way. FGL contends the adjustment in a theoretical, not an actual expense, and should thus be calculated based upon a theoretical standard which comports with practices in the normal course of businesses. Accordingly, FGL concludes that the Department should adjust for imputed interest based upon the median length of

time for televisions in inventory rather than the actual transaction-specific inventory periods which have potential for ridiculous results.

Department's Position: We disagree. Whenever possible, we prefer using data for individual transactions rather than weight-averaged data because these more accurately reflect actual costs. Since FGL was able to provide the actual inventory period for each individual transaction, we used that data to determine FGL's U.S. inventory carrying cost (see Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Administrative Reviews (56 FR 5395, February 11, 1991, Comment 12).

Comment 19: Citing *Timken Co.* v. *United States,* (11 CIT 786, 673 F. Supp. 495 (1987)) and *Smith-Corona Group* v. *United States,* (713 F.2d 1568 (Fed. Cir. 1983), cert. denied, 405 U.S. 1022 (1984)), FGL requests that the Department perform all adjustments for direct U.S. selling expenses as additions to FMV, instead of as deductions to U.S. price.

Department's Position: We disagree. As stated in the previous administrative reviews, we are not following the CIT's decisions in Timken or Smith-Corona (see our response to Comment 2 above). We continue to maintain that section 773 of the Tariff Act does not prohibit us from deducting direct selling expenses from ESP. Consequently, our long-standing practice of making adjustments for direct selling expenses under either section 772 or section 773 of the Tariff Act is still in effect (see Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5392, February 11, 1991, Comment 11)).

Comment 20: Zenith argues that the general expenses component of CV should include commodity tax, rebates, and discounts. Zenith contends that these items must be included in CV in order for the Department to be in conformity with 19 USC 1677b(e)(1)(B), which requires that general expenses include what is usually reflected in sales. Zenith adds that not only does FGL claim that discounts, rebates, and taxes are reflected in the price of the receivers when sold, but that the Department itself insists that such items are proper subjects for adjustment under its authority to adjust for differences in circumstances of sale.

FGL counters that 19 USC 1677b(e) enumerates specific items to be included within CV and that commodity tax is not one of these items. FGL argues that commodity tax is recognized elsewhere in the statute, and that if Congress intended CV to include commodity tax, it would have been included in the CV section of the statute. FGL concludes that there is no legal basis to include commodity tax in CV.

With respect to discounts and rebates, FGL claims that these items were included in CV, according to the company's September 5, 1991 supplemental response. However, FGL claims that these items should be deducted from CV because the Department considers discounts and rebates to be adjustments to price rather than selling expenses. FGL contends that adjustments to price are not permissible elements of cost-based CV, and cites Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review (56 FR 16069, April 19, 1991, Comment 8). Accordingly, FGL advocates removal of discounts and rebates from CV.

Department's Position: We disagree with Zenith. Commodity taxes should not be included in CV. Pursuant to section 773(e) of the statute, the Department constructs an ex-factory value comprised of the costs of manufacturing, general expenses (i.e., SG&A expenses), profit on home market sales, and the cost of packing the merchandise for shipment to the United States. To make an appropriate "apples-to-apples" comparison of this surrogate FMV to USP, all commodity taxes are removed from USP, and no commodity tax is added thereto. Thus, contrary to Zenith's assertions, when CV is used to determine FMV, there is no basis in the statute, or otherwise, for including home market commodity taxes. (See Color Television Receivers From the Republic of Korea; Final Results of the Antidumping Administrative Review (56 FR 12701, March 27, 1991, Comment 9.)

With respect to inclusion of rebates and discounts in CV, we do not agree with Zenith. As we stated in the previous administrative review for FGL, we consider discounts and rebates to be adjustments to price rather than selling expenses. As a result, we have deducted such items from SG&A for CV. (See Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews (56 FR 5392; February 11, 1991, Comment 20).)

Final Results of the Review

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for FGL, and we determine the margin to be:

Manufacturer/exporter	Margin (percent)
Fujitsu General Limited	77.79

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated dumping duties of 35.40 percent, based upon the margin for FGL in the March 1, 1989, through February 28, 1990 review period, will be required for FGL. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 17.07 percent shall be required. (See Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (56 FR 34180, July 26, 1991).) These deposit requirements are effective for all shipments of Japanese television receivers, monochrome and color, withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce regulations (19 CFR 353.22) (1990).

Dated: August 7, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19236 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-503]

Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 13, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand. We have now completed that review and determine the total bounty or grant to be 10.17 percent *ad valorem* for Melville Development Ltd. (Lamb Gourmet), 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddel New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.26 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms during the period April 1, 1989 through March 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 27243) the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. During the review period, such merchandise was classifiable under items 106.3000 of the Tariff Schedules of the United States Annotated (TSUSA). Such merchandise is currently classifiable under items 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1989 through March 31, 1990 and two programs: (1) Export Market Development Taxation Incentive (EMDTI) and (2) Livestock Incentive Scheme (LIS).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 10.17 percent *ad valorem* for Melville Development Ltd. (Lamb Gourmet), 0.41 percent *ad valorem* for Fortex, 0.30 percent *ad valorem* for Weddle New Zealand, 0.26 percent *ad valorem* for Alive Exports, 0.26 percent *ad valorem* for Lowe Walker, and 1.48 percent *ad valorem* for all other firms during the period April 1, 1989 through March 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 10.17 percent *ad valorem* for Melville Development Ltd. (Lamb Gourmet), and 1.48 percent *ad valorem* for all firms, except Alive Exports, Fortex, Lowe Walker, and Weddel New Zealand, on all shipments of this merchandise exported on or after April 1, 1989 and on or before March 31, 1990. For Alive Exports, Fortex, Lowe Walker, and Weddel New Zealand, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported in or after April 1, 1989 and on or before March 31, 1990.

The termination of the EMDTI program reduces the total bounty or grant for cash deposit purposes to 0.26 percent *ad valorem* for all firms, a rate which is *de minimis*. Therefore, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

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 355.22.

Dated: August 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19237 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Draft Recovery Plan for the Kemp's Ridley Sea Turtle

AGENCY: National Marine Fisheries Service, NOAA, Commerce, U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: A draft Recovery Plan for the Kemp's Ridley (*Lepidochelys kempi*) is now available for review and comment by interested parties prior to final approval and adoption by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). The plan was developed by the Kemp's Ridley Recovery Team which was appointed in 1989 by NMFS and USFWS. The recovery team is jointly supported by the USFWS and NMFS. These agencies share the responsibility for sea turtle recovery under the authority of the Endangered Species Act of 1973. Recovery team membership includes biologists and resource managers from the Texas A&M University, the Universidad de Michoacan, Mexico, the Instituto National de Pesca, Mexico, the Florida Audubon Society, NMFS, and USFWS.

DATES: Comments on the draft recovery plans must be received on or before September 27, 1991.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910. Copies of the Draft Kemp's Ridley recovery plan are available upon request from Jack Woody, U.S. Fish and Wildlife Service, Post Office Box 1306, Albuquerque, New Mexico 87103, or Phil Williams, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 8256, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jack Woody at USFWS, 505/766-8062, or, Phil Williams at NMFS, 301/427-2322.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) requires that the agencies responsible for listed species develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS and USFWS appointed a Kemp's Ridley Turtle Recovery Team to assist in the

development of the Draft Kemp's Ridley Turtle Recovery Plan. The Recovery Plan discusses the natural history, current status of the species, and the known and potential human impacts on it. Actions that would promote the recovery of the Kemp's Ridley sea turtle are identified and discussed in the draft plan. The Recovery Plan will be used to direct U.S. activities to promote the recovery of this endangered sea turtle.

Dated: August 6, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-19122 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Public Display Permit No. 746

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Public Display Permit No. 746.

SUMMARY: On Wednesday, May 29, 1991, notice was published in the **Federal Register** (56 FR 24176) that an application (P486) had been filed by the Jenkinson Seaquarium Corporation, 3 Broadway, Point Pleasant Beach, NJ 08743. A public display permit was requested to obtain four harbor seals (*Phoca vitulina*) from captive or stranded stock for public display purposes.

Notice is hereby given that on August 6, 1991, as authorized by the provisions of the Marine Mammal Protection Act, the National Marine Fisheries Service issued a permit for the above activities subject to the special conditions set forth therein.

The permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7330, SSMC1, Silver Spring, Maryland 20910, (301) 427-2289; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281-9300.

Dated: August 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-19120 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Scientific Research Permit No. 745

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

ACTION: Issuance of Scientific Research Permit No. 745.

SUMMARY: On Thursday, June 6, 1991, notice was published in the **Federal Register** (56 FR 26071) that an application (P483) had been filed by Mr. James D. Gilardi, University of California, 641 G Street #D, Davis, California 95616, to take an undetermined number of a small population of Hawaiian spinner dolphins (*Stenella longirostris*) for a period of three months for the study of low impact, non-invasive monitoring and cataloguing using above- and below-water still and video photography.

Notice is hereby given that on August 6, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service issued a Permit for the above research activities subject to the Special and General Conditions set forth therein.

The Permit is available for review by appointment by interested persons in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, SSMC1, Room 7320, Silver Spring, Maryland 20910, (301) 427-2289;

Director, Southwest Region, NMFS, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415; (213) 514-6194; and

Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822-2396, (808) 541-2927.

Dated: August 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-19121 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Thomas Ford (P481A)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Thomas J. Ford, Jr., 209 Harvard Street, Brookline, MA 02146

2. *Type of Permit:* Import for scientific research

3. *Name and Number of Marine Mammals:* One pygmy right whale *Caperea marginata* .

4. *Type of Take:* The applicant proposes to import tissue samples taken from a dead stranded pygmy right whale to study and analyze the macro and micro structure of the tissue found in the upper jaw of pygmy right whales. This organ helps the animal regulate its internal temperature and quite possibly specifically protects the brain from hyperthermia.

5. *Location and Duration of Activity:* The animal stranded and was found dead in South Australia in April 1991.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

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 7234, Silver Spring, Maryland 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, Maryland 20910 (301/427-2289); and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200).

Dated: August 5, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-19123 Filed 8-12-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 8, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 1990 and 1991 limits.

EFFECTIVE DATE: August 15, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on May 9, 1991 (56 FR 21473), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that cotton, wool and man-made fiber textile products in various categories, produced or manufactured in China were transshipped in circumvention of the U.S.-China Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, and entered into the United States with the incorrect country of origin during 1990 and 1991. Consultations were held between the Governments of the United States and the People's Republic of China on this matter in March, May and August of this year. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the categories listed below:

Category	Amount transshipped in 1990	Amount transshipped in 1991
313	2,250 square meters..	-0-.
335	262 dozen.	-0-.
336	138 dozen.	-0-.
339	41,813 dozen.	24,040 dozen.
339-S [1]	99,519 dozen.	-0-.
340	411 dozen.	-0-.
341	10,420 dozen.	-0-.
342	124 dozen.	416 dozen.
347	984 dozen.	-0-.
348	6,137 dozen.	659 dozen.
359-C	78 kilograms.	-0-.
359-V	46 kilograms.	-0-.
359-O	9 kilograms.	-0-.
369-S	56,171 kilograms.	-0-.
438	50 dozen.	-0-.
635	80 dozen.	-0-.
636	79 dozen.	-0-.
639	1,112 dozen.	-0-.
640	314 dozen.	-0-.
641	27,533 dozen.	3,813 dozen.
642	51 dozen.	-0-.
647	28 dozen.	-0-.
648	53 dozen.	-0-.

[1] Charges to Category 339-S are in addition to those charges being made to Category 339.

According to standard Customs procedures, when the 1990 quotas have been completely utilized, as is the case with Categories 335, 336, 338-S/339-S, 340, 341, 342, 347/348, 359-C, 369-S, 635, 638/639, 640, 641, 642 and 648, the transshipment charges will be moved forward to 1991. Therefore, the charges that will be applied against the 1991 quotas are listed below:

Category	Charges applied to 1991 limits
335	262 dozen.
336	138 dozen.
338/339	24,040 dozen.
338-S/339-S	99,519 dozen.
340	411 dozen.
341	10,420 dozen.
342	540 dozen.
347/348	7,780 dozen.
359-C	78 kilograms.
369-S	56,171 kilograms.
635	80 dozen.
638/639	1,112 dozen.
640	314 dozen.
641	31,346 dozen.
642	51 dozen.
648	53 dozen.

When the 1991 quotas have been completely utilized, as is the case with Categories 359-C and 369-S, the charges will be treated as overshipments of the 1991 quota and charged to the 1992 quota upon opening on January 1, 1992.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register.**

The U.S. Government is taking this action pursuant to the U.S. diplomatic note dated June 24, 1991, the U.S.-China bilateral textile agreement of February 2, 1988, as amended, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981 and July 31, 1986.

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 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 8, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetble Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on August 15, 1991, you charge the following amounts to the following categories for 1990 and 1991:

Category	Amount to be charged to 1990	Amount to be charged to 1991 limit
313	2,250 square meters..	-0-.
335	262 dozen.	-0-.
336	138 dozen.	-0-.
339	41,813 dozen.	24,040 dozen.
339-S [1]	99,519 dozen.	-0-.
340	411 dozen.	-0-.
341	10,420 dozen.	-0-.
342	124 dozen.	416 dozen.
347	984 dozen.	-0-.
348	6,137 dozen.	659 dozen.
359-C [2]	78 kilograms.	-0-.
359-V [3]	46 kilograms.	-0-.
359-O [4]	9 kilograms.	-0-.
369-S [5]	56,171 kilograms.	-0-.
438	50 dozen.	-0-.
635	80 dozen.	-0-.
636	79 dozen.	-0-.
639	1,112 dozen.	-0-.
640	314 dozen.	-0-.
641	27,533 dozen.	3,813 dozen.
642	51 dozen.	-0-.
647	28 dozen.	-0-.
648	53 dozen.	-0-.

[1] Category 339-S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020,

6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[4] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (359-V).

[5] Category 369-S: only HTS number 6307.10.2005.

This letter will be published in the Federal Register.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-19167; Filed 8-12-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Air Staff
Brig Gen Frank K. Martin
Mr. John M. Gilligan

Air Force Logistics Command
Lt Gen Charles J. Searock, Jr.
Maj Gen Dale W. Thompson, Jr.
Mr. Ronald L. Orr

Air Force Systems Command
Lt Gen David J. Teal
Mr. Frank O. Tuck

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-19124 Filed 8-12-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-563-000]

Madison Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 5, 1991.

Take notice that the following filings have been made with the Commission:

1. Madison Gas and Electric Company

[Docket No. ER91-563-000]

Take notice that on July 31, 1991, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission an Agreement between it and Wisconsin Public Service Corporation (WPS). MGE and WPS request waiver of the notice requirements to permit the agreement to become effective August 1, 1991.

MGE states that a copy of the filing has been provided to WPS and also to the Public Service Commission of Wisconsin.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Indiana Michigan Power Company

[Docket Nos. ER90-269-003, ER90-270-002, ER90-271-002, ER90-272-002, ER90-273-000, ER90-594-001, EL90-32-001, EL90-37-001 and EL90-41-001]

Take notice that on August 1, 1991, Indiana Michigan Power Company tendered for filing its Compliance Refund Report in compliance with the Commission's order issued on June 18, 1991.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Dravo Energy Resources of Montgomery County, Inc.

[Docket No. QF88-142-002]

On July 26, 1991, Dravo Energy Resources of Montgomery County, Inc. (Applicant), a Delaware corporation with its principal offices at c/o Montenay Power Corporation, 300 Old Country Road, suite 301, Mineola, New York 11501, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Plymouth Township, Montgomery County, Commonwealth of Pennsylvania. The original certification to Dravo Operations of Montgomery County, Inc. was issued on February 23, 1988, (42 FERC ¶ 62,144 (1988)). The instant recertification is requested due to an increase in the net electric power production capacity from 23 MW to 29 MW and a change in the ownership structure. ESI Energy, Inc., an indirect wholly-owned subsidiary of FPL Group, Inc., an electric utility holding company, will have an ownership interest in the facility.

Comment date: September 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER91-565-000]

Take notice that on August 1, 1991, New England Power Company (NEP) tendered for filing amendments to its FERC Electric Tariff, Orginal Volume No. 1, Primary Service for Resale, constituting a new rate, referred to as the W-92 rate. NEP states that the new rate would increase revenues by approximately $81.7 million on the basis of a calendar year 1992 test year. NEP requests an effective date of October 1, 1991, with a three month suspension to January 1, 1992.

NEP states that almost one half of the increase represents NEP payments for purchased power expense related to the commercial operation of Unit II of the Ocean State Power Project. NEP further states that the remainder of the proposed increase is attributable to a continuation of declining sales in the region, inflation in operating and maintenance expense, and certain one time adjustments to reflect cost previously deducted from proposed rates as part of settlements and deferred for future collection.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric Power Company

[Docket No. ER91-562-000]

Take notice that on July 31, 1991 Virginia Electric Power Company (the Company) tendered for filing proposed changes in its electric wholesale rate schedules presently on file with the Federal Energy Regulatory Commission (Commission) that are applicable to Rural Electric Cooperatives, wholesale Municipalities, and Old Dominion Electric Cooperative (ODEC). The proposed changes would increase revenues from jurisdictional sales and service by $16.5 million, based on conditions existing during the test period, 12 months ending December 31, 1992. In addition, revenues from Old Dominion Electric Cooperative for Reserve Sales would increase by $0.9 million.

The Company states that the increase in wholesale rates is necessary to reflect projected cost increases in rate base, labor, materials, supplies, services and purchased power since its filing in Docket No. ER90-540-000, its last general rate case, and to achieve a reasonable overall rate of return.

Copies of the filing were served upon all the Company's jurisdictional Wholesale Customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 19, 1991, in accordance with standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER91-566-000]

Take notice that on August 1, 1991 New England Power Company (NEP) tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with The Narragansett Electric Company (Narragansett). According to NEP, the proposed change would increase the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of $7,171,600 annually based on the 12-month period ending December 31, 1992. NEP requests an effective date of October 1, 1991, but that the credit be allowed to become effective coincident with the effective date of its Rate W-92 filed simultaneously with the G&T credit filing.

NEP states that copies of the filing were served upon the affected state regulatory Commissions and Narragansett.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER91-567-000]

Take notice that on August 1, 1991, Duke Power Company (Duke) tendered for filing with the Commission a revised Supplement No. 4 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). The revised Supplement No. 4 changes Duke's monthly transmission capacity rate under the Interchange Agreement from $1.1154 per KW per month to $1.1415 per KW per month. Duke has proposed an effective date of July 1, 1991 for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: August 19, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. The Kansas Power and Light Company

[Docket No. ER91-564-000]

Take notice that on August 1, 1991, The Kansas Power and Light Company (KPL) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Tariff No. 218. KPL states that it proposes to add a new point of delivery to its existing contract with Kaw Valley Electric Cooperative, Inc. The change is proposed to become effective June 1, 1991.

Copies of the filing were served upon Kaw Valley Electric Cooperative, Inc. and the Kansas Corporation Commission.

Comment date: August 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on behalf of West Penn Power Company and Duquesne Light Company

[Docket No. ER91-560-000]

Take notice that on July 31, 1991, West Penn Power Company (West Penn), and Duquesne Light Company (Duquesne), filed Amendment No. 14 to the Interchange Agreement between West Penn and Duquesne, which Amendment revises Schedules F and G to that Interchange Agreement. The proposed effective date for the Amendment No. 14 is January 1, 1991.

The proposed revised Schedules A, B, and C would change the rates charged by all parties under those Schedules for Emergency Service and Energy, Interchange Power and Energy, and Short Term Power and Energy under the Interchange Agreement between West Penn and Duquesne. The proposed new Schedules F and G for Diversity Power and Energy and Limited Term Power and Energy, would be added to the Interconnection Agreement. This Amendment would also reorganize, standardize and update the language used in those Schedules.

The proposed Schedules are for the purpose of allowing the Parties thereto more flexibility in the rates that they charge so as to remain competitive in the power sales market. The parties request waiver of notice to permit an effective date of January 1991 for Amendment No. 14.

Copies of the filing have been served upon the Pennsylvania Public Utility Commission.

Comment date: August 19, 1991, in accordance with Standard Paragraph E 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. 91-19135 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7802-005]

Natural Energy Resources Co., Notice of Locations and Times of Scoping Meetings for Environmental Impact Statement

August 6, 1991.

The staff of the Federal Energy Regulation Commission (staff) has previously notified interested parties and the public that it intends to prepare an environmental impact statement (EIS) dealing with the proposed Rocky Point Pumped Storage Project, FERC No. 7802-005, on the Taylor River in Gunnison and Chaffee Counties, Colorado.

The major issues to be evaluated in this EIS will be discussed at two scoping meetings, both scheduled to be held on Wednesday, September 25, 1991. Prior to this date, a scoping document (Scoping Document I) will be mailed to all recipients of this notice; copies will also be available at the scoping meetings. Scoping Document I will subsequently be revised to reflect any new information provided at the scoping meetings (Scoping Document II), which will be mailed to all interested parties.

All interested individuals, organizations, and agencies are invited to attend the scoping meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The first meeting will be held from 1 p.m. to 4 p.m. at the Aspinall-Wilson Center, 909 Escalante Drive, Western State College, Gunnison, Colorado 81231. This meeting will focus on resource agency concerns.

The second meeting will be held from 7 p.m. to 10 p.m. at the Gunnison High School Auditorium, 800 W. Ohio Avenue, Gunnison, Colorado 81230. This meeting is primarily for public input, and participants are asked to keep oral comments to five minutes.

Both scoping meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the Commission's public record for Project No. 7802-005. Interested persons who are unable to

attend, or do not choose to speak at the scoping meetings, may provide written statements for the public record.

All correspondence regarding the subject EIS should be filed with the Commission on or before November 1, 1991, and should be addressed to Lois D. Cashell, Secretary Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Rocky Point Pumped Storage Project, Colorado, Project No. 7802-005.

For further information, please contact the FERC EIS Coordinator, Kathleen Sherman at (202) 219-2834.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19146 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-08475T Kansas-1 Amendment]

State of Kansas; Notice of Determination Designating Tight Formation

August 7, 1991.

Take notice that on August 5, 1991, the Kansas Corporation Commission (Kansas) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Niobrara Formation underlying Cheyenne County and a portion of Sherman County, Kansas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers all of Cheyenne County, plus T6S, R39W-R42W, and T7S, R39W-R42W, in Sherman County, Kansas. Kansas originally submitted a 4-county area determination for the Niobrara that included both Cheyenne and Sherman Counties. The Commission remanded the original determination to Kansas on May 22, 1985. The August 5, 1991 notice of determination also contains Kansas' findings that the referenced portion of the Niobrara 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.

[FR Doc. 91-19136 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-6-20-000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective September 1, 1991

Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Fifth Revised Sheet No. 25
Fifth Revised Sheet No. 26
Fifth Revised Sheet No. 27
Fifth Revised Sheet No. 28
Fifth Revised Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed as part of Algonquin's regularly scheduled quarterly Purchased Gas Adjustment ("PGA") pursuant to Sections 17 and 39 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Third Revised Volume No. 1 to reflect the standby service costs to be charged by Texas Eastern Transmission Corporation ("Texas Eastern"), transmission and compression by others costs ("T & C Costs") from Texas Eastern and Transcontinental Gas Pipeline Corporation and purchased gas costs to be charged by its various suppliers.

Algonquin states that the instant filing reflects the purchases and sales projected to be made for the three month period beginning September 1, 1991 as well as the underlying costs of standby and transportation services.

Algonquin states that the proposed effective date for the listed revised tariff sheets is September 1, 1991.

Algonquin further states that the effect of the change in rates is to increase the demand charge by 22.80 cents per MMBtu and to increase the commodity charge by 62.03 cents per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's last PGA filed July 1, 1991 in Docket No. TF91-4-20-000.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

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, N.E., Washington, DC 20426, in accordance with such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. 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. 91-19142 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-22-013]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the tariff sheets:

Algonquin states that it is making the instant filing pursuant to Article II of the Stipulation and Agreement in Docket No. RP90-22-000 as filed on December 14, 1990 and approved, as modified, by the Commission's Order of April 19, 1991. Algonquin states the instant filing contains appropriate revised tariff sheets reflecting rates equivalent to the Settlement Base Rates under its rate schedules, adjusted as appropriate to reflect authorized changes as provided by Algonquin's FERC Gas Tariff.

Algonquin notes that copies of this filing were served upon each affected party and interested state 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 be filed on or before August 13, 1991. 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. 91-19150 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-206-000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes In FERC Gas Tariff

August 6, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 1, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective September 1, 1991:

Second Revised Eleventh Revised Sheet No. 26
Original Sheet No. 26.1
Second Revised Eleventh Revised Sheet No. 26A
Original Sheet No. 26A.1
Second Revised Eleventh Revised Sheet No. 26B
Original Sheet No. 26B.1

Columbia states that the sales rates set forth on Second Revised Eleventh Revised Sheet No. 26 and Original Sheet No. 26.1 reflect a maximum WACOG surcharge of 20¢ per Dth in the Commodity rate.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 384.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. 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. 91-19149 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-24-002, TA91-1-24-003]

Equitrans, Inc., Notice of Revision To Proposed Tariff Changes

August 6, 1991.

Take notice that Equitrans, Inc., ("Equitrans") on July 31, 1991, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective on September 1, 1991:

Substitute Twenty-Eighth Revised Sheet No. 10
Substitute Nineteenth Revised Sheet No. 34

As alternative tariff sheets, Equitrans submits the following, also to be effective September 1, 1991:

Alternate Substitute Twenty-Eighth Revised Sheet No. 10
Alternate Substitute Nineteenth Revised Sheet No. 34

As with the Annual PGA Filing of July 2, 1991, the primary sheets reflect "as-billed" recovery of producer purchased gas costs; the alternative sheets reflect reclassification of producer demand payments back to the commodity component of the sales rate.

Equitrans requests that Substitute Nineteenth Revised Sheet No. 34 (both primary and alternate versions) be made effective instead of Twentieth Revised Sheet No. 34 (both primary and alternate versions) which were contained in its July 2, 1991 annual filing because the newly filed sheet reflects both the winter and summer rates for Rate Schedule ISS whereas the previously submitted sheet only reflected the winter period rate.

Equitrans states that it submitted this filing pursuant to § 154.305(c)(4) of the Commission PGA Regulations, 18 CFR § 154.305(c)(4), in order to revise the current adjustment filed with its Annual PGA on June 31, 1991. The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.2093 per dth and a decrease in the commodity cost of $0.5129 per dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.5075 per dth.

The proposed changes reflect, among other things, the service restructuring and rate design changes that were contained in a March 22, 1991 "Joint Stipulation and Agreement" approved by Commission order issued on July 25, 1991 in Docket Nos. RP90-70, *et al.*, effective August 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state 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 be filed on or before August 13, 1991. 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. 91-19145 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-70-003]

Equitrans, Inc.; Notice of Compliance Filing To Implement Order Approving Settlement

August 6, 1991.

Take notice that on July 31, 1991, Equitrans, Inc. ("Equitrans") filed the following sets of revised tariff sheets to its FERC Gas Tariff (as shown on appendix A of the filing):

I. Refund Rates (July 1, 1990 through July 31, 1991)

Effective July 1, 1990

Volume 1

Second Sub 15 Revised Sheet No. 10
Substitute First Revised Sheet No. 22
Second Sub 7 Revised Sheet No. 34

Effective September 1, 1990

Volume 1

Second Sub 16 Revised Sheet No. 10
Second Sub Eighth Rev Sheet No. 34

Effective October 1, 1990

Volume 1

Second Sub 17 Revised Sheet No. 10

Effective December 1, 1990

Volume 1

Sub Twentieth Rev Sheet No. 10
Substitute Eleventh Rev Sheet No. 34

Effective January 1, 1991

Volume 1

Second Sub 22 Revised Sheet No. 10

Effective February 1, 1991

Volume 1

Second Sub 23 Rev Sheet No. 10
Second Sub 13 Revised Sheet No. 34

Effective March 1, 1991

Volume 1

Second Sub Twenty-Fifth Rev Sheet No. 10
Second Sub 14 Revised Sheet No. 34

Effective April 1, 1991

Volume 1

Sub Twenty-Sixth Rev Sheet No. 10
Sub Seventeenth Rev Sheet No. 34

Effective June 1, 1991

Volume 1

Sub Twenty-Seventh Rev Sheet No. 10
Sub Eighteenth Rev Sheet No. 34

Effective July 1, 1990

Volume 3

Substitute Fourth Revised Sheet No. 4
Substitute Fourth Revised Sheet No. 8

Effective October 1, 1990

Volume 3

Substitute Fifth Revised Sheet No. 4
Substitute Fifth Revised Sheet No. 8

Effective January 1, 1990

Volume 3

Substitute Seventh Revised Sheet No. 4
Substitute Seventh Revised Sheet No. 8

II. Rates Effective August 1, 1991

Volume 1

Second Revised Sheet No. 22
Eighth Revised Sheet No. 23

Volume 3

Eighth Revised Sheet No. 4
Eighth Revised Sheet No. 8

III. Miscellaneous Tariff Changes Effective August 1, 1991

Volume 1

Second Revised Sheet No. 7
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 78
First Revised Sheet No. 144
First Revised Sheet No. 170
First Revised Sheet No. 171
Original Sheet No. 177D
Original Sheet No. 177E

Volume 3

Second Revised Sheet No. 2
Second Revised Sheet No. 3
Original Sheet No. 3A
Second Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
Second Revised Sheet No. 14

Equitrans states that the purpose of these revisions is to implement new base tariff rates effective July 1, 1990 (refund rates) and August 1, 1991 (prospective rates) pursuant to the March 22, 1991 Joint Stipulation and Agreement, which was approved by the Commission by order issued on July 25, 1991.

Equitrans states that copies of the filing have been mailed to all of its jurisdictional customers and interested state 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 be filed on or before August 13, 1991. 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. 91-19147 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-6-15-000]

Mid Louisiana Gas Co.; Notice of Tariff Filing

August 6, 1991.

Take notice that on August 2, 1991, Mid Louisiana Gas Company (Mid Louisiana), tendered for filing Eighty-Fifth Revised Sheet No. 3a, which Mid Louisiana requests to be permitted to become effective September 1, 1991.

Mid Louisiana states that such tariff sheet is filed together with a request for waivers of § 154.305(c)(4) of the Commission's Regulations, 18 CFR 154.305(4) and Section 19 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that such waivers, together with implementation of Eighty-Fifth Revised Sheet No. 3a, would allow Mid Louisiana to use revised pricing provisions in the calculation of the cost of purchased and produced gas for resale to jurisdictional customers.

Mid Louisiana states that the revised pricing provision would be implemented by means of a Commodity Gas Component Cap that would establish a ceiling on the level of purchased and produced gas costs (excluding storage, exchange and gas used, lost and unaccounted for) that Mid Louisiana would be permitted to collect from jurisdictional customers.

Mid Louisiana states that copies of the filing have been sent to the customers and the state commissions shown on the official service list.

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 August 13, 1991. 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. 91-19144 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-27-000]

North Penn Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that North Penn Gas Company (North Penn) on August 2, 1991, tendered for filing Seventh Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

North Penn states that the revised tariff sheet is being filed pursuant to Section 14 (PGA Clause) of the General Terms and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period September 1, 1991 through November 30, 1991 and is proposed to be effective September 1, 1991. North Penn states that the proposed change reflects an increase in the average cost of gas for the G-1 Rate Schedule of $2.32213 per Mcf.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective September 1, 1991, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective September 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the attached service list.

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. All such motions or protests should be filed on or

before August 13, 1991. 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. 91-19143 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-208-000]

Ozark Gas Transmission System; Notice of Filing

August 6, 1991

Take notice that on August 2, 1991, Ozark Gas Transmission System ("Ozark"), 1700 Pacific Avenue, Dallas, Texas 75201, filed with the Commission its FERC Gas Tariff, First Revised Volume No. 1. Ozark proposes that this filing become effective September 3, 1991.

Ozark states that the purpose of this filing is to establish the rates, terms and conditions for open-access transportation under proposed Rate Schedules FTS and ITS, and to revise its existing Rate Schedule T-1 and General Terms and Conditions to accommodate Ozark's provision of open-access transportation. Ozark states that a request for authority to provide open-access transportation is pending in Docket No. CP91-945-000, and requests that the Commission grant Ozark a part 284 blanket transportation certificate in that docket concurrently with the Commission's acceptance for filing of the tariff sheets proposed in this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 13, 1991. Protests will be considered by the Commission in determining 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. 91-19152 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-28-000 and TM91-10-28-000]

Panhandle Eastern Pipe Line Co., Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1991, tendered for filing the following revised tariff sheets listed to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Seventh Revised Sheet No. 3-A
First Revised Sheet No. 3-A.1
Sixty-Fourth Revised No. 3-b
Eleventh Revised Sheet No. 3-B.1

The proposed effective date of these revised tariff sheets is September 1, 1991.

Panhandle states that these revised tariff sheets filed herewith reflect a commodity rate increase of 23.79¢ per Dt. This increase includes:

(1) A 26.82¢ per Dt. increase in the projected purchased gas cost component computed in accordance with § 18.2 of the General Terms and Conditions of Panhandle's tariff; and

(2) A (3.03¢) per Dt. decrease pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith also reflect the following changes to Panhandle's D1 and D2 demand rates:

(1) An increase of $0.44 for D1 pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) An increase of $1.26 for D1 and no change for D2 to reflect an increase in the § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states the above referenced tariff sheets are being filed in accordance with § 154.308 (Quarterly PGA Filing) of the Commission's Regulations and pursuant to § 18.1 and 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) and section 22 (ANGTS tracking mechanism) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional sales rates effective September 1, 1991.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

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 such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 13, 1991. 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. 91-19141 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-85-007]

Panhandle Eastern Pipe Line Co., Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1991 tendered for filing the tariff sheets listed on Appendix A to its FERC Gas Tariff, Original Volume No. 1-A.

Panhandle proposes that the tariff sheets listed on Appendix A become effective September 1, 1991.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Village of Pawnee, Illinois, et al.* vs. *Panhandle Eastern Pipe Line Company,* in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. The tariff sheets listed on Appendix A

reflect these adjustments in the monthly base period for each Small Customer. These tariff sheets also reflect modifications and abandonments of firm sales service authorized by the Commission and name changes for certain customers, as more fully described in the filing.

Panhandle states that copies of this filing have been forwarded to all customers subject to the tariff sheets and the respective 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 be filed on or before August 13, 1991. 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. 91-19151 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-207-000]

Ringwood Gathering Co., Notice of Waiver

August 6, 1991.

Take notice that on August 1, 1991, Ringwood Gathering Company (Ringwood), filed with the Federal Energy Regulatory Commission (Commission) a request for waiver of all PGA filing requirement in § 154.301 through 154.310. Ringwood also requests a waiver to maintain the existing rates in Ringwood's previous filing (TQ91-3-38-000 excluding the surcharge adjustment which was effective through September 30, 1991.

Ringwood submits for filing Seventh Revised Sheet No. 4C Superseding Sixth Revised Sheet No. 4C to maintain its prior rates excluding the surcharge adjustment.

Ringwood states that copies of the filing have been mailed to Williams Natural Gas Company, Oklahoma Natural Gas Company, and interested state regulatory agencies.

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 August 13, 1991. 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. 91-19148 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-205-000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1991

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 1, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Second Revised Sheet No. 410
First Revised Sheet No. 410A

Texas Eastern states that the tariff sheets referenced above are being filed to include new provision in Texas Eastern's gas quality specifications in the General Terms and Conditions of its FERC Gas Tariff. This provision would allow Texas Eastern to accept gas for its transportation customers' account on its offshore systems when the gas does not comply with the quality specifications because producers of such gas have no processing facilities at the wellhead. Texas Eastern states that absent the inclusion of this provision Texas Eastern has no tariff authorization to transport such gas, even though such gas would be processed downstream and the overall quality of the commingled gas stream after processing would meet existing specifications.

Texas Eastern states that the submission of this tariff provision will allow acceptance into its pipeline system gas supplies for transportation which otherwise would not be compatible with existing quality specifications. Texas Eastern submits that this change is beneficial to its transportation customers because it will allow greater access to gas supplies and enable them to further diversify their gas supply portfolios. Texas Eastern submits that this is consistent with the Commission's policy of increasing competition in the natural gas market.

The proposed effective date of the tariff sheets listed above is September 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern also states that copies of this filing are also being mailed to all Rate Schedules FT-1 and IT-1 Shippers.

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. All such motions or protests should be filed on or before August 13, 1991. 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. 91-19153 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2394-006—Wisconsin/Michigan]

August 7, 1991.

Wisconsin Electric Power Co.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

The license for the Chalk Hill Hydro Project No. 2394, located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan, expires on June 30, 1993. The statutory deadline for filing an application for new license was June 30, 1991. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2394-006	Wisconsin Electric Power Company, 231 W. Michigan Street, P.O. Box 2046, Milwaukee, WI 53201.	Richard G. Fuller, Superintendent, Hydroelectric Operations, Wisconsin Electric Power Company, 1401 South Carpenter Ave., Iron Mountain, MI 49801.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
August 10, 1991	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date information is due.
August 20, 1991	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
October 30, 1991	Commission's deadline for applicant for filing a final amendment, if any, to its application.
December 15, 1991	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Charles T. Raabe at 202-219-2811.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19138 Filed 8-12-91; 8:45 am]

BILLING CODE 6717-01-M

Morgantown Energy Technology Center

Grant; Financial Assistance Award to Syracuse University

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for a grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 24-month grant to Syracuse University, Office of Sponsored Programs, 113 Bowne Hall, Syracuse, New York 13244-1200, with an associated budget of approximately $319,000, including cost-sharing of $29,142 by Syracuse University.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4089, Procurement Request No. 21-91MC28072.000.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for a research project to evaluate the various membrane separation processes utilized today for the upgrading of low-quality natural gas to pipeline quality and advance the technology. The University proposes to "tailor-make" uniquely configured polyamide membranes for the separation of specified gas mixtures. The results of the research project could provide the information required for the design and optimization of large-scale processes for the removal of the non-hydrocarbons (i.e., CO_2, H_2S, H_2O vapor) from natural gas and for the economic evaluations of these processes. If these gas separation technologies to upgrade low-quality natural gas to pipeline quality were developed, it would provide new market areas for low-quality natural gas and would provide the means for transporting an untapped natural resource to the market at acceptable costs. It could be used to offset imported oil to this country and to utilize a currently underused valuable natural resource found throughout the U.S.

In view of the unique natural of the work to be performed and the well-equipped laboratories and expertise of the personnel at Syracuse University to be allocated to this research project, it has been determined that it is appropriate to award this grant to Syracuse University on an unsolicited basis.

Issued: July 31, 1991.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91-19228 Filed 8-12-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3983-3]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Application for Extension of the Reformulated Gasoline Program to Rhode Island.

SUMMARY: This notice publishes the application of the Governor of the State of Rhode Island to have the prohibition set forth in section 211(k)(5) of the Clean Air Act as amended by Public Law 101-549 (the Act) applied in Rhode Island beginning January 1, 1995. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the Governor of the State in which the nonattainment area is located.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date).

ADDRESSES: Materials relevant to this notice are contained in Public Docket No. A-91-02. This docket is located in room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB-12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: Oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; no heavy metals (with a possible waiver for metals other than lead); and the inclusion of deposit preventing additives. The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D) any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattainment area may be included in the program at the request of the Governor of the State in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline in any area in the Governor's State which has been classified as not attaining the ozone ambient air quality standard. That subparagraph further provides that EPA is to apply the prohibition as of the date he "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a Governor's application in the **Federal Register.**

EPA will promulgate the requirements for reformulated gasoline in accordance with the statutory deadline of November 15, 1991. These requirements are being developed through regulatory negotiation and were published in proposed form July 9, 1991 (56 FR 31176). The proposed regulations describe the certification program for reformulated gasolines, the credits program for exceeding certain requirements and the enforcement program, among other elements.

II. Rhode Island's Request

EPA received an application from the Hon. Bruce Sundlun, Governor of Rhode Island, for that State to be included in the reformulated gasoline program. His application is set out in full below.

[State of Rhode Island letterhead]

March 14, 1991

William Reilly, Administrator,

U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dear Mr. Reilly: This is my application under section 211(k)(6) of the Clean Air Act that you apply the prohibition of paragraph (5) of that section to the Rhode Island ozone nonattainment area. The entire State of Rhode Island is classified as a Serious nonattainment area. By application of the prohibition only reformulated gasoline may be sold or dispensed in Rhode Island beginning January 1, 1995.

Best personal wishes.

Sincerely,

s/Bruce G. Sundlun

III. Action

Pursuant to the Governor's letter and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the entire State of Rhode Island beginning January 1, 1995 (except as provided above). The application of the prohibitions to Rhode Island cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A), unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: August 5, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-19085 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3984-2]

Acid Rain Advisory Committee; Subcommittee on No_x; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the acid deposition control title of the Clean Air Act Amendments of 1990.

At its July 15-16 meeting, ARAC established a Subcommittee on No_x to provide advice on issues related to the development of regulations for reducing No_x emissions from certain types of existing coal-fired boilers at electric power plants. Specifically, this subcommittee will focus on issues related to No_x emissions from tangentially-fired boilers and dry bottom wallfired boilers affected in Phase I of title IV of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the ARAC Subcommittee on No_x will hold its second open meeting on August 27 from 9 a.m. to 5 p.m.; August 28 from 8:30 a.m. to 5 p.m.; and August 29 from 8:30 a.m. to 4 p.m. at the Ramada Renaissance Hotel, Washington, Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478-2900. The meeting agenda will include further discussions of the definition of low No_x burner technology, the emission rates specified in the legislation, procedure and conditions for extension applications, and alternative emission limitation procedures.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents will be available in EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning the Subcommittee on No_x or its activities, contact Doris Price, at (202) 475-6783; fax (202) 252-0392), or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: August 9, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91-19346 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3983-6]

Open Meeting of the Policy Dialogue Committee on Mining Wastes.

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Policy Dialogue Committee on Mining Wastes.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the date and location of the September meeting of the Policy Dialogue Committee on Mining Waste. The purpose of the meeting is to discuss the key elements of a mine waste program. The meetings are open to the public without advance registration. An opportunity for public comment will be offered at the end of each day of meeting.

DATES: The September meeting will be held on September 5, 1991 from 8:30 a.m. to 5 p.m. The October meeting will be held October 22 and 23, 1991.

ADDRESSES: The September meeting will be held at the Washington Light Infantry Building, 287 Meeting Street, Charleston,

South Carolina. The October meeting will be held in Tucson, Arizona. A specific meeting location will be announced shortly.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the mining waste program should call Steve Hoffman, Office of Solid Waste, U.S. EPA, (703) 308-8413. Summaries of previous meetings will be made available upon written request to Patricia Whiting, Office of Solid Waste, (OS-323W), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Persons needing further information on administrative matters such as committee arrangements or procedures should contact Deborah Dalton, EPA Regulatory Negotiation Project, (202) 382-5495 or the Committee's facilitator, John Ehrman, The Keystone Center, (303) 468-5822.

Dated: August 7, 1991.

Deborah Dalton,

Designated Federal Official, Deputy Director, Negotiation and Dispute Resolution Project, Office of Policy, Planning and Evaluation.

[FR Doc. 91-19202 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59298A; FRL-3940-4]

Certain Chemical; Approval of Modification to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing periods for three test marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME-91-16, TME-91-17, and TME-91-18. The test marketing conditions are described below.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2440. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE-G004, 401 M St., SW., Washington, DC.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME-91-16, TME-91-17, and TME-91-18. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and modification request, and for the modified time periods specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-91-16

Notice of Approval of Original Application: May 31, 1991 (56 FR 24813).

Modified Test Marketing Period: 15-day extension from the original 30 days.

T-91-17

Notice of Approval of Original Application: May 31, 1991 (56 FR 24813).

Modified Test Marketing Period: 15-day extension from the original 30 days.

T-91-18

Notice of Approval of Original Application: May 31, 1991 (56 FR 24813).

Modified Test Marketing Period: 15-day extension from the original 30 days.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

Dated: August 5, 1991.

Lawrence E. Culleen,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-19199 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-51767; FRL 3941-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 73 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 91-1168, 91-1169, September 23, 1991.

P 91-1170, 91-1171, 91-1172, September 24, 1991.

P 91-1173, 91-1174, September 25, 1991.

P 91-1205, 91-1206, 91-1207, October 6, 1991.

P 91-1208, 91-1209, 91-1210, October 7, 1991.

P 91-1211, 91-1212, 91-1213, 91-1214, October 8, 1991.

P 91-1215, 91-1216, October 9, 1991.

P 91-1218, 91-1219, 91-1220, 91-1221, October 12, 1991.

P 91-1222, October 15, 1991.

P 91-1223, 91-1224, 91-1225, 91-1226, October 12, 1991.

P 91-1227, 91-1228, 91-1231, 91-1232, 91-1233, 91-1234, 91-1235, 91-1236, 91-1237, October 13, 1991.

P 91-1238, October 14, 1991.

P 91-1239, 91-1240, October 15, 1991.

P 91-1241, 91-1243, 91-1244, October 16, 1991.

P 91-1245, 91-1246, 91-1247, 91-1248, 91-1249, 91-1250, October 19, 1991.

P 91-1251, 91-1252, 91-1253, 91-1254, October 20, 1991.

P 91-1255, 91-1256, 91-1257, October 21, 1991.

P 91-1258, October 22, 1991.

P 91-1259, 91-1260, October 23, 1991.

P 91-1261, October 27, 1991.

P 91-1262, October 21, 1991.

P 91-1263, 91-1264, October 23, 1991.
P 91-1265, September 26, 1991.
P 91-1266, October 26, 1991.
P 91-1267, September 26, 1991.
P 91-1268, 91-1269, 91-1270, 91-1271, 91-1272, 91-1273, 91-1274, October 27, 1991.

Written comments by:

P 91-1168, 91-1169, August 24, 1991.
P 91-1170, 91-1171, 91-1172, August 25, 1991.
P 91-1173, 91-1174, August 26, 1991.
P 91-1205, 91-1206, 91-1207, September 6, 1991.
P 91-1208, 91-1209, 91-1210, September 7, 1991.
P 91-1211, 91-1212, 91-1213, 91-1214, September 8, 1991.
P 91-1215, 91-1216, September 9, 1991.
P 91-1218, 91-1219, 91-1220, 91-1221, September 12, 1991.
P 91-1222, September 15, 1991.
P 91-1223, 91-1224, 91-1225, 91-1226, September 12, 1991.
P 91-1227, 91-1228, 91-1231, 91-1232, 91-1233, 91-1234, 91-1235, 91-1236, 91-1237, September 13, 1991.
P 91-1238, September 14, 1991.
P 91-1239, 91-1240, September 15, 1991.
P 91-1241, 91-1243, 91-1244, September 16, 1991.
P 91-1245, 91-1246, 91-1247, 91-1248, 91-1249, 91-1250, September 19, 1991.
P 91-1251, 91-1252, 91-1253, 91-1254, September 20, 1991.
P 91-1255, 91-1256, 91-1257, September 21, 1991.
P 91-1258, September 22, 1991.
P 91-1259, 91-1260, September 23, 1991.
P 91-1261, September 27, 1991.
P 91-1262, September 21, 1991.
P 91-1263, 91-1264, September 23, 1991.
P 91-1265, August 27, 1991.
P 91-1266, September 26, 1991.
P 91-1267, August 27, 1991.
P 91-1268, 91-1269, 91-1270, 91-1271, 91-1272, 91-1273, 91-1274, September 27, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51767)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm L-100, Washington, DC, 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm EB-44, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91-1168

Importer. Confidential.
Chemical. (G) Substituted-substituted-substituted-benzene polymer.
Use/Import. (S) Adhesive. Import range: Confidential.

P 91-1169

Manufacturer. H.B. Fuller Company.
Chemical. (G) Hydrogenated dimerized C_{18}, unsaturated fatty acid, hexamethylene diamine, alkane diamine, acid functional hydroocarbon, sebasic acid polymer.
Use/Production. (S) Adhesive. Prod. range: Confidential.

P 91-1170

Manufacturer. Confidential.
Chemical. (G) Siloxanes and silicones, di me aryl stopped.
Use/Production. (G) Plastic modifier. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 91-1171

Manufacturer. GE Silicones.
Chemical. (G) Polysiloxane bisphenol-A-copolycarbonate.
Use/Production. (S) Enclosure for electrical devices. Prod. range: Confidential.

P 91-1172

Manufacturer. Confidential.
Chemical. (G) Alpha alkene copolymer with alpha alkene.
Use/Production. (G) Crude oil additive. Prod. range: Confidential.

P 91-1173

Manufacturer. ICI Americas Inc.
Chemical. (G) Ethoxylated sorbitol lanolin derivative.
Use/Production. (G) Emulsifier. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 39.8 g/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: negative species (guinea pig).

P 91-1174

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Hot melt adhesive. Prod. range: Confidential.

P 91-1205

Manufacturer. Milliken & Company.
Chemical. (G) Substituted polyoxyalkylated aromatic amine methylium salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-1206

Manufacturer. Milliken & Company.
Chemical. (G) Alkoxylated alcohol.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 91-1207

Importer. Confidential.
Chemical. (S) 1,3-Benzenedisulfonic acid, 4-amino-5-chloro.
Use/Import. (G) Intermediate. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat).

P 91-1208

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Vinyl ether terminated urethane.
Use/Production. (S) Coatings/inks/adhesives. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-1209

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Viny ether terminated urethane.
Use/Production. (S) Coatings/inks/adhesives. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-1210

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyisocyanate.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 91-1211

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Disubstituted benzene sulfonic acid salt.

Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 91-1212

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Disubstituted benzene sulfonic acid salt.

Use/Production. (S) Dye intermediate. Prod. range: Confidential.

P 91-1213

Manufacturer. Confidential.

Chemical. (G) Reaction product of alkyl thio alcohol, and substituted phospate.

Use/Production. (G) Petroleum additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2. g/kg species (rat). Skin irritation: strong species (rabbit). Mutagenicity: negative.

P 91-1214

Manufacturer. Confidential.

Chemical. (G) Lithium nickel oxide.

Use/Production. (S) Dry cell battery elastrode. Prod. range: 100–2,000 kg/yr.

P 91-1215

Manufacturer. Confidential.

Chemical. (G) Trialkylboron amine complex.

Use/Production. (G) Polymerization imitiator. Prod. range: Confidential.

P 91-1216

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Adhesive binder. Prod. range: Confidential.

P 91-1218

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-1219

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-1220

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 91-1221

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium, magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1222

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1223

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1224

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1225

Manufacturer. Confidential.

Chemical. (G) Modified maleated rosin, calcium magnesium and zinc salts.

Use/Production. (S) Binder in printing inks. Prod. range: Confidential.

P 91-1226

Importer. Unichema North America.

Chemical. (G) Fatty diol, C_{36} branched, saturated.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5000 mg/kg species (rat). Eye irritation: minimal species (rabbit). Skin irritation: slight species (rabbit).

P 91-1227

Manufacturer. Confidential.

Chemical. (G) Isocyanate containing polyesterpolyurethane.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 91-1228

Manufacturer. Confidential.

Chemical. (G) Dihydroheterpolycycle.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 91-1231

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentaerythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1232

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1233

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1234

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1235

Manufacturer. Confidential.

Chemical. (G) Reaction product of fatty acid oils and a phenolicpentacrythritol tetraester.

Use/Production. (S) Lubricant finish on nylon tire yarn. Prod. range: Confidential.

P 91-1236

Manufacturer. Confidential.

Chemical. (G) Unsaturated urethane modified tall oil fatty acid alkydrythritol tetraester.

Use/Production. (G) Component of paint formulations. Prod. range: Confidential.

P 91-1237

Manufacturer. Akzo - Lanchem.

Chemical. (G) Alkyd/acrylic copolymer.

Use/Production. (S) Resin used to manufacture industrial coatings. Prod. range: Confidential.

P 91-1238

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) Bicyclo(3.3.1)HEPT-3-EN-2-OL, 4,6,6-trimethyl.

Use/Production. (S) Fragrance component. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Skin irritation: slight species (rabbit).

P 91-1239

Importer. Confidential.

Chemical. (G) Acetamide, 2-alkoxy-*N*-((chloro-cyano-substituted heteromonocycle)azo)-(dialkyamino)phenyl)-.

Use/Import. (S) Dye for fiber. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Static acute toxicity: time LC50 96H > 180 mg/l species (carp). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-1240

Importer. Confidential.

Chemical. (G) Acetamide, *N*-((chloro-cyano-substituted heteromonocycle)azo)-(dialkylamino)phenyl)-.

Use/Import. (S) Dye for fiber. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Static acute toxicity: time LC50 96H > 180 mg/l species (carp). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 91-1241

Manufacturer. Confidential.

Chemical. (G) Rosin, substituted alkyl benzene, dieneophile modified zinc salt reaction product with unsaturated hydrocarbon resin.

Use/Production. (S) Resin binder for printing ink. Prod. range: Confidential.

P 91-1243

Importer. Confidential.

Chemical. (G) Amino functional reactive thinner.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-1244

Importer. Confidential.

Chemical. (G) Acrylic-silicone: graft polymer.

Use/Import. (S) Paint. Import range: Confidential.

P 91-1245

Manufacturer. Rhone-Poulenc, Performance Resins Div.

Chemical. (G) Diphenol dicyanate homopolymer.

Use/Production. (S) Thermoset resin for use in fiber reinforced structural and electrical composits; heat curable adhesives. Prod. range: Confidential.

P 91-1246

Importer. Confidential.

Chemical. (G) Acrylic acid esters/acrylonitrile copolymer.

Use/Import. (S) Paint dispersion. Import range: Confidential.

P 91-1247

Manufacturer. Confidential.

Chemical. (S) Polymer of 2,2,4-trimethyl-1,3-pentanediol; isophthalic acid; adipic acid; and tert-butyl acetoacetate.

Use/Production. (S) A polymer for enamel paint. Prod. range: 100,000–250,000 kg/yr.

P 91-1248

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified butadiene-vinylidene chloride polymer.

Use/Production. (S) Carpet backing adhesive. Prod. range: Confidential.

P 91-1249

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified butadiene-vinylidene chloride polymer.

Use/Production. (S) Carpet backing adhesive. Prod. range: Confidential.

P 91-1250

Importer. Confidential.

Chemical. (G) Polyol ester.

Use/Import. (G) Lubricant. Import range: Confidential.

P 91-1251

Manufacturer. Estron Chemical, Inc.

Chemical. (G) Polyester.

Use/Production. (G) Lubricant. Prod. range: Confidential.

P 91-1252

Importer. Confidential.

Chemical. (G) Acrylic Polyol.

Use/Import. (G) Raw material resin for paint. Import range: 5,000–30,000 kg/yr.

P 91-1253

Importer. Confidential.

Chemical. (G) Acrylic polyol.

Use/Import. (G) Raw material resin for paint. Import range: 5,000–30,000 kg/yr.

P 91-1254

Manufacturer. Confidential.

Chemical. (G) Crosslinked rubber.

Use/Production. (G) Thermoplastic resin for molded/extruded parts. Prod. range: Confidential.

P 91-1255

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Silicone polymer.

Use/Production. (S) Polymeric low surface energy coating for tape. Prod. range: Confidential.

P 91-1256

Manufacturer. Confidential.

Chemical. (G) Water dispersed polyether polyurethane.

Use/Production. (S) Textile finish. Prod. range: 5,000 kg/yr.

P 91-1257

Importer. Confidential.

Chemical. (G) Polyimide resin.

Use/Import. (G) Coating. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3.8 g/kg species (rabbit).

P 91-1258

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (S) Polymeric component of caulks and adhesives. Prod. range: Confidential.

P 91-1259

Manufacturer. Cape Industries.

Chemical. (G) Aromatic polyureter polyol.

Use/Production. (G) Destructive use, chemical intermediate. Prod. range: Confidential.

P 91-1260

Manufacturer. Confidential.

Chemical. (G) Orhanic salt.

Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-1261

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.

P 91-1262

Manufacturer. Eastman Chemical Company.

Chemical. (G) Ester of poly functional carbomonocyclic acid.

Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-1263

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organosilyl-functional silica.

Use/Production. (S) Abrasion resistant radiation cure coating. Prod. range: Confidential.

P 91-1264

Manufacturer. Dow Corning Corporation.

Chemical. (G) Organosilyl-functional silica.

Use/Production. (S) Abrasion resistant radiation cure coating. Prod. range: Confidential.

P 91-1265

Manufacturer. Henkel Corporation.

Chemical. (G) Napthalene sulfonate condensate salt.

Use/Production. (S) Concrete admixture. Prod. range: Confidential.

P 91-1266

Manufacturer. Henkel Corporation.
Chemical. (G) Napthalene sulfonate condensate salt.
Use/Production. (S) Concrete admixture. Prod. range: Confidential.

P 91-1267

Manufacturer. Henkel Corporation.
Chemical. (G) Napthalene sulfonate condensate salt.
Use/Production. (S) Concrete admixture. Prod. range: Confidential.

P 91-1268

Manufacturer. Confidential.
Chemical. (G) Tall oil fatty acids, aliphatic dicarboxylic acid, aliphatic polyol, oxyalkylene alkyd.
Use/Production. (G) Water soluble resin for coatings (protective and decorative). Prod. range: Confidential.

P 91-1269

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (S) Baked finishes for metal objects. Prod. range: Confidential.

P 91-1270

Manufacturer. Metre-General, Inc.
Chemical. (G) Silica-gel-immobilized amine-bound nitrogen containing ligand.
Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1271

Manufacturer. Metre-General, Inc.
Chemical. (G) Silica-gel-immobilized amine-bound nitrogen containing ligand.
Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1272

Manufacturer. Metre-General.
Chemical. (G) Silica-gel-immobilized-amine-bound nitrogen-containing ligand.
Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1273

Manufacturer. Metre-General, Inc.
Chemical. (G) Silica-gel-immobilized amine-bound nitrogen containing ligand.
Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

P 91-1274

Manufacturer. Metre-General, Inc.
Chemical. (G) Silica-gel-immobilized-amine-bound nitrogen-containing ligand.
Use/Production. (G) An immobilized ligand for removing poisonous materials from water and waste water. Prod. range: Confidential.

Dated: August 6, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-19200, Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-F

33 U.S.C. Section 1319(g), Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Parker Hannifin Corporation, Red Oak, IA

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Parker Hannifin Corporation, Red Oak, Iowa.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On July 31, 1991, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint: In the Matter of Parker Hannifin Corporation, EPA Docket No. VII-91-W-0072.

The Complaint proposed a penalty of $125,000.00 for discharging pollutants into East Nishnabotna River, a water of the United States, from the company's facility near Red Oak, Montgomery County, Iowa, in violation of the effluent limitations and conditions of National Pollutant Discharge Elimination System Permit IA-0004693.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding, should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Parker Hannifin Corporation is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: July 30, 1991.

Morris Kay,

Regional Administrator.

[FR Doc. 91-19164 Filed 8-12-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions in the State of Oklahoma, the Federal Deposit Insurance Corporation ("FDIC") publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county of Oklahoma in which the

agencies wish to effect the conveyance or release of interests in land.

NOTICE: Pursuant to section 11 of the Federal Deposit Insurance ("FDI") Act (12 U.S.C. 1821), as amended by section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under Section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under Section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation ("FSLIC"), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDC Act (12 U.S.C. 1823(c)) The FDIC also acquires legal title in its corporate capacity to assets acquired in furthermore of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to the following individual:

Robert G. Miller

Each employee to whom a power of attorney has been issued is authorized and empowered to: sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired asserts; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: August 7, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-19154 Filed 8-12-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Lykes Bros. Steamship Co., Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 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, 1100 L Street, NW., room 10325. 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.: 202-011259-001.

Title: United States/Southern Africa Conference Agreement.

Parties: Empresa de Navegacao International, Lykes Bros. Steamship Co., Inc., Safbank Line, Ltd.

Synopsis: The proposed amendment would modify the service contract provisions to permit members to agree upon the allocation of monies collected or owed by the Conference with regard to rerating charges and liquidated damages for failure by the shipper or the carrier to meet the minimum cargo commitment or service commitment.

Agreement No.: 202-011260-002.

Title: United States/East Africa Conference Agreement.

Parties: Bank Line East Africa Limited, Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would modify the service contract provisions to permit members to agree upon the allocation of monies collected or owed by the Conference with regard to rerating charges and liquidated damages for failure by the shipper or the carrier to meet the minimum cargo commitment or service commitment.

Dated: August 7, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-19139 Filed 8-12-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Heartland Bancshares, Inc.; 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 accepte 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 September 3, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Heartland Bancshares, Inc., Lenox, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First Community National Bank, Corning, Iowa.

Board of Governors of the Federal Reserve System, August 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19161 Filed 8-12-91; 8:45 am]

BILLING CODE 6210-01-F

H.D. Reynolds, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. H.D. Reynolds, Jr., El Dorado, Arkansas; El Dorado and Wesson Railway Company, Union County, Arkansas; Natural Resources, Inc., El Dorado, Arkansas; and Triangle Industries, Inc., El Dorado, Arkansas; collectively to acquire an additional 12.25 percent (for a total of 20.0 percent) of the voting shares of NBC Bank Corp, El Dorado, Arkansas, and thereby indirectly acquire National Bank of Commerce of El Dorado, El Dorado, Arkansas.

Board of Governors of the Federal Reserve System, August 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19162 Filed 8-12-91; 8:45 am]

BILLING CODE 6210-01-F

Signet Banking Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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. 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 September 3, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Signet Banking Corporation, Richmond, Virginia; to acquire 29.72 percent of Credit Systems Incorporated, St. Louis, Missouri; and thereby engage in the issuance and servicing of bank credit cards and related cardholder accounts pursuant to § 225.25(b)(1) of the Board's Regulation Y, and providing to financial institutions all facilities and processing services necessary for them to offer bank card services to their merchant customers pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19163 Filed 8-12-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072291 AND 080291

Name of Acquiring Person, Name of Acquiring Person, Name of Acquiring Entity	PMN No.	Date Terminated
W.D. Company, Inc., Maison Blanche, Inc., MB I Acquisition Corp.	91-1153	07/22/91
Handleman Co., LIVE Entertainment, Inc., Lieberman Enterprises Inc.	91-1129	07/24/91
Jan Bell Marketing, Inc., Michael Anthony Jewelers, Inc., Michael Anthony Jewelers, Inc.	91-1180	07/24/91
Eleni Acquisition, Inc., Jack Kent Cooke, Cooke CableVision Inc.	91-1184	07/24/91
Windmill Holdings Corp., Grand Metropolitan Public Limited Company, The Pillsbury Co.	91-1102	07/25/91
Bechtel Investments, Inc., Gilchrist Timber Co., Gilchrist Timber Co.	91-1113	07/26/91
Carrefour, Costco Wholesale Corp., Costco Wholesale Corp.	91-1137	07/26/91
Gerald W. Schwartz, Bethlehem Steel Corp., Bethlehem Steel Corp.	91-1141	07/26/91
Homestake Mining Co., Galactic Resources Ltd., Galactic Resources Ltd.	91-1190	07/26/91
Walsh, Carson, Anderson & Stowe V, L.P., Incarnate Word Health Services, St. John's Hospital and Health Centers, Inc.	91-1197	07/26/91
Metropolitan Life Insurance Co., James C. Fissell, Western Relocation Management, Inc.	91-1200	07/26/91
GranCare, Inc., The ARA Group, Inc., ARA Living Centers—Pacific, Inc.	91-1165	07/29/91
Citicorp, Inspiration Resources Corp., Inspiration Leasing Inc.	91-1182	07/29/91
Folksam General Mutual Insurance Society, The Mutual Life Insurance Company of New York, MONY Reinsurance Corp.	91-1191	07/29/91
First Reserve Gas Storage Inc., Endevco, Inc., Endevco Industrial Gas Sales Co.	91-1216	07/29/91
Hampton Investment Co., Boise Cascade Corp., Boise Cascade Corp.	91-1203	08/30/91
Vulcan Materials Co., Southdown, Inc., Florida Mining & Minerals Division	91-1171	08/02/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072291 AND 080291—Continued

Name of Acquiring Person, Name of Acquiring Person, Name of Acquiring Entity	PMN No.	Date Terminated
Empresas ICA, Sociedad Controladora, S.A. de C.V., Southdown, Inc., Florida Mining & Minerals Division	91-1172	08/02/91
Barry Baker, James F. Goodmon, WTTV, Inc.	91-1201	08/02/91
VIAG Aktiengesellschaft, Peter Kiewit Sons', Inc., Continental White Cap, Inc.	91-1202	08/02/91
The Edward W. Scripps Trust, R. E. Turner, Turner Broadcasting System, Inc.	91-1224	08/02/91
Bell Atlantic Corp., MNC Financial, Inc., American Financial Service Group, Inc.	91-1233	08/02/91
John B. Poindexter, Steven R. Lowy, Lowy Enterprises, Inc.	91-1235	08/02/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-19216 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3336]

Audio Communications Incorporated; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Nevada corporation, that markets "900" number information services to children, from making misrepresentations regarding free gifts or the number of calls required to receive a premium; requires a clear statement, or preamble, at the beginning of each children's message giving the child a chance to hand up without charge; and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

DATES: Complaint and Order issued July 24, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Toby M. Levin, FTC/S-4002, Washington, DC 20580. (202) 326-3156.

SUPPLEMENTARY INFORMATION: On Wednesday, May 15, 1991, there was published in the **Federal Register**, 56 FR 22432 a proposed consent agreement with analysis In the Matter of Audio Communications Incorporated, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-19215 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 6487]

Firestone Tire & Rubber Co., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1961 order with the Firestone Tire & Rubber Co. and Shell Oil Co., thus terminating provisions, as to Shell Oil, that prohibited the use of certain sales commission agreements and related practices with Firestone and other suppliers of tires, batteries, and accessories. The Commission concluded that significant changes of law since the entry of the final order warranted reopening and setting aside the entire order as it applies to Shell.

DATES: Final Order issued March 9, 1961. Set Aside Order issued August 2, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth Davidson, FTC/S-2115, Washington, DC 20508. (202) 326-2863.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In the Matter of Firestone Tire & Rubber Co., et al. The prohibited trade practices and/or corrective actions as set forth at 26 FR 4886, are removed, as to Shell Oil Co.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[Docket No. 6487]

Order Reopening and Setting Aside Final Order Issued on March 9, 1961

On April 4, 1991, the Shell Oil Company ("Shell") filed a request to reopen and set aside (request) the Final Order that was entered in Docket No. 6487 on March 9, 1961 ("order"). 58 F.T.C. 371 (1961). The Request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C.. 45(b) and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51 (1991). The request was on the public record for thirty days. No comments were received.

The order Shell seeks to have set aside was based on a finding by the Commission that agreements between Shell and the Firestone Tire and Rubber Company (Firestone) and between Shell and the Goodyear Tire and Rubber Company (Goodyear) constituted unfair methods of competition in violation of section 5 of the Federal Trade Commission Act. Under the agreements, Shell received commissions on the sale of Firestone and Goodyear "TBA products" [1] to designated Shell franchisees.

The order prohibits Shell from continuing the sales commission agreements and related business practices with Firestone or other Shell suppliers. The order also prohibits Firestone from maintaining such agreements with Shell or any other marketing oil company. Goodyear was prohibited from engaging in such practices in a similar order that was entered in a companion case, Docket No. 6486, brought against Goodyear and the Atlantic Refining Company ("Atlantic").[2]

Docket No. 6487 was fully litigated. The Commission's order was modified in part by the Court of Appeals in 1966. *Shell Oil Company* v. *FTC*, 360 F.2d 470 (5th Cir. 1966), *cert. denied*, 385 U.S. 1002 (1967).

Shell asserts that, since the adjudication of the Commission's order, there have been changes of law and of fact that warrant reopening the order and setting it aside.

Previously, the Commission reopened and set aside the order in the companion case, both as to Atlantic, 111 F.T.C. 662 (1989), and as to Goodyear, F.T.C. (August 21, 1990), on the grounds that there have been relevant changes of law and there is no longer any need for that order.

Shell argues that its order ought to be set aside as well. It does not advance any arguments that were not urged on behalf of Atlantic and Goodyear; rather, its arguments include the grounds articulated by the Commission in setting aside the order in Docket No. 6486 as to Atlantic and Goodyear.

The Commission has considered Shell's request and has concluded that Shell has made a satisfactory showing of changed conditions of law that warrants setting aside the entire order in Docket No. 6487 as it applies to Shell. Significant changes of law since the entry of the order in this matter warrant reopening and setting aside the order.

Background

The Commission issued its complaint on January 11, 1956, alleging that the sales commission agreement concerning tires, batteries and other automotive accessories (TBA) between Shell and Firestone constituted an unfair method of competition in violation of section 5 of the Federal Trade Commission Act. The sales commission agreement provided that, in return for Shell's efforts to promote Firestone's TBA, Firestone would pay Shell a commission of ten percent on gross sales made by Firestone to Shell franchisees. The initial decision of the hearing examiner was issued on October 23, 1959. The Commission's opinion, issued on March 9, 1961, found "Shell has sufficient economic power over its wholesale and retail distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics" and concluded "the use of the sales commission plan in favor of Firestone constitutes an unfair method of competition." 58 F.T.C. 371, 385. The Commission supported its conclusion by finding that the agreements unlawfully restricted competition in TBA products at the manufacturing, wholesale and retail levels and denied consumers the benefits of competition. 58 F.T.C. at 385, 414–15.

The Commission ordered Shell to cease:

1. All agreements under which Shell would receive anything of value from vendors of TBA for sales to Shell franchisees;

2. Accepting anything of value for promoting the sale of any vendor's TBA products;

3. Using contracts or other means to encourage its franchisees to acquire any vendor's TBA products (other than Shell TBA products);

4. Monitoring the sale of any vendor's TBA products other than its own;

5. Coercing Shell franchisees to acquire TBA products;

6. Preventing Shell franchisees from acquiring the TBA products of their choice.

The Court of Appeals upheld the Commission's finding that the sales commission agreement constituted an unfair method of competition.[3] The court found that Shell had economic power over its dealers, which it derived from its control of the dealers' supplies of petroleum products, short-term leases and equipment loan contracts, financing arrangements and housekeeping requirements for dealers. See 360 F. 2d at 479–481. The court of appeals affirmed the Commission's conclusions that Shell used its economic leverage over its dealers in carrying out the sales commission plan, causing adverse competitive effects in the TBA market in violation of Section 5. 360 F. 2d at 486–87; see also *Atlantic Refining Co.*, 381 U.S. at 368 (Atlantic "exerted the persuasion that is a natural incident of its economic power.") [4] Although the court spoke of Shell's "dominant economic power over its dealers," 360 F. 2d at 479, it did not make any findings concerning the firm's market power in an interbrand market. But, the court of appeals also determined that Shell had not coerced its franchisees and, therefore, declined to enforce paragraphs 5 and 6, described above, that ordered Shell to cease coercing its dealers. 360 F. 2d at 486.

The court of appeals viewed the commission sales agreements as similar to tying arrangements. 360 F. 2d at 477. But the court recognized that the agreements were not tying arrangements and declined to apply a *per se* rule. 360

[1] TBA products are tires, batteries, and other automotive accessories.

[2] *Atlantic Refining Co.*, Docket 6486, 58 F.T.C. 309 (1961), *aff'd*, 331 F.2d 394 (7th Cir. 1964), *aff'd*, 381 U.S. 357, *reh'g denied*, 382 U.S. 873 (1965), *order set aside*, 111 F.T.C. 662 (1989) (as to Atlantic) and F.T.C. (August 21, 1990) (as to Goodyear); An additional case involved sales commission agreements between petroleum product and TBA product companies. *B.F. Goodrich Co.*, 62 F.T.C. 1172 (1963), *rev'd*, 336 F.2d 754 (D.C. Cir. 1964), *vacated & remanded*, 381 U.S. 739 (1965), *Opinion on remand*, 60 F.T.C. 22 (1966), *rev'd*, 383 F.2d 942 (D.C. cir. 1967), *rev'd & remanded*, 393 U.S. 223 (1968), *Order modified*, 75 F.T.C. 410 (1969).

[3] *Shell Oil Co.* v. *F.T.C.*, 360 F. 2d 470 (5th Cir. 1966), *cert. den.*, 385 U.S. 1002 (1967).

[4] *See also Simpson* v. *Union Oil Co.*, 377 U.S. 13 (1964) (fear of nonrenewal of short-term leases used to enforce resale prices).

F. 2d at 477, 487. See also *Atlantic Refining Co.*, 381 U.S. at 369 ("We recognize that the * * * contract is not a tying arrangement."). Instead, the anticompetitive effects of the commission sales agreements in the TBA market, especially the "destructive effects" on competitors of Firestone and Goodyear, were examined. 360 F. 2d at 484. At the same time, however, consistent with the opinion of the Supreme Court in *Atlantic Refining Co.*, the court said that "extensive (full scale) economic analysis of the competitive effect" was unnecessary. 360 F. 2d at 483 (alteration in original), *quoting* 381 U.S. at 371. Instead, it was sufficient to find that a not insubstantial portion of the TBA market was foreclosed. *Id.;* 381 U.S. at 371. The Supreme Court also said that the Commission need not consider "evidence of economic justification" for the sale commission agreements: "While these contracts may provide (Shell) with an economical method of assuring efficient product distribution among its dealers they also amount to a device that permits [TBA] suppliers * * * through the use of oil company power, to effectively sew up large markets." 381 U.S. at 371. Thus, while the court did not apply a *per se* standard, the standard it applied was similar to a *per se* standard, in that it did not include a detailed explanation of the competitive effects of the agreements. Any deviation from a *per se* standard rested on the court's insistence of evidence of Shell's possession of some "dominant power" over its dealers, its exercise of that power, and the effect of that power over a not insubstantial amount of commerce. See 360 F. 2d at 487 (summarizing evidence).

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified, or set aside if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[5] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, docket No. C-2956, Letter to John C. Hart (June 5, 1986) at 4. *See,* S. Rep. No. 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *see Phillips Petroleum Co.*, Docket No. C-1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket No. C-3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); *see also United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing" of changes that eliminate reasons for order or such that order causes unanticipated hardship).

The language of section 5(b) plainly anticipates that the burden is on the requester to make "a satisfactory showing" of changed conditions to obtain reopening of the order. *See also Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426, (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing, by means other than conclusory statements, why an order should be modified.[6] If the Commission determines that the requester has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The requester's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * (not reopening) except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC*, 656 F.2d 718; 731-22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Shell has requested that the Commission reopen and set aside the order because changed conditions of fact and of law require such action. For the reasons described below, changes of law warrant reopening and setting aside the order against Shell. Having reopened and set aside the order on the basis of changes of law, the Commission does not reach the issue of whether the changes of fact warrant reopening.

Changed Conditions of Law Warrant Reopening the Order

A change in law that is sufficient to require reopening is one that has the effect of bringing the terms of the order in conflict with existing law. See *Louisiana-Pacific Corp.*, docket C-2956, slip op. at 20 (Nov. 15, 1989); *Lenox, Inc.*, Docket 8718, 111 F.T.C. 612, 614 (1989). Shell claims that, since the order was entered, the law applicable to tying arrangements and nonprice vertical restraints has changed significantly, requiring consideration of issues that were not considered when the order was entered. Shell asserts that the decisions in *United States* v. *Fortner Enterprises, Inc.*, 429 U.S. 610 (1977) and *Jefferson Parish Hospital District No. 2* v. *Hyde*, 466 U.S. 2, 17-18 (1984), require a showing that "the Commission in 1961 did not require, that Shell had market power in the tying product—retail gasoline sales." Request at 11. Shell also asserts that the Commission did not in 1961 consider the possible justifications for the sales commission agreements, as required by the decision in *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977). Request at 10-15.

The Commission has concluded that the order in this matter should be reopened for two reasons. First, because the earlier analysis that formed the basis for the Commission's 1961 order did not rest on a determination regarding the market power of the respondents—a determination that would be an integral part of such an analysis under *Fortner* and *Hyde*—the Commission has concluded that the legal standard for liability has changed.

[5] Section 5(b) provides, in part:

[T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codifie[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[6] The legislative history of amended section 5(b), S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), states:

Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * * The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

Second, the Commission did not consider "evidence of economic justification" for the sales commission agreements. This was consistent with the opinion of the Supreme Court in *Atlantic Refining Co.*, 381 U.S. 357, 371 (1965), even though, the Court said, the agreements "may provide * * * an economical method of assuring efficient product distribution." *Id.* at 369. To the extent that this case involved nonprice vertical restraints by a supplier, inquiry into economic justifications has been required since the decision of the Supreme Court in *Continental T.V., Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977). These conclusions are consistent with the Commission's actions vacating the orders in *Atlantic* and *B.F. Goodrich.*

The Order Should be Set Aside

The question remains whether modification of the order is appropriate. An order is not automatically set aside on the ground that the law has changed, unless the petitioner also shows that there is no need for the order or continued application of the order is inequitable or harmful to competition. *See Lenox, Inc.*, Docket 8718, 111 F.T.C. 612, 614 (1989); *Bulova Watch Co., Inc.*, 102 F.T.C. 1834 (1983). *See also Louisiana Pacific Corp.*, Docket C-2956, slip. op. at 6-7 (Nov. 27, 1989).

Shell has satisfied the standard to have the order set aside. As in the companion case involving Atlantic and Goodyear, the Commission never had evidence that Shell, the oil marketing company, possessed "economic power" as that term has been understood since *Fortner*, supra.[7] Furthermore, since 1961, the influence of gas station franchisors over franchisees has been limited by enactment of the Petroleum Marketing Practices Act, 15 U.S.C. 2801 et seq., in 1978.

Shell has also shown that there is no need for the order by citing evidence that gas stations as a group currently have too small a market share to produce substantial competitive effects on TBA distribution. Gas stations nationwide sold only 3 percent of replacement batteries and 8 percent of replacement tires in 1987, compared, respectively, to 44 percent and 37 percent of such replacement sales in 1961. 58 F.T.C. at 325-26; Request at 18. Specialty stores and mass merchandisers have become more important suppliers of these products. Request at 18-19. As a result, distribution arrangements like those at issue in this case would not likely have the same adverse foreclosure and entry deterring effects on competition in the TBA market that the Commission found in 1961.

Accordingly, *It is Ordered* That this matter be reopened and that the Commission's order in Docket No. 6487 issued on March 9, 1961, be set aside as to Shell Oil Co. as of the date of this order.

By the Commission, Commissioner Yao not participating.

Donald S. Clark,

Secretary.

[FR Doc. 91-19213 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

[7] The Commission's 1961 opinion in Docket 6487 suggests that Shell's share of national gasoline sales was on the order of 5 percent. 58 F.T.C. at 407.

[Dkt. 9233]

Harold Honickman, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a major Pepsi bottler for the New York metropolitan area and his beverage corporation, for a ten year period, to seek prior Commission approval before making certain soft drink acquisitions in the New York metropolitan area; or else hold the newly acquired assets separate and apart from ongoing bottling operations. However, the addendum to the agreement allows Mr. Honickman to distribute and sell the products of Seven-Up Brooklyn to another bottler for a limited time period.

DATES: Complaint issued November 2, 1989. Order issued July 25, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Constance Salemi, FTC/S-3302, Washington, DC 20580. (202) 326-2643.

SUPPLEMENTARY INFORMATION: On Tuesday, April 30, 1991, there was published in the **Federal Register**, 56 FR 19859, a proposed consent agreement with analysis in the Matter of Harold Honickman, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 91-19212 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, the Decision and Order, and the dissenting statement of Commissioner Owen are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C-3337]

Teleline, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California corporation, that markets "900" number information services to children, from making misrepresentations regarding free gifts or the number of calls required to receive a premium; requires a clear statement, or preamble, at the beginning of each children's message giving the child a chance to hang up without charge; and requires the company to provide a means for parents to prevent, or not be charged for, unauthorized calls by their children.

DATES: Complaint and Order issued July 24, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Toby M. Levin, FTC/S-4002, Washington, DC 20580. (202) 326-3156.

SUPPLEMENTARY INFORMATION: On Wednesday, May 15, 1991, there was published in the **Federal Register**, 56 FR 22432, a proposed consent agreement with analysis In the Matter of Teleline, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-19214 Filed 8-12-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for September 1991.

The National Advisory Mental Health will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The meeting of the Advisory Committee of the Task Force on Homelessness and Severe Mental Illiness will include discussion of issues relevant to the homeless mentally ill population. This meeting will be open, however, attendance by the public will be limited to space available.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9-105, 5600 Fishers Lane, Rockville, MD 20857 (telephone 301-443-4333).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Advisory Committee of the Task Force on Homelessness and Severe Mental Illiness.

Meeting Date: September 13, 1991.

Place: Stonehenge, room 615F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Open: September 13, 9 a.m.—5 p.m.

Contact: Jane Steinberg, Ph.D., room 11C-05, Parklawn Building, telephone (301) 443-0000.

Committee Name: National Advisory Mental Health Council.

Meeting Dates: September 16-17, 1991.

Place: September 16—Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. September 17—Building 31, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: September 17, 9 a.m.—5 p.m.

Closed: Otherwise.

Contact: Carolyn Strete, Ph.D., room 9-105, Parklawn Building, telephone (301) 443-3367.

Dated; August 7, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-19169 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Program Announcement 178]

Availability of Funds for Fiscal Year 1991 Investigation of the Risk of Nosocomial Transmission of Human Immunodeficiency Virus from Infected Health Care Workers to Patients who have Undergone Invasive Procedures

Introduction

The Centers for Disease Control (CDC) announces availability of funds for cooperative agreements to evaluate the risk of transmission of human immunodeficiency virus (HIV) to patients who have undergone an invasive procedure performed by a health-care worker (HCW) who was infected with HIV when the procedure was performed; to identify possible risk factors for HCW-to-patient transmission; and to develop specific prevention control measures to reduce the risk of HCW-to-patient transmission.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection, Clinical Preventive Services, and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

AUTHORITY

These cooperative agreements are authorized under sections 301(a) (42 U.S.C. 241(a)), 311 (42 U.S.C. 243), and 317(k)(3) (42 U.S.C. 247b (k)(3)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are official state and local health agencies that are current recipients of HIV/AIDS Surveillance Cooperative Agreements.

Availability of Funds

Approximately $400,000 will be available in FY 1991 to provide funding to 10 to 30 cooperative agreements. Awards are expected to range from $15,000 to $50,000. Funding estimates may vary and are subject to change. Funding is available for a 12-month budget period within a 1 year project period. Cooperative agreement funds shall not be used for the delivery of clinical/therapeutic services. This program has no statutory formula. No specific matching funds are required.

Purpose

The purposes of this cooperative agreement is to provide support to health departments which elect to evaluate patients who have undergone invasive procedures performed by HCWs subsequently found to have been infected with HIV at the time of the procedures and to facilitate the collection of data required to analyze and evaluate the risk of transmission of HIV from an infected health-care worker to patients.

The objectives of this cooperative agreement are:

a. To evaluate the risk of transmission of HIV to patients who have undergone an invasive procedure performed by a HCW who was infected with HIV when the procedure was performed.

b. To identify possible risk factors for HCW-to-patient transmission such as: infection control practices, sterilization and disinfection techniques, HCW's stage of illness, and type(s) of procedure(s) performed.

c. To develop specific prevention and control measures to reduce the risk of HCW-to-patient transmission.

For the purposes of this document, invasive procedures are defined as (1) surgical entry into tissues, cavities, or organs or repair of major traumatic injuries in an operating or delivery room, emergency department, or outpatient setting, including both physicians' and dentists' offices; (2) cardiac catheterization and angiographic procedures; (3) a vaginal or cesarean delivery or other invasive

obstetric procedure during which bleeding may occur; or (4) the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

Program Requirements

In conducting activities to achieve the purposes of this program, the recipient shall be responsible for conducting activities under A. below and CDE will be responsible for conducting activities under B. below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Documentation of an investigation of patients exposed to an HIV-infected HCW during the performance of invasive procedures must be in progress or implemented on or before August 15, 1991.
2. Procurement of information consent as required by State and local laws and regulations regarding collection of information and activities listed below.
3. Collection of occupational and medical history data from the HIV-infected HCW through review of records and/or interview of the HCW and/or his/her health-care provider(s).
4. Collection of serum and lymphocytes from the HCW.
5. Evaluation of the HCW's work and infection control practices and, for office settings, review of sterilization/disinfection and reprocessing practices.
6. Identification and notification of patients who have undergone invasive procedures (as defined above) performed by the HIV-infected HCW.
7. Performance of HIV counseling and serologic testing of patients.
8. For persons who choose to be tested outside the health department, collection of HIV test result by questionnaire or other mechanism.
9. Delineation of the type and number of invasive procedures performed by the HIV-infected HCW.
10. Interview, followup investigation and collection of serum and lymphocytes from any HIV-infected patients.
11. Development of data management systems to assure strict confidentiality of all medical records, surveillance registries, data collection forms and computer files.
12. Collaboration with CDC in the design and implementation of the investigation to facilitate aggregation of the results of multiple investigations. In addition, data collected from such investigation must be provided to CDC, which will aggregate the results of multiple investigations and analyze and disseminate aggregate results. However, recipients may report or publish the results of their investigations individually.

B. CDC Activities

1. Provision of consultation and scientific and technical assistance to state and local health departments in the conduct of these investigations (e.g., review of sterilization/disinfection practices).
2. Coordination of the collection, analysis and dissemination of aggregate data from these investigations to provide a more precise and quantifiable measure of risk to patients (e.g., assistance with interviews of HWC's health-care provider, staff, co-workers, seropositive patients, etc.).
3. Performance of additional laboratory evaluation (e.g., HIV DNA sequencing), as appropriate, if seropositive patients are identified and specimens are available and analyzable from the infected HCW.

Evaluation Criteria

Eligible applications submitted under this annoucement will be evaluated according to the following criteria:

1. The feasibility of conducting the investigation and the quality of the data to be collected taking into consideration the following factors:
   a. The availability of serum, whole blood, or tissue samples from the HIV-infected HCW and any seropositive patients for possible laboratory studies as needed;
   b. The nature of the patient population served, i.e., whether or not it includes a high percentage of patients with known risk factors for HIV infection;
   c. The availability of patient records, logs, appointment books, billing or insurance records, personnel records, etc., to facilitate identification of patients and staff in the HCW practice;
   d. The period of time which has elapsed since the HCW last practiced, which will influence the availability of records, office staff and associates, access to the practice, and ability to locate patients.
   e. Coordination of the investigation with other institutions and agencies, as required. (30 Points)
2. The applicant's understanding of the objectives of the cooperative agreement and willingness to cooperate with CDC in the design, implementation and analysis of the investigation, including the provision of data collected to CDC. (15 Points)
3. The quality of the plans to conduct an investigation including a description of techniques for data collection, data management, counseling and testing, and maintenance of confidentiality of all data. (25 Points)
4. The applicant's legal authority and ability to conduct the investigation including data collection and patient notification and procurement of informed consent as required. (15 Points)
5. How the project will be administered, including the size, qualifications, duties and responsibilities, and time allocation of the proposed staff; the availability of the facilities to be used during the investigation; and a schedule for accomplishing the activities of the investigation, including time frames. (15 Points)
6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.118.

Application Submission and Deadline

The original and two copies of the completed application Form PHS-5161-1 must be submitted to Candice Nowicki-Lehnherr, 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, on or before August 30, 1991.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:
   a. Received on or before the deadline date or
   b. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

2. *Late Applications:* Applications which do not meet the criteria in either 1a. or 1b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Mailstop E-14, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, telephone (404) 842-6512 or FTS 236-6512.

Programmatic technical assistance may be obtained from Mary E. Chamberland, M.D., M.P.H. or Ruthanne Marcus, M.P.H. AIDS Activity, Hospital Infections Program, Mailstop A-07, Center for Infectious Diseases, Centers for Disease Control, Atlanta, GA 30333, telephone (404) 639-1547 or FTS 236-1547.

Please refer to Announcement Number 178 when requesting information and submitting any application on the Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 17-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: August 6, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-19159 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Title I—HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of grants made to eligible metropolitan areas..

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1991 funds have been awarded to 16 eligible metropolitan areas (EMs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and he statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101-381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under public Law 101-517.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $86,083,000 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to other 16 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control (CDC) as of June 30, 1990. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 16 EMAs.

EMA	Total awards
Atlanta, GA	2,123,775
Boston, MA	2,236,267
Chicago, IL	3,229,799
Dallas, TX	1,379,434
District of Columbia	3,392,784
Ft. Lauderdale, FL	1,807,299
Houston, TX	3,710,210
Hudson, Co., NJ	1,562,728
Los Angeles, CA	7,848,314
Miami, FL	3,044,301
Newark, NJ	4,111,603
New York, NY	33,457,519
Philadelphia, PA	2,323,850
San Diego, CA	1,460,205
San Francisco, CA	12,713,831
San Juan, PR	1,681,081

Eligible Grantees

Metropolitan areas which were eligible for grant awards under title I were those areas for which, as of June 30, 1990, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data for the population in the area.

Grants were awarded to the chief elected official (CEO) of the city or urban county that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: Health care providers; community-based and AIDS service organizations; social service providers; mental health care providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; grantees receiving categorical grants for early intervention services under title III of the CARE Act; and the lead agency of any HRSA adult and pediatric HIV-related care demonstration project operating in the area to be served. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under title I, the EMAs were required to submit an application containing such information as the Secretary required,

including assurances adequate to ensure:

• That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;

• That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under title I may not be used in maintaining the required level of expenditures;

• That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with the political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;

• That entities within the EMA that received title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;

• The title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and

• To the maximum extent practicable, that HIV health care and support services provided with title I assistance will be provided without regard to the ability of the individual to pay for such services, and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

General Use of Grant Funds

EMAs must use the title I HIV Emergency Relief grants to provide financial assistance to public or non-profit entities, for the purpose of delivering or enhancing—

• HIV-related outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and

• HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, form inpatient facilities.

Services supported by the title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, the homeless, and persons affected by chemical dependency.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the CEO in their locality, and may obtain information on their CEO contact by calling Ms. June Horner, Acting Director, Division of HIV Services, at (301) 443-6745.

Executive Order 12372

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: August 7, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-19238 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-15-M

Title II—HIV Care Grant Program

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of grants made to States and Territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1991 funds have been awarded to States and Territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by title II of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101-381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 101-517.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $77,474,015 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control for the 24 months ending September 30, 1990, and a per capita income factor, Below is the distribution of funds by State.

	Total allotment
Alabama	483,388
Alaska*	100,000
Arizona*	653,285
Arkansas*	276,192
California*	12,953,753
Colorado	727,458
Connecticut*	763,464
DC*	1,094,364
Delaware*	151,980
Florida*	7,397,516
Georgia*	2,366,100
Hawaii*	329,429
Idaho*	100,000
Illinois*	2,289,116
Indiana*	621,522
Iowa	110,588
Kansas*	245,985
Kentucky*	299,687
Louisiana*	1,308,109
Maine*	118,205
Maryland*	1,554,569
Massachusetts	1,454,614
Michigan	1,046,092
Minnesota*	357,781
Mississippi*	488,542
Missouri*	1,043,394
Montana	100,000
Nebraska*	100,000
Nevada*	330,545
New Hampshire*	100,000
New Jersey*	4,215,417
New Mexico	203,312
New York*	13,802,740
North Carolina*	986,337
North Dakota	100,000
Ohio*	1,117,823
Oklahoma*	393,500
Oregon*	513,063
Pennsylvania*	2,241,191
Rhode Island*	173,200
South Carolina*	688,747
South Dakota	100,000
Tennessee*	605,992
Texas	5,731,924
Utah*	199,022
Vermont*	100,000
Virginia	970,120
W. Virginia*	127,689
Washington*	1,025,356
Wisconsin	354,601
Wyoming*	100,000
Puerto Rico*	4,716,952
Guam	2,954
Virgin Islands*	38,397

The States with an asterisk received funding advances to provide drug treatments for low-income individuals with HIV disease.

These advances, totalling $17.5 million, were deducted from the States' total allotment and were made in accordance with congressional authority to prevent disruptions in drug treatment services in this transition year.

Eligibility Criteria

In order to receive funding under title II, States were required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including:

(1) A detailed description of the HIV-related services provided in the States to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services;

(2) A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the title II grant, including a description of the purposes for which the State intends to use such assistance; and

(3) An assurance by the State that:

• The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the title II grant assistance;

• The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with title II assistance will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuum of health care coverage, submit a plan to the Secretary that demonstrates that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health care coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance; and that information concerning such criteria will be made available to the public.

• The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive title II funds from the State;

• the State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under title II;

• the State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under title II; and

• the State will ensure that grant funds are not utilized to make payments for any items or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant dollars to:

• Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private, health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease. Priority funding must be given to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects, and then to any other existing HIV care consortia.

• Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.

• Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State) individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.

• Provides treatment that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the FY 1991 title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure not later than 150 days after the receipt of the grant by the State.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Ms. June Horner, Acting Director, Division of HIV Services, at (301) 443-6745.

Executive Order 12372

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: August 7, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-19239 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1991:

Name: National Advisory Council on Migrant Health.

Date and Time: September 6-9, 1991—2 p.m.

Place: Hyatt Regency Denver, 1750 Welton Street, Denver, Colorado.

The meeting is open to the public.

Purpose

The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda

The agenda will cover an overview of Council 1990 recommendations. September 7, the Council will visit Sunrise Community Health Center in Greeley and Plan de Salud Del Valle, Inc. in Ft. Lupton. A public hearing is scheduled from 1:30 p.m. to 6 p.m. at La Familia Restaurant in Ft. Lupton. The Council will solicit oral and written comments from farmworkers, clinic staff, invited guests and the public, specific to migrant/seasonal farmworker and migrant health program issues. The Council will resume meeting at the Hyatt Regency Denver on September 8, and will request from invited guests solutions specific to migrant/seasonal farmworker and migrant health program issues. The Council will also be formulating new 1991 recommendation that will be presented to the Secretary of the Department of Health and Human Services.

Anyone requiring information regarding the subject Council should contact Mr. Jack Egan, Acting Executive Secretary, National Advisory Council on Migrant Health, room 7A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-1153.

Agenda Items are subject to change as priorities dictate.

Dated: August 8, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-19241 Filed 8-12-91; 8:45 am]

BILLING CODE 4160-15-M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on September 28, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8-05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Phyllis Yates on behalf Eddie Yates, Memphis, Tennessee, Claims Court Number 90-1618 V.

2. Louise Brewster, Huntington, New York, Claims Court Number 90-1619 V.

3. Richard Bryd, Houston, Texas, Claims Court Number 90-1620 V.

4. Don and Sharon Schumacher on behalf of Donald Schumacher Jr., Leominster, Massachusetts, Claims Court Number 90-1621 V.

5. Michael Allen on behalf of Anna Allen, Landover, Maryland, Claims Court Number 90-1622 V.

6. Michon Trail, St. Paul, Minnesota, Claims Court Number 90-1623 V.

7. Helen Tucker, Raleigh, North Carolina, Claims Court Number 90-1624 V.

8. Myrtle Emery on behalf of Mark Emery, Oklahoma City, Oklahoma, Claims Court Number 90-1625 V.

9. Pravin Mehta on behalf of Marc Mehta, Bridgeport, Connecticut, Claims Court Number 90-1626 V.

10. Bruce and Mary Caro on behalf of Adam Caro, Binghamton, New York, Claims Court Number 90-1627 V.

11. Darlene Fields on behalf of Brittany Fields, Pittsburgh, Pennsylvania, Claims Court Number 90-1628 V.

12. Melissa Doe on behalf of Katie Doe, Watertown, Massachusetts, Claims Court Number 90-1629 V.

13. Rita Lord on behalf of Charles Lord, Cleveland, New York, Claims Court Number 90-1630 V.

14. Charles Melvin on behalf of Mathew Melvin, Watertown, New York, Claims Court Number 90-1631 V.

15. Danny Graham, Anderson, Indiana, Claims Court Number 90-1632 V.

16. Humberto Mojica on behalf of Jennica Mojica, La Grange, Illinois, Claims Court Number 90-1633 V.

17. John and Maureen Morrissey on behalf of Kathleen Morrissey, Evanston, Illinois, Claims Court Number 90-1634 V.

18. Ronald Tressler on behalf of Troy Tressler, Gretna, Louisiana, Claims Court Number 90-1635 V.

19. Patrick Wucherpfennig on behalf of Jennifer Wucherpfennig, Phillips Ranch, California, Claims Court Number 90-1636 V.

20. Ruth Cosette Abbott on behalf of David Bradley White, Tucson, Arizona, Claims Court Number 90-1637 V.

21. Silvester Gray on behalf of Akeem Gray, Colorado Springs, Colorado, Claims Court Number 90-1638 V.

22. Margaret Scheuer on behalf of William Morton, Fairbanks, Alaska, Claims Court Number 90-1639 V.

23. Victoria Davis on behalf of Matthew Davis, Phoenix, Arizona, Claims Court Number 90-1640 V.

24. Stephani Vitale, Tucson, Arizona, Claims Court Number 90-1641 V.

25. Verna Lewis on behalf of Lynelle Lewis, Mesa, Arizona, Claims Court Number 90-1642 V.

26. Curtis and Julia Satchell on behalf of Gretchen Satchell, Easton, Maryland, Claims Court Number 90-1643 V.

27. Barry Depew on behalf of Joshua Depew, Kingsport, Tennessee, Claims Court Number 90-1644 V.

28. Leland Ruegsegger on behalf of Jeremy Ruegsegger, Boulder, Colorado, Claims Court Number 90-1645 V.

29. Nicki West on behalf of James McKenzie, Terrell, Texas, Claims Court Number 90-1646 V.

30. Charlene Stephens on behalf of Carla Stephens, Ansonia, Connecticut, Claims Court Number 90-1647 V.

31. Nancy Screen on behalf of Brian Screen, Frostburg, Maryland, Claims Court Number 90-1648 V.

32. Pamela Craven on behalf of Brian Stuart, Omaha, Nebraska, Claims Court Number 90-1649 V.

33. Reginald Jarrett on behalf of Aza Jarrett, Chicago, Illinois, Claims Court Number 90-1650 V.

34. Mary Thompson on behalf of Amy Dunning, Borger, Texas, Claims Court Number 90-1651 V.

35. Robert Carbajal, Odessa, Texas, Claims Court Number 90-1652 V.

36. William and Helene Dykstra on behalf of Sara Dykstra, Willmar, Minnesota, Claims Court Number 90-1653 V.

37. Lorelei Schelhaas on behalf of Michele Schelhaas, Pipestone, Minnesota, Claims Court Number 90-1654 V.

38. Daniel Lara on behalf of Julia Lara, Litchfield, Minnesota, Claims Court Number 90-1655 V.

39. Juanita Gandia on behalf of Bennie Gandia, Staten Island, New York, Claims Court Number 90-1656 V.

40. Madelyn Grandjean on behalf of James Grandjean, Reno, Nevada, Claims Court Number 90-1657 V.

41. William Pigott on behalf of Kaitlin Pigott, Pittsfield, Massachusetts, Claims Court Number 90-1658 V.

42. John and Apatricia Bellacera on behalf of Brenen Bellacera, Auburn, California, Claims Court Number 90-1659 V.

43. Jerome Abbadessa on behalf of Anne Abbadessa, Brooklyn, New York, Claims Court Number 90-1660 V.

44. Roger and Patricia LaFreniere on behalf of Shelley LaFreniere, Hinesburg, Vermont, Claims Court Number 90-1661 V.

45. Brent Clarke on behalf of Steven Clarke, Great Bend, Kansas, Claims Court Number 90-1662 V.

46. Susan Capretti on behalf of Justin Capretti, Greenbelt, Maryland, Claims Court Number 90-1663 V.

47. Robin Rink on behalf of Roxann Capps, Bellflower, California, Claims Court Number 90-1664 V.

48. Judy Kane, Chicago, Illinois, Claims Court Number 90-1665 V.

49. Stephen Koules on behalf of Peter Koules, Lajolla, California, Claims Court Number 90-1666 V.

50. Dan Marsh on behalf of Gabriel Marsh, Snohomish, Washington, Claims Court Number 90-16677 V.

51. Anna Klinedinst, York, Pennsylvania, Claims Court Number 90-1669 V.

52. Dawna Sinisi, Altoona, Pennsylvania, Claims Court Number 90-1670 V.

53. Timothy Chestnut on behalf of Jason Chestnut, Charleston, South Carolina, Claims Court Number 90-1671 V.

54. Ileana Gonzalez on behalf of Kathryn Gonzalez, San Jose, California, Claims Court Number 90-1672 V.

55. Troy Cox on behalf of Rory Cox, Denver, Colorado, Claims Court Number 90-1673 V.

56. Helen and Gregory Sykes on behalf of Adalee Sykes, Warwick, Rhode Island, Claims Court Number 90-1674 V.

57. Leona Piper on behalf of Patricia Piper, Kalamath Falls, Oregon, Claims Court Number 90-1675 V.

58. Thomas Matkovich, on behalf of Tammi Matkovich, Davenport, Iowa, Claims Court Number 90-1676 V.

59. David Geopfert on behalf of Erica Goepfert, Vernal, Utah, Claims Court Number 90-1677 V.

60. Katherine Geitner on behalf of Erick Geitner, Bridgewater, New Jersey, Claims Court Number 90-1678 V.

61. Teresa Luttrell on behalf of Brandon Luttrell, Indianapolis, Indiana, Claims Court Number 90-1679 V.

62. Laura Graf, Fort Campbell, Kentucky, Claims Court Number 90-1680 V.

63. Lawrence Capra on behalf of Anthony Capra, Belle Fourche, South Dakota, Claims Court Number 90-1681 V.

64. Reginia Fields on behalf of John Fields, Kansas City, Kansas, Claims Court Number 90-1682 V.

65. Jean and Deborah Ormechea on behalf of John M. Ormechea, Clarkston, Michigan, Claims Court Number 90-1983 V.

66. James Grant on behalf of Alex Grant, White Bear Lake, Minnesota, Claims Court Number 90-1684 V.

67. John Schunk on behalf of Christopher Schunk, Chaska, Minnesota, Claims Court Number 90-1685 V.

68. Luanne Beal on behalf of Danielle Beal, Hammond, Indiana, Claims Court Number 90-1686 V.

69. William Scholl on behalf of Thomas Scholl, Tucson, Arizona, Claims Court Number 90-1687 V.

70. Leon Peters, Johnson City, Indiana, Claims Court Number 90-1688 V.

71. Judith McNerny on behalf of Christine McNerny, Cincinnati, Ohio, Claims Court Number 90-1989 V.

72. Kamell Putnam, Hacienda Heights, California, Claims Court Number 90-1690 V.

73. Barbara Shenberger on behalf of Kenneth Jackson, Randallstown, Maryland, Claims Court Number 90-1691 V.

74. Barbara Shenberger on behalf of Thomas Morris, Randallstown, Maryland, Claims Court Number 90-1692 V.

75. Barbara Shenberger on behalf of Tammy Morris, Randallstown, Maryland, Claims Court Number 90-1693 V.

76. Roy Seacor on behalf of Brittany Seacor, Mount Kisco, New York, Claims Court Number 90-1694 V.

77. Maude Dieudonne on behalf of Shirley Dieudonne, Brooklyn, New York, Claims Court Number 90-1695 V.

78. Brian Adams on behalf of Ross Adams, Hollywood, Florida, Claims Court Number 90-1696 V.

79. Cynettie Sanders on behalf of Nartisa Sanders, Warner Robins, Georgia, Claims Court Number 90-1697 & 90-1698 V.

80. Louise Miraglia on behalf of Gary Miraglia, Deceased, New York City, New York, Claims Court Number 90-1699 V.

81. Louise Miraglia on behalf of Donald Miraglia, Deceased, New York City, New York, Claims Court Number 90-1700 V.

82. Minas Karras on behalf of Ourania Karras, Jackson Heights, New York, Claims Court Number 90-1701 V.

83. Minas Karras on behalf of Anastasia Karras, Jackson Heights, New York, Claims Court Number 90-1702 V.

84. John Lurtz on behalf of Paul Lurtz, Mansfield, Ohio, Claims Court Number 90-1703 V.

85. Stamos Liossis on behalf of Dino Liossis, Prospect Heights, Illinois, Claims Court Number 90-1704 V.

86. Sharon Elaine Douglas, Nashville, Tennessee, Claims Court Number 90-1705 V.

87. David and Barbara Mowen on behalf of Jesse Mowen, Flagstaff, Arizona, Claims Court Number 90-1706 V.

88. Roy Arnold, Washington, D.C., Claims Court Number 90-1707 V.

89. Daniel and Dora Martin on behalf of Monica Martin, Reno, Nevada, Claims Court Number 90-1708 V.

90. Joyce Connone, Lorain, Ohio, Claims Court Number 90-1709 V.

91. David and Betty Housch on behalf of Jon W. Housch, Shelbyville, Indiana, Claims Court Number 90-1710 V.

92. Linda C. Jones on behalf of Shon Jones, Hammond, Indiana, Claims Court Number 90-1711 V.

93. Ralph and Carol Cox on behalf of Ralph D. Cox, Irvine, Kentucky, Claims Court Number 90-1712 V.

94. Stacey Sabol, Belle Vernon, Pennsylvania, Claims Court Number 90-1713 V.

95. Shannon Dixon, Houston, Texas, Claims Court Number 90-1714 V.

96. Maureen Sima on behalf of Wayne Sima, Denver, Colorado, Claims Court Number 90-1715 V.

97. Rose Sebetka, Rockledge, Florida, Claims Court Number 90-1716 V.

98. Deborah Betts, Summerville, South Carolina, Claims Court Number 90-1717 V.

99. Marvin and Shawna Martin on behalf of Bradley Martin, Centerville, Iowa, Claims Court Number 90-1718 V.

100. Bruce Cooper on behalf of Melissa Cooper, Morristown, New Jersey, Claims Court Number 90-1719 V.

101. Ralph Cox on behalf of Joseph Cox, Irvine, Kentucky, Claims Court Number 90-1720 V.

102. Anna Hearod on behalf of David Hearod, Irvine, Kentucky, Claims Court Number 90-1721 V.

103. Mary Therneau on behalf of Dyane Therneau, Grand Rapids, Minnesota, Claims Court Number 90-1722 V.

104. Christine Fawkes, Chicago, Illinois, Claims Court Number 90-1723 V.

105. James and Darla Ross on behalf of Ryan Ross, Brookings, South Dakota, Claims Court Number 90-1725 V.

106. Incoronato Stasi on behalf of Alugina Stasi, Glen Cove, New York, Claims Court Number 90-1726 V.

107. Paul Larson on behalf of Erik Larson, Westlake, Ohio, Claims Court Number 90-1727 V.

108. Dean McMillan on behalf of Daniel McMillan, Redondo Beach, California, Claims Court Number 90-1728 V.

109. John Kevin O'Leary, San Diego, California, Claims Court Number 90-1729 V.

110. Walter Guest on behalf of Sanford Guest, Hamilton, Ohio, Claims Court Number 90-1730 V.

111. Toy Duvall on behalf of Kelly Duvall, St. Louis, Missouri, Claims Court Number 90-1731 V.

112. Jacqueline Behr, St. Paul, Minnesota, Claims Court Number 90-1732 V.

113. Marcia Williams on behalf of Stacey Williams, Hamilton, Ohio, Claims Court Number 90-1733 V.

114. Barbara Fisher on behalf of Christian Fisher, Alexandria, Virginia, Claims Court Number 90-1734 V.

115. Ronald Cullum on behalf of Brandon Cullum, Islip, New York, Claims Court Number 90-1735 V.

116. Lynn Lockwood on behalf of Ryan Lockwood, Rochester, New York, Claims Court Number 90-1736 V.

117. Patricia Williams on behalf of David Williams, Bellflower, California, Claims Court Number 90-1737 V.

118. Karen Matney, Paducah, Texas, Claims Court Number 90-1738 V.

119. Dyana Arbuthnott on behalf of John Arbuthnott, San Bernardino, California, Claims Court Number 90-1739 V.

120. Marlene Stackpoole on behalf of Meghan Stackpoole, Detroit, Michigan, Claims Court Number 90-1740 V.

121. Alice Shelton on behalf of Joseph Shelton, Washington, D.C., Claims Court Number 90-1741 V.

122. Leonard Burke, White Plains, New York, Claims Court Number 90-1742 V.

123. Scott Barrett on behalf of Jessica Barrett, Las Vegas, Nevada, Claims Court Number 90-1743 V.

124. Melissa Hughes, Alexandria, Virginia, Claims Court Number 90-1744 V.

125. Winnie Stevens, Fort Worth, Texas, Claims Court Number 90-1745 V.

126. Kevin Vire on behalf of Cassundra Vire, Deceased, Tulsa, Oklahoma, Claims Court Number 90-1746 V.

127. Alice Murnane, New York City, New York, Claims Court Number 90-1747 V.

128. Melville Morris on behalf of Marc Morris, Nuremberg, Germany, Claims Court Number 90-1748 V.

129. Evelyn Murphy on behalf of Richard Murphy, Paterson, New Jersey, Claims Court Number 90-1749 V.

130. Patricia Turner on behalf of Bryant Hodge, Ocilla, Georgia, Claims Court Number 90-1750 V.

131. Kaidi Depelchin, Redwood City, California, Claims Court Number 90-1751 V.

132. Virgil and Gerry Brock on behalf of Cynthia Brock, Delphos, Ohio, Claims Court Number 90-1752 V.

133. James B. Bailey, Kingston, New York, Claims Court Number 90-1753 V.

134. Stephen and Anne Eng on behalf of Elizabeth Eng, Nashville, Tennessee, Claims Court Number 90-1754 V.

135. Constance Petreikis, Chicago, Illinois, Claims Court Number 90-1755 V.

136. Joanne Hatem, Manhasset, New York, Claims Court Number 90-1756 V.

137. John and Diane Bazley on behalf of Jesse Bazley, Phoenix, Arizona, Claims Court Number 90-1757 V.

138. Alesia Allen on behalf of Cortez Strong, St. Louis, Missouri, Claims Court Number 90-1758 V.

139. William Arrington on behalf of James Arrington, Midland, Texas, Claims Court Number 90-1759 V.

140. Arun Agarwal on behalf of Anju Agarwal, Ruston, Louisiana, Claims Court Number 90-1760 V.

141. Leonard Burke, White Plains, New York, Claims Court Number 90-1761 V.

142. Donald Rowlett on behalf of Delores Rowlett, Henderson, Tennessee, Claims Court Number 90-1764 V.

143. Bennie Pittman on behalf of Jesse Pittman, Muskogee, Oklahoma, Claims Court Number 90-1765 V.

144. Elizabeth and Robert Rollick on behalf of Richard Rollick, Suffolk County, New York, Claims Court Number 90-1766 V.

145. Marni Salit on behalf of Alex Salit, Mill Valley, California, Claims Court Number 90-1767 V.

146. Lige Tatone on behalf of Timothy Tatone, San Juan, Puerto Rico, Claims Court Number 90-1768 V.

147. Judy Brown on behalf of Leslie Brown, Zachary, Louisiana, Claims Court Number 90-1769 V.

148. Barbara Falotico on behalf of Stephen Falotico, New Brunswick, New Jersey, Claims Court Number 90-1770 V.

149. Mary Taylor on behalf of Russell Taylor, Houston, Texas, Claims Court Number 90-1771 V.

150. Jeffrey Collen on behalf of Gregory Collen, Naperville, Illinois, Claims Court Number 90-1772 V.

151. Jack and Terry Riley on behalf of Melissa Riley, Bellaire, Ohio, Claims Court Number 90-1773 V.

152. Dona Card, Ashtabula, Ohio, Claims Court Number 90-1774 V.

153. Robert and Elizabeth Rollick on behalf of Elizabeth Rollick, Suffolk County, New York, Claims Court Number 90-1775 V.

154. Patricia and Melvin Shute on behalf of Claudia Shute, Gibbstown, New Jersey, Claims Court Number 90-1776 V.

155. Jeanne Forcillo on behalf of Danielle Forcillo, Bakersfield, California, Claims Court Number 90-1777 V.

156. Barry and Elizabeth Satanek on behalf of Sabrina Satanek, Uniontown, Pennsylvania, Claims Court Number 90-1778 V.

157. Rebecca Pekarovic, Warren, Ohio, Claims Court Number 90-1779 V.

158. Estellar H. Young on behalf of Courtney L. Young, Deceased, Chicago, Illinois, Claims Court Number 90-1780 V.

159. Melissa Spratling, Houston, Texas, Claims Court Number 90-1781 V.

160. Tiffany Reynolds, Little Rock, Arkansas, Claims Court Number 90-1782 V.

161. Lee and Eula Kroll on behalf of Michael Lacy, Tecumseh, Nebraska, Claims Court Number 90-1783 V.

162. Charles and Shirley Fair on behalf of Kathy Fair, Johnson City, Tennessee, Claims Court Number 90-1784 V.

163. Donna Bergsten on behalf of Joshua Benson, Apple Valley, Minnesota, Claims Court Number 90-1785 V.

164. Elaine Murray on behalf of Thomas Murray, Deceased, Cresco, Iowa, Claims Court Number 90-1786 V.

165. Murvil Crawford on behalf of Catherine Crawford, Mansfield, Ohio, Claims Court Number 90-1787 V.

166. Lisa Graham on behalf of Zachary Graham, Delaware, Ohio, Claims Court Number 90-1788 V.

167. Katherine Korst, Anoka, Minnesota, Claims Court Number 90-1789 V.

168. Bruce Thomas on behalf of Sarah Thomas, Helena, Montana, Claims Court Number 90-1790 V.

169. Ronald Heaston on behalf of Maria Heaston, Reno, Nevada, Claims Court Number 90-1791 V.

170. Silvano Flores on behalf of Davis Flores, Pasadena, Texas, Claims Court Number 90-1792 V.

171. Jonathan Guerin on behalf of Jordan Guerin, Charlotte, North Carolina, Claims Court Number 90-1793 V.

172. Martin Doran on behalf of Andrew Doran, Deceased, Bad Cannstatt, Germany, Claims Court Number 90-1794 V.

173. Cindy Harris on behalf of Capri Harris, Atlanta, Georgia, Claims Court Number 90-1795 V.

174. Walter Kurgan on behalf of Michele Kurgan, Syracuse, New York, Claims Court Number 90-1796 V.

175. David Trevino on behalf of Catherine Trevino, Robstown, Texas, Claims Court Number 90-1797 V.

176. George Chavez on behalf of Cassandra Chavez, Sherman Oaks, California, Claims Court Number 90-1798 V.

177. Susan and Rodney Downs on behalf of Elizabeth Downs, Dearborn, Michigan, Claims Court Number 90-1799 V.

178. Karen Barron on behalf of Matthew Barron, Akron, Ohio, Claims Court Number 90-1801 V.

179. Karla Kirklano on behalf of Bjorn Kirklano, Claremont, New Hampshire, Claims Court Number 90-1802 V.

180. Sandy Gibson on behalf of James Schoning, Deceased, Denver, Colorado, Claims Court Number 90-1803 V.

181. Paula Massonova on behalf of Tony Massonova, Kingston, Pennsylvania, Claims Court Number 90-1804 V.

182. Bradley Weaver, Morrison, Illinois, Claims Court Number 90-1805 V.

183. Eddia Bricker on behalf of Aaron Bricker, Fresno, California, Claims Court Number 90-1806 V.

184. Richard Lange on behalf of Janean Lange, St Louis, Missouri, Claims Court Number 90-1808 V.

185. Mitchell Steen, Hudson, Wisconsin, Claims Court Number 90-1809 V.

186. Douglas Snyder on behalf of Derek Snyder, Cincinnati, Ohio, Claims Court Number 90-1810 V.

187. Marcia Buchner on behalf of Marine Knowlton, Wileyville, West Virginia, Claims Court Number 90-1811 V.

188. Gilbert Roblez on behalf of Derika Roblez, Denver City, Texas, Claims Court Number 90-1812 V.

189. Gene Holloway and Peggy Swihart on behalf of Marc Holloway, Marion, Indiana, Claims Court Number 90-1813 V.

190. Barbara Shimek on behalf of Laurie Shimek, Brooklyn, New York, Claims Court Number 90-1814 V.

191. Gregory Moore on behalf of Kristi Morre, New Richmond, Wisconsin, Claims Court Number 90-1815 V.

192. Barbara Wehrman on behalf of Melissa Wehrman, Munster, Indiana, Claims Court Number 90-1816 V.

193. George McCutchen on behalf of Timothy McCutchen, Denver, Colorado, Claims Court Number 90-1817 V.

194. Patricia Velat on behalf of Richard Velat, Pikeville, Kentucky, Claims Court Number 90-1818 V.

195. Paul DeLange Jr. on behalf of Paul DeLange III, Norfolk, Virginia, Claims Court Number 90-1819 V.

196. Kathy Jones on behalf of Leah Jones, Barrington, Illinois, Claims Court Number 90-1821 V.

197. Justin Guckin, New Haven, Connecticut, Claims Court Number 90-1822 V.

Dated: August 7, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-19240 Field 8-12-91; 8:45 am]

BILLING CODE 4160-15-m

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-01-4212-13; CACA 28304]

California Desert District, Realty Action, Exchange of Public and Private Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CACA 28304, Exchange of Public and Private Lands.

SUMMARY: The following described public lands in San Bernardino County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 5 N., R. 3 W.
Sec. 6,
lots 13 and 14;
T. 6 N., R. 3 W.
Sec. 31,
W½NE¼NW¼SE¼,
E½NW¼NW¼SE¼,
NE¼SW¼NW¼SE¼,
SE¼SW¼NW¼SE¼,
NW¼SE¼NW¼SE¼,
SW¼SE¼NW¼SE¼,
W½NE¼SW¼SE¼,
NE¼NW¼SW¼SE¼,
S½NW¼SW¼SE¼,
E½SW¼SW¼SE¼,
and W½SE¼SW¼SE¼;
T. 6 N., R. 4 W.
Sec. 20,
lots 5, 6, 7 and 8; and SE¼SW¼;
Sec. 21,
lots 10 and 11;
Sec. 28,
N½NW¼, and SW¼NW¼;
T. 8 N., R. 4 W.
Sec. 19,
W½NE¼, and lot 1 of NW¼;
The selected public lands aggregate 609.49 acres.

In exchange for all or a portion of these lands, John R. Cooley has offered the following non-Federal lands in San Bernardino County:

Mount Diablo Meridian, California

T. 31 S., R. 45 E.
Sec. 31,
lots 1, 2, 3 and 4, E½W½, and E½;

San Bernardino Meridian, California

T. 11 N., R. 7 E.
Sec. 2,
E½SE¼;
Sec. 11.
N½NE¼;
T. 12 N., R. 8 E.
Sec. 26,
SW¼SW¼;
Sec. 27,
SE¼SE¼;
Sec. 34,
NE¼NE¼;
Sec. 35,
NW¼NW¼;
The offered non-Federal lands aggregate 986.64 acres.

The purpose of this exchange is to acquire non-Federal lands within the Black Mountain Cultural Area and Area of Critical Environmental Concern, the Western Mojave Land Tenure Adjustment Project Area Consolidation Zone, the Rasor Off-Highway Vehicle Area, and the East Mojave National Scenic Area. Acquisition of the offered parcels is specified in adopted and draft specific plans for these areas as prescribed in the California Desert Conservation Area Plan, as amended.

Disposal of the isolated and fragmented selected land parcels is consistent with the land tenure adjustment objectives of the California Desert Conservation Area Plan, as amended. The exchange would benefit the general public and the private sector. The public interest would be well served by completing the exchange.

The public lands to be conveyed will be subject to the following terms and conditions:

A. Reservations to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. The right to itself, its permittees or licensees to enter upon, occupy and use any part or all of lot 7 and the SE¼SW¼, Section 20 and the SW¼NW¼, section 28, T. 6 N., R. 4 W., SBM lying within 20 feet of the centerline of transmission line right-of-way of the Southern California Edison Company, Serial No. CALA 023184, for the purposes described in Power Site Classification 241 (November 11, 1929), and set forth in and subject to the limitations of section 24 of the Federal Power Act of June 10, 1920, as amended (43 U.S.C. 818).

3. There will be no mineral reservation to the United States. All minerals will be conveyed in the exchange patent(s). The mineral estate to be conveyed has no known value.

B. Third Party Rights

The public lands would be patented subject to: 1. A right-of-way not to exceed 33 feet in width to be located along the north, south, east and west boundaries of said land for roadway and public utility purposes, as to each selected public land parcel patented within section 6, T. 5 N., R. 3 W., SBM and section 31, T. 6 N., R. 3 W., SBM. 2. Those rights for construction, operation and maintenance of the 33kV Victor-Oro Grande electric distribution line granted to the Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CALA 023184, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961), as to portions of lot 7 and the SE¼,SW¼, section 20 and the SW¼, NW¼, section 28, T. 6 N., R. 4 W., SBM.

3. Those rights for construction, operation and maintenance of the 500 kV DC Intermountain Power Project electric transmission line granted to the Intermountain Power Agency, its successors or assigns, by right-of-way Serial No. CACA 8294, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761), as to portions of lots 7 and 8, section 20 and lots 9, 10 and 11, section 21, T. 6 N., R. 4 W., SBM.

4. Those rights for construction, operation and maintenance of an access roadway, underground water pipeline and electric line granted to John R. Cooley by right-of-way Serial No. CACA 13783 as to portions of lots 13 and 14, section 6, T. 5 N., R. 3 W., SBM and the E½SW¼SW¼SE¼, section 31, T. 6 N., R. 3 W., SBM would merge with the title when the exchange patent issues.

The offered title to be acquired by the United States is fee simple, surface and all minerals.

On June 6, 1991 all of the selected public lands described above within sections 20, 21 and 28, T. 6 N., R. 4 W., SBM and section 19, T. 8 N., R. 4 W., SBM were segregated from appropriation under the public land laws and the mining laws, but not the mineral leasing laws, by publication of the exchange base segregation notice for the Western Mojave Land Tenure Adjustment Project (56 FR 109, pp. 26137–26139). The period of segregation is for a two year period ending June 5, 1993.

As provided in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** shall segregate, subject to existing valid rights, the selected public lands described above within section 6, T. 5 N., R. 3. W., SBM and section 31, T. 6 N., R. 3 W., SBM from all other forms of appropriation under the public land laws including the mining laws but not the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document(s), upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

The exchange will be on an equal value basis. The exchange will be equalized by acreage adjustment, by cash payment by John R. Cooley in an amount not to exceed 25 percent of the fair market value of the selected public lands to be patented, or by waiver of excess value owed by the United States.

Additional information about this exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619) 256–3591, and the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507–0714.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert

District at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 6, 1991.

James L. Williams,

Acting District Manager.

[FR Doc. 91-19160 Filed 8-12-91; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 31, 1991. 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 August 28, 1991.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Bartow County

First Presbyterian Church, 183 W. Main St., Cartersville, 91001157

Morgan County

O'Flaherty, John, House, 1000 Oconee Rd., Buckhead, 91001155

Pulaski County

Merritt—Ragan House, 316 Merritt St., Hawkinsville, 91001156

Thomas County

Beutell, Joe M., House, 101 Montrose Dr., Thomasville, 91001158

INDIANA

Brown County

Grandview Church, Grandview Ridge Rd. SE of New Bellsville, Van Buren Township, New Bellsville vicinity, 91001160

Daviess County

Carnahan, Magnus, J., House, 511 E. Main St., Washington, 91001167

Elkhart County

Bristol—Washington Township School, 304 W. Vistula St., Bristol, 91001164

Jackson County

Wheeler, Frank, Hotel, Jct. of Second and Main Sts., Freetown, 91001161

Madison County

Paramount Theater Building, 1124 Meridian St., Anderson, 91001165

Marion County

Colden Hill Historic District, Roughly bounded by 36th St., 337th St., Governors Rd., the rear lot lines behind Golden Hill Dr., and Central Canal, Indianapolis, 91001163

St. Joseph County

Lakeville High School, 601 N. Michigan St., Lakeville, 91001166

Scott County

Scottsburg Depot, 43 S. Railroad St., Scottsburg, 91001162

KANSAS

Lincoln County

Danske Evangelist Lutheran Kirke, Between Trail and Timber Creeks due E of Denmark, Grant Township, Denmark vicinity, 91001154

LOUISIANA

St. Mary Parish

Southwest Reef Lighthouse, Jct. of Bellevue Front and Canton Sts., Berwick, 91001152

TEXAS

Rusk County

Hudnall—Pirtle Site, Address Restricted, Easton vicinity, 91001159

Taylor County

Parramore Historic District, Bounded by Orange, N. 8th, alley between Grape and Mulberry, and N. 7th Sts., Abilene, 91001153.

[FR Doc. 91-19140 Filed 8-12-91; 8:45 am]

BILLING CODE 4310-70-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Draft Report on Proposed Standard Electronic Citation System

AGENCY: Judicial Conference of the United States.

ACTION: Request for comments and notice of hearing.

SUMMARY: The Library Program Subcommittee of the Judicial Conference Committee on Automation and Technology developed a draft report on proposals and recommendations for a standard electronic citation system for the electronic dissemination of federal court opinions. Interested parties are requested to submit written comments to the Article III Judges Division.

The Library Program Subcommittee plans to hold a hearing on the proposal in Washington, DC, on September 12 and 13, 1991. Those interested in appearing before the Subcommittee in person, should submit a written request to the Article III Judges Division stating the name, address, and telephone number of the witness and the particular topic(s) to be addressed. The Subcommittee will select representative witnesses to testify.

A final report will be prepared in November for presentation to the Committee on Automation and Technology when it meets in January 1992.

DATES: Written comments on the report should be received on or before August 26, 1991. Written requests to appear at the hearing should be received no later than September 3, 1991. The hearing will be held in the Ceremonial Courtroom (#20), U.S. Courthouse, 3rd & Constitution Avenue NW., Washington, DC, at 9 a.m. on September 12, 1991.

ADDRESSES: Comments and requests to appear should be mailed to the Article III Judges Division, Administrative Office of the U.S. Courts, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joan Countryman, Article III Judges Division, Administrative Office of the U.S. Courts, Washington, DC 20544, telephone: FTS/202 633-6350.

SUPPLEMENTARY INFORMATION:

I. Background

This is a report of the Library Program Subcommittee of the Judicial Conference Committee on Automation & Technology. The Judicial Conference is the policy-making body of the federal courts.[1] The Conference operates through a network of committees created to address and advise on a wide variety of subjects such as automation, personnel, probation and sentencing, procurement, space, security, and judicial salaries and benefits. The Judicial Conference and its committees are staffed by the Administrative Office of the United States Courts (the AO), which assisted in the preparation of this report.

At its March 1990 session, the Judicial Conference agreed to encourage courts to allow the use of parallel electronic citations to federal court opinions. In February of 1991 a proposal on electronic citations was circulated to circuit court librarians, appellate court clerks, and some computer assisted legal research (CALR) publishers. In June 1991, the Automation & Technology Committee referred this matter to its Library Program Subcommittee and requested that the Subcommittee

[1] The Chief Justice of the United States is the presiding officer. Membership is comprised of the Chief Judge of each judicial circuit, the Chief Judge of the Court of International Trade, and a district judge from each regional judicial circuit who is elected for a term of three years by the circuit and district judges of the circuit represented.

develop a proposed electronic citation format and solicit comment on it from the courts, CALR publishers, other publishers, and representatives of the Blue Book and Maroon Book.

The Subcommittee developed the proposals and recommendations contained herein and authorized distribution of this document for comment. The Subcommittee will review the comments received and will present its conclusions and recommendations to the full Committee at its January 1992 meeting.

II. Introduction

The purpose of a parallel electronic citation is to allow persons doing legal research electronically to locate easily the opinion being cited. The electronic citation is not meant to replace the citation to the printed opinion.

The issue of parallel electronic citations arose as the AO was developing a system to disseminate appellate court opinions electronically. The system, known as EDOS (Electronic Dissemination of Opinions System), uses an electronic bulletin board to provide public access to court opinions. Users of the system would include print and electronic publishers, the media, government and private attorneys, and anyone interested in a particular court opinion. The issues related to electronic citations are closely tied to EDOS issues, and consequently the approach to implementing EDOS is also discussed in this report.

EDOS was originally envisioned as a central dissemination system. Electronic versions of opinions were to be uploaded to a central system, and publishers would receive high speed transmissions of opinions from the central system. Initially, however, individual courts of appeals began using electronic bulletin boards. The AO developed software called the Appeals Court Electronic Service (ACES), which is currently installed in the Fourth and Ninth circuits. An alternative electronic bulletin board program called Court Information Transmitted Electronically (CITE) is installed in the Sixth Circuit. Based on this experience, it was decided that a decentralized approach to electronic dissemination was more appropriate than a centralized system. EDOS is the umbrella name for an electronic bulletin board used to disseminate opinions.

The full text of opinions is available on EDOS for a limited period of time, and anyone with a computer and modem can obtain an electronic copy of the opinion. A cross reference by case number and case name is available in the EDOS systems currently implemented in the circuits but full text searching is not. Implementation of EDOS in all the courts of appeals should be completed by October 1, 1991. [2]

A standard form of citation to electronically obtained opinions is being proposed to facilitate their use in research and writing. Although EDOS software is available and a standardized approach to naming the electronic versions of the opinions has been proposed, implementation procedures at the courts of appeals are still being developed. Expansion to district and bankruptcy courts is being considered.

III. Current Forms for Citing Electronic Opinions

There are two primary CALR publishers—Mead Data Central (publisher of the LEXIS legal research data base) and West Publishing Company (publisher of the WESTLAW legal research data base). Each company assigns a unique document number to each opinion on its data base, but the number assigned to any particular opinion on WESTLAW is different from the number on LEXIS. The LEXIS and WESTLAW numbers are sequential numbers that have no intrinsic meaning.[3]

Guidance to citing electronic opinions is given in the Harvard Blue Book and the University of Chicago Maroon Book. The Harvard Blue Book states: "If an unreported case is available on a computerized legal research service, indicate that fact parenthetically: *Ostegaard* v. *DeMarco*, No. 91–127 (D. Wyo. Aug. 7, 1992) (LEXIS, Genfed library, Dist. file)." [4]

The University of Chicago Maroon Book identifies both LEXIS and WESTLAW formats as acceptable electronic citations: "For computer research service citations, follow the form used by the service. For example,

Gioda v. *Saipan Stevedoring Company, Inc.*, 1988 US App LEXIS 11248, *16 (9th Cir).

Gioda v. *Saipan Stevedoring Company, Inc.*, 1988 WL 8494, 13 (9th Cir)." [5]

Each LEXIS cite indicates the year of the decision, the jurisdiction or forum of the decision, and a LEXIS document number. Each WESTLAW cite indicates the year of the decision, the document number, and the jurisdiction. When the print citation becomes available, this citation is suppressed but still available for retrieval.

Thus, three citation formats are currently used for citing to electronically available documents: (1) Identification by case number, jurisdiction, and date, plus electronic data base publisher and file; (2) year, jurisdiction, and WESTLAW document number; and (3) year, jurisdiction, and LEXIS document number. Such citations are used principally for identifying unreported decisions, because under current practices the citation to a printed opinion is the only citation to be used after an opinion is published.

All three electronic citation formats identify the court issuing the opinion and the year the opinion was issued. These are important because they help identify the extent to which the cited opinion has precedential value. Beyond that, the variations in format from the Blue Book to the Maroon Book reflect various approaches to locating the precise document being referenced.

The Harvard Blue Book format requires both case number and precise date to pinpoint the decision being cited, because several different opinions can be related to the same case number. Both CALR publishers have settled upon a unique document number as the best way to identify an opinion.

The University of Chicago's Maroon Book approach uses the CALR publisher document numbers; however, each major publisher uses a different number for the same opinion. Citing to both LEXIS and WESTLAW document numbers is cumbersome and leaves open the possibility that citations to additional publishers, unique numbers may be necessary if new publishers enter the CALR field.

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[2] The Supreme Court of the United States currently disseminates opinions to a limited number of organizations via HERMES, a separate computer system not part of EDOS. The organizations with access to HERMES then are responsible for broad distribution to the public.

[3] Beginning at 1 with each new year, Mead assigns a unique sequential number to each opinion as it is added to a particular library. The primary LEXIS federal libraries are US, USAPP, DIST, and CLCT. Thus, LEXIS electronic citations are:

1990 US LEXIS 1
1990 USAPP LEXIS 1
1990 DIST LEXIS 1
1990 CLCT LEXIS 1

West also assigns a sequential number to all opinions loaded on WESTLAW, beginning at 1 again with each new year. However, West does not need a combination of the file name and sequence number to identify uniquely a particular opinion. West just assigns a sequential number regardless of whether the opinion is U.S. Supreme Court, U.S. appellate court, U.S. district court, or a state court. A West customer service representative said the West electronic citation numbers go up into the hundreds of thousands each year.

[4] *A Uniform System of Citation*, 14th Edition, Harvard Law Review Association, 1986, Sec. 10.7.2, p. 51.

[5] *The University of Chicago Manual of Legal Citation*, The Lawyers Co-operative Publishing Co., Bancroft-Whitney Co., and Mead Data Central, Inc., 1989, Rule 4.2 (b), p.17.

If a unique identifier is assigned by a court to each opinion which is made available on the electronic bulletin board, that identifier could be used to cite to the electronic record without reference to a CALR publisher.

IV. Proposed Recommendations

The Library Program Subcommittee met on June 14, 1991 and agreed upon the following proposals for consideration in developing and implementing parallel electronic citations:

A. Standard electronic citations should be permanent, parallel and not interim citations.

B. EDOS and standard electronic citations should be designed broadly enough so they can be used for district and bankruptcy courts, and even for state and other courts if they wish to follow the same approach. An assessment of expanding electronic citation to district and bankruptcy courts should be made after full implementation and subsequent evaluation of EDOS in the courts of appeals.

C. Electronic citations should use the letters ECS (for "electronic citation system") to identify electronic document numbers.

D. The standard electronic citation should be based on the EDOS file name, because an electronic citation based on case number, court, and date is not guaranteed to be unique.

E. The following proposed EDOS file naming structure should be considered for implementation. The recommended format is YYTSSSSP.XXX, where YY = Year of Opinion, T = Type of Court, SSSS = Sequence Number, P = Published and Amended Indicator, and XXX = Court Identifier. Arabic numbers for the sequence number portion of the name should be used until the number of opinions exceeds 9,999, at which time the first digit of the sequence number should become an alphanumeric code.

F. The actual format of the standard electronic citation should be the same as the EDOS file name. If the opinion is printed in the official reporter, the electronic citation should be used with the official print citation, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05, 369 F.2d 976 (5th Cir. 1990). If the opinion is not available in the official reporter, the electronic citation should be used with the case name, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05. If there are amendments to the opinion, the electronic citation should be shown with all amending file names included, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05 as amended by 90A0322A.05, 90A0322B.05, 369 F.2d 976 (5th Cir. 1990).

G. Fixed page breaks and numbers within the electronic document should be used as pinpoint citations in electronic citations. Fixed page breaks and numbers should be inserted when an opinion is completed and ready to be filed.

H. Standard electronic citations should be linked to EDOS and implemented in conjunction with the electronic dissemination of opinions by the federal courts. This means that implementation of electronic citations for appellate court opinions would begin immediately upon approval by the Judicial Conference. In other courts, implementation of electronic citations would depend upon the availability of their opinions on EDOS.

I. All opinions plus any amending orders should be posted on EDOS. Thus, EDOS would contain all court opinions, and any amendments to them, rather than just published opinions.

J. An opinion should remain posted on EDOS for at least one month. Beyond that, the length of time opinions remain on EDOS should be determined by each court. Notice of the court's policy for length of time an opinion remains on EDOS should be provided when the user signs on to that court's EDOS bulletin board. Each month an archival copy of the EDOS data base should be made before any opinions are purged from the data base. The monthly archives of electronic opinions should be retained by the court for two to three years.

K. Documents should be offered in the court's word processing format and any other formats a court chooses to provide. The format(s) offered by a court should be listed in the introductory information presented on the electronic bulletin board.

Background and analysis supporting the recommendations for implementing standard parallel electronic citations are presented on the following pages of this report.

V. Discussion and Analysis

A. Parallel Citations

Standard electronic citations should be permanent, parallel and not interim citations.

Currently the two primary CALR publishers are Mead Data Central and West Publishing Company. However, it is likely that more publishers will enter the legal electronic publishing market in years to come as the cost barriers to market entry drop. Other publishers probably will assign their own unique opinion identifier numbers if a standard electronic citation is not established.

An interim citation would be used until a print citation became available. A parallel electronic citation would be used concurrently with a print citation and would remain as a permanent part of the opinion.

Some courts and law offices are reducing their print collections and partially replacing them with subscriptions to online legal research data bases and/or compact disk (optical disk) publications. While it is important that citation to printed reports of court decisions continue, so that persons who only have access to printed reporters can find copies of referenced decisions, it is also important for the judiciary to establish a uniform reference to electronic versions of court decisions before additional versions of electronic citations are begun. A standard parallel electronic citation would allow the increasing number of persons who use electronic searching to identify and locate the electronic version of an opinion readily without regard for which company publishes the opinion or provides the electronic data base of opinions.

B. Expansion to Other Courts

EDOS and standard electronic citations should be designed broadly enough so they can be used for district and bankruptcy courts, and even for state and other courts if they wish to follow the same approach. An assessment of expanding electronic citation to district and bankruptcy courts should be made after full implementation and subsequent evaluation of EDOS in the courts of appeals.

In establishing a standard electronic citation and encouraging parallel use of the citation with the print citation, the federal judiciary should devise a standard citation that is as broad as possible. It should be appropriate for not only the federal appellate courts but also the district and bankruptcy courts.

EDOS was originally conceived as a means of disseminating appellate opinions. It is currently being implemented in the courts of appeals. In most courts of appeals, opinions are funneled to a central person, known as an "opinions clerk," who releases the court's opinions for publication. Actual publication is done under contract in most circuits. After the judge completes an opinion, it is sent to the printer. In some circuits, the printer proofs the opinion and provides cite checking services. The opinion is printed within a relatively short period (two days to two weeks), and after the judge approves the slip opinion for release, the printer

produces sufficient copies to mail to the clerk, the judges in the circuit, and a list of subscribers. In some circuits the subscriber list varies depending on whether the opinion is "published" or not. Two circuits already use electronic communications to send opinions to the printer.

In most district and bankruptcy courts, the judge determines that an opinion should be published and sends the opinion directly to the publishers in pre-addressed envelopes provided by the publishers. A copy of each opinion is sent to the clerk's office and filed in the case file, but in most district and bankruptcy clerks offices, no one person is responsible for dissemination of opinions to publishers.

If EDOS is expanded to the district and bankruptcy courts, it will be necessary to change current procedures to involve the clerk's office. The clerk's office would be responsible for inserting the date filed, assigning the sequence number and creating the related EDOS file name, inserting the EDOS file name and/or electronic citation at the beginning of the document, checking to see that pages are properly defined and numbered, converting the document to any additional ASCII or word processing formats necessary, updating the cross reference list with the case name and new opinion file name, and uploading [6] the renamed file to the EDOS bulletin board.

Most district and bankruptcy courts have fewer than 25 published opinions per month, according to a survey conducted in May of 1991. The survey indicated that the average number of unreleased opinions is 70 per month in district courts and 10 per month in bankruptcy courts. It is likely that opinions from district and bankruptcy courts can be uploaded to the appellate court's EDOS system.

While the Judicial Conference has no policy-making role for the United States Tax Court, United States Court of Veterans Appeals, United States Court of Military Appeals, or state courts, if a broad perspective is used when the standard federal electronic citation format is designed, it would be easy for other courts to adopt a similar format. Such standardization probably would be appreciated by members of the bar.

As many as 26 appellate state courts now distribute opinions electronically to West and/or Mead, Colorado, New York, and California are publishing their state court opinions on compact disk, and in the near future, Virginia and Utah plan to publish state opinions on compact disk. The New Mexico bar has posted state appellate court opinions since 1987 on LegalNet, which is part of a larger statewide fiber optic network containing a variety of state information that can be accessed and searched for $.60 per minute. State and bankruptcy docketing data is also available on LegalNet. Federal courts are given free access to the New Mexico system in return for supplying electronic versions of their opinions, which date back to 1989.

C. Electronic Citation System Name

Electronic citations should use the letters ECS (for "electronic citation system") to identify electronic document numbers.

Some responses to the February 1991 proposal suggested that the citation name should identify the opinion source as a federal court. The electronic citation system has been designed very broadly, however, so that it can be adopted by state as well as federal courts. Therefore, ECS is recommended to facilitate use by state and other courts.

D. Electronic Citation Based on EDOS File Name

The standard electronic citation should be based on the EDOS file name, because an electronic citation based on case number, court, and date is not guaranteed to be unique.

Some who commented on the February 1991 proposal to base the electronic citation on the EDOS file name saw no need to create a new numbering system. They suggested continuing to use the case number, as provided in the Blue Book. However, multiple opinions can be issued for one case number. For a case number to identify an opinion uniquely, it must include the date the opinion was issued, the court, and in bankruptcy courts, an adversarial number. Examples of citations using case number for appellate, district, and bankruptcy courts are shown below:

Court of appeals citation example: No. 89-16372 (3d Cir. Feb. 28, 1991)

District court example: No. CV-89-2078-EFL (E.D. Pa. Feb. 28, 1991)

Bankruptcy court example: No. 89-00396, Adv. No. 89-0084 (Bankr. E.D. Pa. Feb. 28, 1991)

If the electronic citation is based on case number and date of issue, those items are already available on the first page of the opinion. Currently, a docket clerk updates the word processing document with the date of filing. If an electronic citation is based on the EDOS file name, the clerk who assigns the file name for EDOS would also be required to add that citation to the first page of the opinion.

There is an argument that long case numbers will lead to more typographical errors. While it is unlikely that a court would issue two opinions for the same case number on the same date, since it is within the realm of possibility, case number and date are not unique identifiers. From time to time bankruptcy courts issue two opinions for the same case on the same day. An opinion citation requires a unique identifier. Mead and West do not include the case number in the file name when assigning electronic citation numbers to opinions on LEXIS and WESTLAW.

E. Structure of EDOS File Name

The following proposed EDOS file naming structure should be considered for implementation. The recommended format is YYTSSSSP.XXX, where YY=Year of Opinion, T=Type of Court, SSSS=Sequence Number, P=Published and Amended Indicator, and XXX=Court Identifier. Arabic numbers for the sequence number portion of the name should be used until the number of opinions exceeds 9,999, at which time the first digit of the sequence number should become an alphanumeric code.

It is recommended that a unique file name be assigned to each opinion issued by a court and posted on the EDOS bulletin board. The name contains "codes" for the year issued, the type of court issuing the opinion (S=supreme, A=appellate, P=bankruptcy appellate panel, B=bankruptcy, C=Claims Court, I=Court of International Trade, and D=district),[7] a four-digit sequence number, a published and amended indicator, and an abbreviation identifying the issuing court. The format is YYTSSSSP.XXX, where YY=Year, T=Type of Court, SSSS=Sequence Number, P=Published and Amended Indicator, and XXX=Court Identifier. For example, 90A0322P.05 would be assigned to a published opinion issued in 1990 by an appellate court. The file name shows that this is the 322nd opinion filed by the court in 1990. The "P" following 322 means it is a published opinion; a "U" would indicate an unpublished opinion. A code of "A" through "N" indicates the level of amendment to a published opinion; a

[6] "Uploading" means transmitting a copy of a file over telephone lines to another computer system and leaving the copy on the remote computer.

[7] Other courts, such as the U.S. Tax Court, U.S. Court of Veterans Appeals, U.S. Court of Military Appeals, and state courts, can choose other court type indicators to identify opinions from their courts, if they choose to adopt this file naming convention and the related electronic citation system.

code of "V" through "Z" indicates the level of amendment to an unpublished opinion. The issuing court is the appellate court of the 5th Circuit (shown as "05" in the code). Attachment 1 shows a list of the court identifier codes.

EDOS systems use either the UNIX or DOS operating systems.[8] Most users who download [9] opinions from EDOS will be using PC's with DOS operating systems. Although UNIX system file names are not limited to 11 characters, DOS file names are. If EDOS users download a file with more than 11 characters to a personal computer, the file name will be truncated after 11 characters.[10] This is not a major concern, but if it is possible to create a file name within the 11-character DOS constraint, this approach will accommodate the most users and will allow all users to have the same file name for any given document. The opinion file name need not exceed the 11-character DOS limit, unless the case number is to be included as part of the file name.

The primary issue with the proposed EDOS file name is whether a sequence number of four digits is sufficient to accommodate all opinions issued by any court in a year. With a four-digit sequence number, the maximum opinions per year per court would be 9,999. A search of LEXIS showed 2,660 opinions in 1990 for the Southern District of New York District Court [11] and 178 opinions for the Southern District of New York Bankruptcy Court. Since the Southern District of New York is the largest district court, a four-digit limit appears to be sufficient. If it is subsequently determined that all orders, as well as all opinions, issued by a district and/or bankruptcy court are to be posted on EDOS and available for electronic citation, then four Arabic number digits would not suffice. However, it would be possible to use the same proposed structure for the file name if the alphabet, instead of numbers, were used for one or more of the four digits in the sequence code.[12]

F. Format of Electronic Citation

The actual format of the standard electronic citation should be the same as the EDOS file name. If the opinion is printed in the official reporter, the electronic citation should be used with the official print citation, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05, 369 F.2d 976, (5th Cir. 1990). If the opinion is not available in the official reporter, the electronic citation should be used with the case name, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05. If there are amendments to the opinion, the electronic citation should be shown with all amending file names included, e.g., *Ostegaard* v. *DeMarco*, ECS 90A0322P.05 as amended by 90A0322A.05, 90A0322B.05, 369 F.2d 976 (5th Cir. 1990).

If the EDOS file name is used as the basis for the citation, the citation could be the EDOS file name itself (e.g., 90A0322P.05).[13] This has the advantage of not requiring any translation by the clerk's office and, if opinions were to remain on EDOS for an extended time, it would allow the public to locate and retrieve documents easily.

Other electronic citation formats were considered, such as the general format used for LEXIS and WESTLAW citations, with the year preceding the identifying source name and the document number following the source name, as shown in the example below:

Ostegaard v. *DeMarco*, 1990 5th Cir. ECS No. 322P, 369 F.2d. 976 (5th Cir. 1990).

For the same opinion, if it were unpublished, the citation would be:

Ostegaard v. *DeMarco*, 1990 5th Cir. ECS No. 322U

Alternatively, the textual citation could follow a more traditional format:

Ostegaard v. *DeMarco*, ECS No. 322P, 369 F.2d. 976 (5th Cir. 1990)

An unpublished opinion using the more traditional format would be shown as:

Ostegaard v. *DeMarco*, ECS No. 322U (5th Cir. 1990)

Although these citation formats appear more legible than the file name at first glance, the Subcommittee concluded that cases with precedential value should have both the print and electronic citations. The electronic file name is fairly easy to decipher when it is placed next to the traditional print citation. Therefore, an electronic citation consisting of the file name itself is recommended.

Using the file name is not advantageous when referring to an amended opinion, because the original file name will only allow retrieval of the original (i.e., unanended) opinion. However, if an opinion is revised through an amending order, citation to the amending order will only allow retrieval of the amending order, not the original opinion. Therefore, the Subcommittee agreed that amended opinions should be cited by giving the file name of the original opinion plus the file names of all amendments. The amendments are like pocket parts. In this sense, the electronic opinions are not as "user friendly" as the printed opinions, because the amendments are not integrated into the opinions. Optionally, all amending orders could include the revised opinion, but this would require additional work in the judge's chambers or clerk's office. Such an approach would allow an electronic citation to the latest version only rather than to all versions of the opinion.

G. Pinpoint Citations

Fixed page breaks and numbers within the electronic document should be used as pinpoint citations in electronic citations. Fixed page breaks and numbers should be inserted when an opinion is completed and ready to be filed.

Some comments on the February 1991 electronic citation proposal noted that the proposed format did not contain page numbers. Pinpoint citations probably are necessary. Page numbers vary from publisher to publisher and are appropriate only for citations to a particular case reporter. Moreover, if one wants to print the electronic version of the document and use pinpoint citations to locate a particular passage, a page number could be a misleading pinpoint citation. Page numbering varies depending on the printer used and the defined page size in the word processing

[8] UNIX is a popular, vendor-independent, multi-user operating system. DOS stands for "Disk Operating System;" it is the most widespread operating system in use today for personal computers.

[9] "Downloading" means copying a file electronically, retrieving the copy over telephone wires, and receiving it in one's local computer.

[10] If the person downloading is selecting only a few opinions, truncation should not be a problem, because the person can probably identify the files and will not be apt to overlay one file with another of the same name from a different court. However, those who download all the opinions posted, such as publishers, the Department of Justice, or state attorneys general, would be prone to overlay files if they used a PC for downloading and file names were truncated. Overlaying a file erases the underlying file.

If the file name is used as the citation format (as opposed to a translation of the file name), it is even more important to stay with the 11-character limit. Otherwise, there would be unnecessary confusion with a file name of more than 11 characters. EDOS users would locate a document with a file name identical to the citation they had, but the file name would look different by the time the file was transferred to their computer, because the name would be truncated.

[11] This figure includes U.S. district court judge and magistrate judge opinions.

[12] If the alphabet were used for all four digits, up to 456,975 opinions and orders per year per court could be numbered. The decimal numbering system uses a base of 10, whereas an alphabet numbering system uses a base of 26.

[13] Note that the EDOS file name is not the same as the case file name. No change to the case file numbering scheme is proposed. Instead, a completely separate naming scheme is being proposed for opinions.

document. Therefore, if page numbers are used for pinpoint citation, they must be inserted with fixed ("hard") page breaks and a clear indication of the page number.

Paragraph numbers could be used, but they change the appearance of the opinion and therefore are not desirable. Also, paragraph numbering would require extra work in chambers or the clerk's office to add the numbers.

Theoretically, pinpoint citations should not be a problem. Page numbers are necessary for printed citations, because one must go to a book to look up the case, and it is inefficient to scan the entire opinion to find the cited text. However, a parallel electronic citation is another matter. It is to be used with an electronic search, and the best way to find the quote is to search for the quoted language electronically. When one searches an electronic data base of opinions (whether using an online data base or optical disk system), page numbers are an anachronism. On the other hand, one who uses electronic versions of opinions may want to print the opinions.

While no solution is perfect, fixed page breaks and numbers in the electronic version of the document provide the best solution. A standard electronic citation to a particular quotation on page seven of the electronic file would then be shown as *Ostegaard* v. *DeMarco*, ECS 90A0322P.05, 7, 369 F.2d. 976, 979 (5th Cir. 1990).

H. Timing

Standard electronic citations should be linked to EDOS and implemented in conjunction with the electronic dissemination of opinions by the federal courts. This means that implementation of electronic citations for appellate court opinions would begin immediately upon approval by the Judicial Conference. In other courts, implementation of electronic citations would depend upon the availability of their opinions on EDOS.

A standard electronic citation based on the EDOS file name will only work for cases issued via EDOS (in 1992 and thereafter). This means electronic citations will be phased in gradually. There are no plans to assign electronic citations to older opinions.

I. Items To Be Posted on EDOS

All opinions plus any amending orders should be posted on EDOS. Thus, EDOS would contain all court opinions and any amendments to them, rather than just published opinions.

The Library Program Subcommittee recommends posting all opinions, regardless of publishers' interest, so that the public can access any opinion of the court, at least for a limited period of time.[14] Opinions will be posted on EDOS at the time they are considered final and are released to publishers.

Judges determine which opinions are to be "published," and only published opinions may be cited as precedent in the appellate courts. Some district courts, such as the District Court for the District of Columbia, allow citation to unpublished opinions of the United States Court of Appeals for the District of Columbia. Increasingly, publishers are printing "unpublished" opinions with a notation that the opinions are unpublished and not to be cited as precedent. This happens when the opinion fits the subject matter of a particular publication (e.g., computer law) or when the opinion is about a newsworthy case. Many "unpublished" opinions are available in the LEXIS and WESTLAW data bases. The term "released" identifies the opinions that are available to researchers, whether or not the opinions are officially "published."

The courts could make it easier to obtain published opinions by posting them on EDOS but more difficult to obtain the electronic version of unpublished opinions by not making them available on EDOS. It is unlikely, however, that such an approach will stop publishers from obtaining and releasing unpublished opinions. Therefore, the Subcommittee decided to endorse the posting of all opinions for a limited period of time, but to include as part of the citation itself an indicator showing whether the opinion is considered "published" by the court that issued the opinion.

J. Length of Time Opinions Should Remain on EDOS

An opinion should remain posted on EDOS for at least one month. Beyond that, the length of time opinions remain on EDOS should be determined by each court. Notice of the court's policy for length of time an opinion remains on EDOS should be provided when the user signs on to that court's EDOS bulletin board. Each month an archival copy of the EDOS data base should be made before any opinions are purged from the data base. The monthly archives of electronic opinions should be retained by the court for two to three years.

Federal appellate court opinions are published in printed form within four to six weeks of receipt by the publishers. This is generally true for district and bankruptcy court opinions, too, although some opinions do not appear for six to nine months after they are issued. It may be that such delays occur for opinions released only after someone requests an unpublished opinion. Some lower court opinions are released only after an appellate opinion reviewing the lower court opinion has been issued.

As currently implemented, ACES and CITE are not substitutes for LEXIS and WESTLAW, because full text search software is not available on the electronic bulletin boards. Legal research data bases have an added value in the search software provided by the publishers. Moreover, many researchers will prefer books to printouts of the electronic opinions.

Reviewing an index of an entire year's worth of opinions would be daunting in the larger appellate and district courts for EDOS users who dial in to retrieve a particular opinion. The clerk of the Ninth Circuit Court of Appeals estimated that judges in that court produce approximately 3,000 opinions per year. A search of LEXIS showed approximately 2,660 opinions from the Southern District of New York in 1990.

On the other hand, there were only 76 opinions in LEXIS issued by the Southern District of Texas in 1990. An index with this number of entries would be quite manageable for the public to review, and it would even be possible to maintain two years of opinions at that rate. There were 178 opinions from the Southern District of New York Bankruptcy Court in 1990 and 28 from the Southern District of Texas Bankruptcy Court. The chart below lists the number of opinions shown on LEXIS in 1990 by selected jurisdictions for district and bankruptcy courts.

Jurisdiction	No. of district court opinions	No. of bankruptcy court opinions
Southern District of New York	2,659	178
Eastern District of Pennsylvania	2,312	154
District of the District of Columbia	1,030	33
Southern District of Florida	215	81
Central District of California	108	42
Southern District of Texas	76	28

Based on the variability in number of opinions published in each district, it appears that the time period for keeping opinions on EDOS should be allowed to vary from court to court, but all courts

[14] When discussions were held with vendors in 1989, only opinions normally released to publishers were to be available on EDOS.

should retain opinions on EDOS for at least one month.

K. Format of Documents Posted on EDOS

Documents should be offered in a court's word processing format and any other formats the court chooses to provide. The format(s) offered by a court should be listed in the introductory information presented on the electronic bulletin board.

Most courts use WordPerfect word processing software, which is widely available in the legal community, but some courts use Office Power by CCI, a product popular with a number of the larger law firms but not available on PC's. As currently contemplated, there will be separate subdirectories established on EDOS, one for document files in the court's word processing format and one for the same documents in ASCII format.[15] Special characters and formatting commands are stripped out in the ASCII version. A downloaded ASCII document looks considerably different from the word processing version of the document.

The publishers who wish to obtain opinions from EDOS can acquire WordPerfect word processing software and either acquire Office Power or software to convert Office Power documents to a format preferred by the publisher. The public can find businesses to print a WordPerfect document and/or convert it to another format, but they would have more difficulty locating a business that has Office Power. Therefore, the courts with Office Power might consider converting Office Power documents to WordPerfect.

The conversion of documents to ASCII and/or any format other than the court's standard word processing format will require time from a secretary or clerk. Courts may want to assess whether there is a need for multiple formats after they have had some experience in operating EDOS.

William R. Burchill, Jr.,

Acting Director.

[15] ASCII stands for American Standard Code for Information Interchange. It is a very limited character set and represents the lowest common denominator for word processing programs. ASCII text can be accepted by almost any word processing software. Most word processing software packages use many more codes than are available in ASCII. An ASCII version is usually a stripped-down version of a document; it has the text but lacks many of the formatting features found in a word processing document, such as underlining, bold, and italics. Footnotes are stripped out when some word processing documents are converted to ASCII, but this is not the case when WordPerfect or Office Power documents are converted to ASCII.

ATTACHMENT 1.—COURT IDENTIFIER CODES

Code	Description
US	U.S. Supreme Court.
DC	District of Columbia Circuit.
01	First Circuit.
02	Second Circuit.
03	Third Circuit.
04	Fourth Circuit.
05	Fifth Circuit.
06	Sixth Circuit.
07	Seventh Circuit.
08	Eighth Circuit.
09	Ninth Circuit.
10	Tenth Circuit.
11	Eleventh Circuit.
FC	Federal Circuit.
ALN	Northern District of Alabama.
ALM	Middle District of Alabama.
ALS	Southern District of Alabama.
AK	District of Alaska.
ARE	Eastern District of Arkansas.
ARW	Western District of Arkansas.
AZ	District of Arizona.
CAE	Eastern District of California.
CAC	Central District of California.
CAN	Northern District of California.
CAS	Southern District of California.
CO	District of Colorado.
CT	District of Connecticut.
DE	District of Delaware.
DC	District of Columbia.
FLM	Middle District of Florida.
FLN	Northern District of Florida.
FLS	Southern District of Florida.
GAM	Middle District of Georgia.
GAN	Northern District of Georgia.
GAS	Southern District of Georgia.
GU	District of Guam.
HI	District of Hawaii.
ID	District of Idaho.
ILC	Central District of Illinois.
ILN	Northern District of Illinois.
ILS	Southern District of Illinois.
INN	Northern District of Indiana.
INS	Southern District of Indiana.
IAN	Northern District of Iowa.
IAS	Southern District of Iowa.
KS	District of Kansas.
KYE	Eastern District of Kentucky.
KYW	Western District of Kentucky.
LAE	Eastern District of Louisiana.
LAM	Middle District of Louisiana.
LAW	Western District of Louisiana.
MA	District of Massachusetts.
MD	District of Maryland.
ME	District of Maine.
MIE	Eastern District of Michigan.
MIW	Western District of Michigan.
MN	District of Minnesota.
MOE	Eastern District of Missouri.
MOW	Western District of Missouri.
MP	Northern Mariana Islands.
MSE	Eastern District of Mississippi.
MSN	Northern District of Mississippi.
MSS	Southern District of Mississippi.
MSW	Western District of Mississippi.
MT	District of Montana.
NCE	Eastern District of North Carolina.
NCM	Middle District of North Carolina.
NCW	Western District of North Carolina.
NE	District of Nebraska.
ND	District of North Dakota.
NH	District of New Hampshire.
NJ	District of New Jersey.

ATTACHMENT 1.—COURT IDENTIFIER CODES—Continued

Code	Description
NM	District of New Mexico.
NV	District of Nevada.
NYE	Eastern District of New York.
NYN	Northern District of New York.
NYS	Southern District of New York.
NYW	Western District of New York.
OHN	Northern District of Ohio.
OHS	Southern District of Ohio.
OKE	Eastern District of Oklahoma.
OKW	Western District of Oklahoma.
OR	District of Oregon.
PAE	Eastern District of Pennsylvania.
PAM	Middle District of Pennsylvania.
PAW	Western District of Pennsylvania.
PR	District of Puerto Rico.
RI	District of Rhode Island.
SC	District of South Carolina.
SD	District of South Dakota.
TNE	Eastern District of Tennessee.
TNM	Middle District of Tennessee.
TNW	Western District of Tennessee.
TXE	Eastern District of Texas.
TXN	Northern District of Texas.
TXS	Southern District of Texas
TXW	Western District of Texas.
UT	District of Utah.
VAE	Eastern District of Virginia.
VAW	Western District of Virginia.
VI	District of Virgin Islands.
VT	District of Vermont.
WAE	Eastern District of Washington.
WAW	Western District of Washington.
WIE	Eastern District of Wisconsin.
WIW	Western District of Wisconsin.
WVN	Northern District of West Virginia.
WVS	Southern District of West Virginia.
WY	District of Wyoming.

[FR Doc. 91-19126 Filed 8-12-91; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1521-91]

Certification of Central Address File System

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 242B(a)(4) of the Immigration and Nationality Act, as amended (the "Act") (8 U.S.C. 1252b), a central address file system has been created to preserve notices of addresses and telephone numbers, and notices of any changes thereto, provided by aliens in deportation proceedings. The Executive Office for Immigration Review shall maintain the central file as part of its automated ANSIR system. The ANSIR system will preserve the addresses and telephone numbers of the aliens in deportation proceedings, as well as those of their attorneys or

representatives who have filed a notice of appearance.

The Immigration and Naturalization Service and the Executive Office for Immigration Review shall have access to the system. Changes to the information shall be made by the Executive Office for Immigration and Naturalization Service.

Ther provisions of subsections (a), (b), (c), and (e)(1) of section 242B of the Act, as amended, shall be effective six months from the date of certification of the central address file system. Subsection (a) requires written notice to an alien in deportation proceedings of, *inter alia*, the nature of the proceedings, the time and place of proceedings and the consequences of the failure to appear at such proceedings. Notices shall be in English and Spanish. The alien will be required to provide the Attorney General with a written record of any address and telephone number, as well as any changes thereto, at which he or she may be contacted respecting proceedings under section 242 of the Act. Subsection (b) provides that the alien will have at least fourteen days from the date of the service of notice under subsection (a) to secure counsel. The Attorney General shall provide for lists of counsel who are available to represent aliens in deportation proceedings. Under subsection (c), an alien who fails to appear at a deportation proceeding after receiving written notice required by subsection (a)(2) may be ordered deported. Subsection (e)(1) provides that an alien against whom a final order of deportation is entered *in absentia* and who was provided oral notice in his or her own language or in a language he or she understands of the time and place of proceedings and the consequences of failing to appear, will not be eligible for relief from deportation as specified in subsection (e)(5) for a period of five years after the date of entry of the final order of deportation.

EFFECTIVE DATE: This certification is effective August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5107 Leesburg Pike, suite 2400, Falls Church, Virginia 22041 (703) 756-6470.

Pursuant to section 242B(a)(4) of the Immigration and Nationality Act, as amended (8 U.S.C. 1252b), I certify that the central address file system has been established. The system will preserve notices of addresses and telephone numbers of aliens in deportation proceedings, and notices of any changes thereto, and addresses and telephone numbers of their attorneys or representatives who have filed a notice of appearance. The system will be maintained by the Executive Office for Immigration Review for the purpose of facilitating communications to aliens regarding deportation or other proceedings.

The notice-related provisions contained in subsection (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act, as amended, shall take effect on February 13, 1991.

Dated: August 5, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-19187 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed consent decree in *United States and State of Ohio* v. *City of Wellston, Ohio*, Civil Action No. C2-87-1216 (S.D. Ohio), is available to the public for review and comment. The proposed consent decree resolves litigation in this matter with respect to the alleged violation by the City of Wellston, Ohio ("Wellston") of effluent limitations in its National Pollutant Discharge Elimination System ("NPDES") permit. The permit was issued pursuant to the Clean Water Act, 33 U.S.C. 1342, in connection with operations at the municipal wastewater treatment facility in Wellston, Ohio.

The decree has been lodged with the United States District Court for the Southern District of Ohio, Eastern Division on June 25, 1991. It provides that Wellston will construct. modifications of the wastewater treatment facility and undertake a combined sewer overflow compliance program so that it comes into compliance with effluent limits and other aspects of its NPDES permit. The decree also provides for a civil penalty of $17,000, plus interest, to be paid in two installments.

The Department of Justice will receive comments relating to the proposed decree for 30 days from the date of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer the *United States and State of Ohio* v. *City of Wellston*, D.J. Ref. No. 90-5-1-1-2874. The decree may be examined without charge at the office of the United States Attorney for the Southern District of Indiana, Civil Division at 220 United States Courthouse, Columbus, Ohio 43215; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004 [Telephone: (202) 347-2072]. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-19195 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notifications; Electrically Heated Catalyst Testing

Notice is hereby given that, on July 24, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* "the Act"), written notice was filed by the participants in the Electrically Heated Catalyst Testing Program simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Program and (2) the nature and objectives of the Program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Program and its general areas of planned activity are given below.

The parties to the Program are: ARCO Products Company, BP Oil Company, Chevron U.S.A., Inc., Exxon Company U:S.A., Mobil Oil Corporation, Shell Oil Company, Texaco Refining and Marketing, Tosco Refining Company, Ultramar Inc., Union Oil Company of California, California Air Resources Board (Stationary Source Division), California Air Resources Board (Mobile Source Division), and Western States Petroleum Association.

The objective of the Program is to plan and carry out research and tests designed to measure and evaluate automobile exhaust emissions and the potential improvements in air quality that may be achieved through the use of electrically heated catalysts. The purpose of this study is to provide the

State of California with information it may use in its efforts to reduce the total emissions from motor vehicles and thereby improve air quality, as required by the California Clean Air Act, Cal. Health & Safety Code §§ 39000 *et seq.*

Membership in the Program remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-19190 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act Notifications; Hampshire Instruments, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Hampshire Instruments, Inc. ("Hampshire") on July 11, 1991, filed a written notification on behalf of Hampshire and McDonnell Douglas Electronic Systems Company ("MDESC") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the parties to this agreement and the general areas of planned activity are given below.

Hampshire is a New York corporation with its principal place of business at 10 Carlson Road, P.O. Box 10159, Rochester, New York 14610.

MDESC is a Maryland corporation with its principal place of business at P.O. Box 516, St. Louis, Missouri 63166.

Hampshire and MDESC have agreed to engage in a joint research effort for the application of MDESC's solid state laser technology to Hampshire's point source x-ray lithography. Generic diode-pumped laser technology will be developed which will enable the design, construction, and demonstration of a high performance solid-state laser system which in turn will serve the requirements of very high-throughput advanced x-ray lithography workstations.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-19193 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notifications; National Storage Industry Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), National Storage Industry Consortium ("NSIC") on June 12, 1991, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties, and their general areas of planned activities are given below.

The members of NSIC are:

Applied Magnetics Corp.
Eastman Kodak Co.
Quantum Corp.
Carlisle Memory Products
International Business Machines Corporation
Minnesota Mining & Manufacturing Company
Hewlett-Packard Company
Digital Equipment Corp.
KOMAG Inc.
VISqUS Corp.
Storage Technology Corp.
Maxoptix Corp.
Iomega Corp.

In addition, the following universities are "University Affiliate Members" of NSIC:

University of California at Berkeley (UCB)
University of California at Los Angeles (UCLA)
University of California at San Diego (UCSD)
University of Arizona
University of Alabama
Santa Clara University
University of Minnesota
Carnegie Mellon University
Stanford University
Washington University (St. Louis)
Ohio State University
University of Nebraska

NSIC's area of planned activity is sponsoring research in the area of information storage technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-19194 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act Notifications; Petrotechnical Open Software Corp.; Joint Research and Development Venture

Notice is hereby given that, on July 19, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* (the "Act"), Petrotechnical Open Software Corporation ("POSC") 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 invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become new, non-voting members of POSC:

Halliburton Company, 11255 Kirkland Way, suite 300, Kirkland, WA 98033
Hewlett-Packard Company, 19091 Pruneridge Avenue, Cupertino, CA 95014
Digital Equipment Corporation, 4 Results Way, Marlboro, MA 01752
Delft Petroleum Technologies, Inc., 777 N. Eldridge Parkway, suite 700, Houston, TX 77079-4465
TNO Institute of Applied Geoscience, Schoemakerstrat 97, P.O. Box 6012, 2600 JA DELFT, The Netherlands
The Petroleum Science and Technology Institute, Dunedin House, 25 Ravelston Terrace, Edinburgh EH4 3EX, Scotland, UK
Inforama (SA) France, 7 Rue Pasquier, 75008 Paris, France
UK Department of Energy 1 Place Street, London SW1E 5HE, England, UK
AEA Petroleum Services, Winfrith Technology Centre, Dorchester, Dorset DT2 8DH, England, UK
Open Software Foundation, 11 Cambridge Center, Cambridge, MA 02142
Sun Microsystems, Inc., 12 Greenway Plaza, suite 1500, Houston, TX 77046

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed simultaneously with the Attorney General and the Federal Trade Commission its original notifications pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(a) of the Act on February 7, 1991 (56 FR 5021).

On April 12, 1991, POSC filed simultaneously with the Attorney General and the Federal Trade Commission notifications of the addition

of members 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 May 7, 1991 (56 FR 21176).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-19192 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act Notifications; Reid Vapor Pressure & Driveability Index

Notice is hereby given that, on July 24, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), written notice was filed by the participants in the Reid Vapor Pressure & Driveability Index Testing Program simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Program and (2) the nature and objectives of the Program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Program and its general areas of planned activity are given below.

The parties to the Program are: ARCO Products Company, BP Oil Company, Chevron U.S.A., Inc., Exxon Company U.S.A., Mobil Oil Corporation, Shell Oil Company, Texaco Refining and Marketing, Tosco Refining Company, Ultramar Inc., Union Oil Company of California, California Air Resources Board (Stationary Source Division), California Air Resources Board (Mobile Source Division), Western States Petroleum Association, and General Motors Corporation.

The objectives of the Program is to study the effects of varying the Reid Vapor Pressure ("RVP") level of fuels and evaporative emissions. The purpose of this study is to provide the State of California with information it may use in its efforts to reduce the total emissions from motor vehicles and thereby improve air quality, as required by the California Clean Air Act, Cal. Health & Safety Code §§ 39000 *et seq.*

Membership in the Program remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-19191 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-01-M

Federal Bureau of Investigation

Meeting of Uniform Crime Reporting (UCR) Data Providers Advisory Policy Board (APB)

The UCR APB will met on September 3 and 4, 1991, from 9 a.m. until close of business each day at the Sheraton Seattle Hotel and Towers, 1400 Sixth Avenue, Seattle, Washington, 98101, telephone number (206) 621-9000.

The major topics of discussion will be the consideration of individual state agency participation in the National Incident-Based Reporting System (NIBRS); status of the study to determine the future of UCR by the Department of Justice (DOJ); a report by the NIBRS publication subcommittee; redundancy of data submission to the FBI by law enforcement entities; and a report by the UCR staff on the progress of 1990 Hate Crime Data Collection and publications.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairperson of the Board.

Inquiries may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Information Management Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number (202) 324-2614.

Dated: August 5, 1991.

William S. Sessions,

Director.

[FR Doc. 91-19184 Filed 8-12-91; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Office of the Secretary

Substance Abuse Program in the Workplace

AGENCY: Office of the Secretary, Labor.

ACTION: Request for comments and information.

SUMMARY: The Office of the Assistant Secretary for Policy (OASP) is requesting information requesting employee substance abuse programs, including their content, cost and effectiveness. The Department of Labor (DOL) has determined that "comprehensive substance abuse programs" are one of the most effective ways for companies to address the problem of substance abuse in their workplace and seeks this information in order to assist small business in establishing these programs.

OASP is requesting a variety of nonproprietary substance abuse information from such sources as the Federal and State governments, private industry, community groups and national associations. The information requested includes, but is not limited to: Federal and State legislation; regulations and policies arising from legislation and federally mandated programs; model substance abuse programs; model employee assistance programs; drug awareness, education, prevention and training programs; and general training requirements that have been established by small businesses and community-based service organizations.

Information is also requested on currently existing automated substance abuse information systems that can be accessed to disseminate information and the types of substance abuse information on those systems.

DATES: Comments, information and data should be submitted by October 15, 1991.

ADDRESSES: Written submissions in response to this notice should be sent to the attention of Mark Wilson, the Office of the Assistant Secretary for Policy, U.S. Department of Labor, room S-2114, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523-6054.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Wilson, Office of the Assistant Secretary for Policy, U.S. Department of Labor, Room S-2114, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-6054.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Labor, in conjunction with the Office of National Drug Control Policy (ONDCP), has been given a leadership role in addressing the problem of substance abuse in the workplace. With respect to illegal drugs, ONDCP has identified the workplace as one of the key sectors in which a reduction in the demand for drugs is

essential if there is to be overall success in the war on drugs. This need can best be understood with reference to the National Institute on Drug Abuse (NIDA) survey which found that 68% of drug users are employed.

The Department of Labor has very specific interests in reducing the problem of substance abuse in the workplace, independent of the issue of legality. Substance abuse, including the abuse of legal drugs such as alcohol, has a profound impact on the workplace. The costs of substance abuse have been estimated by some to be as high as $200 billion annually. Specifically, substance abuse has been identified as a major factor in the health and safety of workers. It is a major problem contributing to the dramatic rise in health care costs. Sharply rising health care costs, in turn, have become a major problem when collective bargaining agreements are renegotiated. Substance abuse also sharply affects the ability to mount effective employment and training programs. Finally, substance abuse is a major factor in limiting this country's ability to perform up to its full competitive potential.

After careful examination of the problem of substance abuse in the workplace, the Department has concluded that the most effective way for companies to address the problem is to establish a "comprehensive substance abuse program" in their workplaces. Such comprehensive programs typically include five elements:

A written substance abuse policy. A written policy reflects the strong commitment of the employer to a workplace free of illegal drugs and other substance abuse.

An employee education and awareness program. A program of employee education and awareness focuses on the specific dangers of substance abuse. The training builds on the company's substance abuse policy, explaining why the policy was developed and highlighting the dangers of substance abuse on the job. Such training also helps non-abusers understand the problems of addiction and abuse and how the problems of others affect them.

Supervisory training program. A program of management training is needed so that supervisors understand corporate policies on workplace substance abuse and know how to deal with employees abusing or suspected of abusing substances in the workplace.

An employee assistance program. An employee assistance program (EAP), or access to one through a consortium, represents the key building block for employers seeking to assist employees who voluntarily seek as well as those who may be directed to seek assistance in lieu of disciplinary action.

Drug testing, as appropriate. While drug testing is still a highly controversial subject, there is a growing consensus that drug testing in the workplace is an important component of a substance abuse program, particularly when the health and safety of others may be at risk.

The implementation of such comprehensive substance abuse programs in larger companies, given the evidence available, has been identified as an effective way to deal with the problem. While the Department is continuing research in the area of program effectiveness, it has initially set as its goal that every workplace in the country adopt such a comprehensive program, realizing that small businesses may, of necessity, that they are best served by a program comprised of only some of the five elements.

In 1988, the Department's Bureau of Labor Statistics undertook a survey of companies to identify which establishments have adopted substance abuse programs. While the sample was limited, it does provide statistically significant information on establishments with such programs. Specifically, breakdowns are available by broad industry classifications, geographical regions and size of establishment. The most striking finding of the survey was that large firms (those with 500+ employees) have tended to mount such programs, while medium and particularly small establishments (those with 500 or fewer employees) typically have not.

While many firms initially implemented substance abuse programs in order to satisfy legal requirements such as the mandate for all Federal government contractors to have a "Drug Free Workplace," they have, nevertheless, found these programs to be an effective means of combatting drug abuse in the workplace. For example, some firms have found the payoff to cost ratio for substance abuse programs to exceed 8 to 1.

The seriousness of the problem becomes evident when one identified the importance of such smaller establishments in the national economy. Small establishments, defined here as those with 250 or fewer employees, account for over 99 percent of all business establishments in the country and employ two-thirds of all workers. Clearly, the failure to reach this group equates to a failure to reach a majority of the workers in the country.

The problem is exacerbated as large (and increasingly medium-sized) businesses adopt programs, employees with substance abuse problems appear to be moving increasingly to smaller firms. As a result, it is the smaller establishment that suffers increasingly from the adverse impact of workplace substance abuse.

The question, thus, arises as to why smaller firms have not been more aggressive in adopting substance abuse programs? Some of this reluctance can certainly be ascribed to an information lag. Indeed, it has been only relatively recently that many large firms have recognized and addressed the problem of substance abuse. While many larger firms did have some form of an alcohol treatment program, few large firms appear to have had comprehensive substance abuse programs prior to the mid 1970's. Contributing to this information lag effect are the following perceptions among smaller employers:

While acknowledging that substance abuse is an important and critical problem in the workplace, there is the belief among many small employers that their workplace does not have such a problem. For example, one study found that about 90% of small business owners felt that there was an employee drug abuse problem in the nation but only 10% felt that there was such a problem in their firm.

Small employers are quick to see the direct costs of implementing a substance abuse program but may not appreciate the substantial benefits of doing so. In addition to their valuable time, expenditures would be required for consultants, training materials, legal fees, etc. These direct costs must be weighed against hard to quantify benefits such as reduced accidents, increased productivity, improved morale, etc.

Small employers lack specific information as to how to go about implementing such a program. In large firms, this function is generally performed by the director of human resources or personnel. Just obtaining the base information often presents a major obstacle.

Comments and Information Requested

OASP seeks comments and information from the public regarding substance abuse programs. In addition to general information, OASP is specifically interested in the following especially as they relate to small businesses:

1. What were the reasons that the program was established (e.g., to comply with a regulatory program, to help current employees, as part of a collective bargaining agreement, etc.)?

Before your program was established, were you aware of any studies that provided estimates of the benefits accruing from these programs? If so, what were these studies and what affect did they have on your decision to establish a program?

2. Please comment on the Department's rationale as to why have small businesses tended not to implement substance abuse programs while large businesses have. Provide your reasons for agreeing or disagreeing.

3. How was the program organized? What assistance was obtained to establish the program and from whom? How much did it cost to establish the program (e.g., during the first year)?

4. What is the content of the program? Does it include the five elements recommended by DOL? If not, what does it contain? Please supply any materials available on the program (e.g., the policy statement, training materials, etc.). Is there a procedure to update the program? If so, what is this procedure? If not, why not?

5. What are the direct costs involved in maintaining the program? What are the direct costs per employee? Please provide as much detail as possible by program element (e.g., costs involved in employee training, operating the EAP, drug testing, etc.).

6. What benefits have been found to accrue from the program (e.g., higher productivity, lower accident and turnover rates, lower workers' compensation and insurance costs, etc.)? Please provide as much detail as possible both in quantified terms (e.g., reductions in the number of accidents, workers' compensation claims/rates, absenteeism, and health care costs; increased productivity; etc.) and in other terms (if the benefits have not been quantified)?

7. Which elements of your program have been most successful in eliminating substance abuse among your employees?

8. Based upon your experience with your program, if you had the choice would you recommend that other companies establish similar programs. Please provide your reasons. What advice would you give to companies, especially small businesses, trying to establish their own programs?

9. What can be done at the federal, and local level, either by government or by the private sector, to assist businesses in addressing the problem of workplace substance abuse?

10. Is your firm presently covered by a regulation requiring the establishment of a substance abuse program? If so, what is it? Would additional regulation be useful in this area?

This document was prepared under the direction of Debra R. Bowland, Acting Assistant Secretary for Policy.

Signed at Washington, DC, this 7th day of August, 1991.

Debra R. Bowland,

Acting Assistant Secretary for Policy.

[FR Doc. 91-19220 Filed 8-12-91; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determination regarding eligibility to apply for adjustment assistance issued during the period of July 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,845; Kentucky Agricultural Energy Corp., Franklin, KY

TA-W-25,840; Fitzsimons Manufacturing Co., Big Rapids, MI

TA-W-25,734; Bayou Steel Corp., LaPlace, LA

TA-W-25,904; Sara Lee Knitting Products, Floyd, VA

TA-W-25,824; Towne-Robinson, Inc., Dearborn, MI

TA-W-25,685; Seneca Wire & Manufacturing Co., Fostoria, OH

TA-W-25,830; American Sign & Indicator Corp., Spokane, WA

TA-W-25,866; Fayscott Co., Dexter, ME

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,967; Label-Tech, Inc., Grand Prairie, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,994; Fina Oil & Chemical Co., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,893; Dowell-Schlumberger, Inc., Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,918; J & G Shake Co., Forks, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,907; Sterling Drug, Inc., Trenton, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,972; Miss Jamie, Inc., New York, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,927; Union Railroad Co., Monroeville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,909; Waste Management of North America, Warner Co., Morrisville, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,899; Keiber Thompson, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,865; Enserch Exploration, Inc., Midland District, Midland, TX

Investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required certification.

TA-W-25,701; Capitol Circuits Corp., Printer Products, Boston, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,702; Capitol Circuits Corp., Westtrex, Fall River, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,847; Northern Contracting Co., Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,901; Louis A. Grant, Inc., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,915; Fred Stecker Oldsmobile, Inc., Euclid, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,911 & 25,912; BP Oil Pipeline Co., Kirbyville, TX & BP Oil Pipeline Co., Longview, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,899; Heckett, Morrisville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,867; Fiatallis, North America, Inc., Carol Stream, IL

Increased imports did not contribute importantly to worker separation at the firm.

TA-W-25,868; Fiatallis, North America, Inc., Stone Mountain, GA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,869; Fiatallis, North America, Inc., Irving, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,870; Fiatallis, North American, Inc., Cranbury, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,871; Fiatallis, North American, Inc., West Sacramento, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,872; Fiatallis, North American, Inc., Portsmouth, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,873; Fiatallis, North America, Inc., Springfield, IL

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-25,682; Pat Fashions, Inc., Perth Amboy, NJ

A certification was issued covering all workers separated on or after April 3, 1990 and before January 31, 1991.

TA-W-25,862; Dana Corp., Parish Div., Reading, PA

A certification was issued covering all workers separated on or after May 15, 1990.

TA-W-25,852; Tara Knitting Mills, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after May 6, 1990 and before April 30, 1991.

TA-W-25,835; Corporate Knitting, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after May 3,1990.

TA-W-25,846; Larose RF Systems, Inc., Cohoes, NY

A certification was issued covering all workers separated on or after May 8, 1990 and before July 31, 1991.

TA-W-25,708; G.E. Government Communication Systems (G.E. Aerospace) Camden, NJ

A certification was issued covering all workers separated on or after May 25, 1990.

TA-W-25,879; Keystone Fireworks Manufacturing Co., Inc., Dunbar, PA

A certification was issued covering all workers separated on or after May 20, 1990.

TA-W-25,782; Maytown Shoe Manufacturing Co., Inc, Beale Ave., Altoona, PA

A certification was issued covering all workers separated on or after April 23, 1990.

TA-W-25,783; Maytown Shoe Manufacturing Co., Inc., 8th Ave., Altoona, PA

A certification was issued covering all workers separated on or after April 23, 1990.

TA-W-25,784; Maytown Shoe Manufacturing Co., Inc., Queen and Elizabeth Street, Maytown, PA.

A certification was issued covering all workers separated on or after April 23, 1990.

I hereby certify that the aforementioned determinations were issued during the months of July, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 7, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-19221 Filed 8-12-91; 8:45 am]

BILLING CODE 6510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 12, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray R. Welsh, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average

burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: State and Regional Program—Arts Projects in Underserved Communities.

Frequency of Collection: Annually.

Respondents: State and local governments.

Use: Guidelines, instructions and applications elicit relevant information from State Arts Agencies and Regional Organizations that apply for funding under the Arts Projects in Underserved Communities category. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the panel review process.

Estimated Number of Respondents: 75.

Average Burden Hours per Responses: 22.

Total Estimated Burden: 1,650.

Bill Williams,

Assistant Director, Administration Services Division, National Endowment for the Arts.

[FR Doc. 91-19224 Filed 8-12-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biological and Critical Systems.

Dates & Times: August 27, 1991. 8:30 a.m.-5 p.m.

Location: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 1133.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Rsearch proposals.

Contact Person: Edward H. Bryan, Ph.D., Program Director, room 1133, National Science Foundation, Washington, DC 20550. Telephone (202) 357-7737.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-19133 Filed 8-12-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Chemical and Thermal Systems Committee of Visitors; Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors Review.

Date and time: August 28-29, 1991.

Place: Room 1115, 1800 G Street NW., Washington, DC

Types of meeting: Closed.

Contact Person: Mihail Roco/Stephen Traugott, Program Directors, Fluid, Particulate and Hydraulic Systems, Room 1115, National Science Foundation, Washington, DC 20550. Telephone: (202) 357-9606.

Purpose of meeting: To provide oversight review of the Fluid, Particulate and Hydraulic Systems Program

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposals actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: August 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-19132 Filed 8-12-91; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will he held on—

Thursday, November 07, 1991
Thursday, November 21, 1991
Thursday, December 12, 1991

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: August 6, 1991.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 91-19155 Filed 8-12-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29528; File No. SR-DGOC-91-02]

August 6, 1991.

Self-Regulatory Organizations; Delta Government Options Corporation; Order Approving a Proposed Rule Change Relating to the Definition of Options Expiration Date

On May 24, 1991, Delta Government Options Corporation ("DGOC") filed a proposed rule change (File No. SR-DGOC-91-02) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 26, 1991, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

I. Description of the Proposal

DGOC's proposed rule change will modify its definition of option "expiration date" in Article I of its Rules. Specifically, the proposal will amend DGOC's rules to: (1) Extend the potential length of an option contract to up to two years from the date of the writing of the option contract; and (2) permit any Friday of the expiration month to serve as an expiration date for options contracts, rather than only the first Friday of the month (short-dated options contracts), or the last Friday of the month (all other option contracts), as provided under existing rules.

DGOC states in its filing that the proposed rule change responds to requests by its participants that expiration dates match more precisely the tenor of other financial contracts in the over-the-counter market and other trading environments. By affording participants a larger spectrum of expiration dates, DGOC believes that it can enable its participants to gravitate naturally toward the expiration dates that each participant deems best suited to its trading needs. In particular, DGOC believes that the proposal will afford its participants the flexibility to adjust option contract durations in relation to their overall U.S. Treasury ("Treasury") security portfolios. Moreover, the proposal will enable participants to submit, for processing at DGOC, over-the-counter Treasury option trades that, prior to this proposal, could not be submitted because their stated expiration date was other than previously available through DGOC.

II. Discussion

Section 17A(a)(1) articulates the Congressional finding that clearance and settlement procedures and processing techniques should be efficient, effective, and safe. Section 17A(b)(3)(F) provides, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that this proposed rule change is consistent with section 17A of the Act, and, more specifically, with sections 17A(a)(1) and 17A(b)(3)(F) of the Act.[3]

As noted above, DGOC's proposal will provide DGOC participants greater flexibility to select the expiration dates that most satisfy their needs. This could increase the number of over-the-counter options cleared through DGOC, whose system offers potentially better safeguards than existing clearance processes for these trades. Moreover, the proposal will not diminish DGOC's existing safeguards. DGOC will continue to calculate and collect, where appropriate, member margin requirements. All other safeguards, including DGOC's maximum potential system exposure safeguard ("MPSE"), will continue to apply.[4]

III. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with Section 17A of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[5] that DGOC's proposed rule change (SR-DGOC-91-02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19156 Filed 8-12-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29307 (June 14, 1991), 56 FR 29296.

[3] 15 U.S.C. 78q-1(a)(1) and (B)(3)(F).

[4] For a description of DGOC's safeguards, including MPSE, see, Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010 and Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890.

[5] 15 U.S.C. 78s(b)(2).

[6] 17 C.F.R. 200.30-3(a)(12).

[Rel. No. IC-18260; 812-7678]

Government Securities Equity Trust Series I and Subsequent Series, et al.; Notice of Application

August 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order of exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Government Securities Equity Trust, Series I and Subsequent Series (the "Trust") (formerly AIM T.A.R.G.E.T Trust, Series I (Weingarten) and Subsequent Series); AIM Convertible Securities Inc., AIM Equity Funds, Inc., AIM High Yield Securities, Inc., Short-Term Investments Co., Tax-Free Investments Trust, on behalf of themselves and any series or portfolio thereof (other than any of the aforementioned open-end investment companies (or portfolios thereof) which are money market or no-load funds) ("Existing Funds"); AIM advisors, Inc. ("AIM Advisers"), AIM Capital Management, Inc. ("AIM Capital"), AIM Distributors, Inc. ("AIM Distributors") and Prudential Securities, Inc. ("Prudential").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) that would grant an amendment to an order that exempted applicants from sections 12(d)(1), 14(a), 19(b) of the Act and rule 19b-1 thereunder and that permitted certain affiliated transactions under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATIONS: Applicants seek an order amending an existing order that permitted series of the Trust to invest in shares of certain open-end investment companies and zero coupon obligations. The requested order would delete condition (h) of the prior order, which prohibited any series of the Trust from purchasing shares of certain open-end investment companies that had established multiple classes and prevented these investment companies from establishing additional classes if their shares were held by any of the series of the Trust.

FILING DATE: The application was filed on February 6, 1991 and an amendment was filed on June 20, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by

mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 3, 1991, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants (except Prudential Securities Inc.), Eleven Greenway Plaza, suite 1919, Houston, Texas 77046; Prudential Securities, Inc., One Seaport Plaza, 199 Water Street, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Assistant Director, (202) 272-3023 (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. The Trust consists of a series of unit investment trusts, each of which is similar but separate and designated by a different series number ("Trust Series"). Each Trust Series is organized pursuant to a trust indenture which incorporates a master trust agreement between Prudential, the sponsor and depositor for each such Trust Series (the "Sponsor"), and a qualified bank (the "Trustee"). At present, there are two existing Trust series. Statements made in the application apply to both existing and possible future Trust Series unless otherwise noted.

2. The Trust's objective is to protect capital while still providing for capital appreciation through investment in United States Government and other types of zero coupon obligations or contracts, and in shares of one of the Funds (as defined below).

3. Each of the Existing Funds is an open-end management investment company registered under the 1940 Act. Each Existing Fund has entered into an investment advisory or management agreement with AIM Advisors or AIM Capitol and a distribution agreement with AIM Distributors. AIM Advisors, AIM Capitol, and AIM Distributors and subsidiaries of AIM Management Group, Inc. Shares of the Existing Funds (or portfolios thereof) are offered with front-end sales loads. None of the Existing Funds are currently offered with any type of deferred sales charge. Each of the Existing Funds has adopted a rule 12b-1 plan.

4. Applicants request relief extend to the Trust's investment in any open-end investment company (including any portfolios or series thereof), other than a money market or no-load fund, that may in the future be advised by or have as its principal underwriter AIM Advisers, AIM Capital, or AIM Distributors, or any of their affiliates that are under common control with them. (These future open-end investment companies and the Existing Funds are collectively referred to as the "Funds").

5. Pursuant to a previous exemptive order granted by the Commission and later amended (the "Multi-class Order"), the Funds are authorized to establish separate classes of securities within the same investment portfolio. (See Investment Company Act Release Nos. 14656 (August 2, 1985) (notice) and 14695 (August 27, 1985) (order); 15570 (February 6, 1987) (notice) and 15592 (February 27, 1987) (amended order)). Under the Multi-class Order, the classes may differ in that certain classes of shares may be offered in connection with: (a) A 12b-1 plan adopted by the Fund involved pursuant to rule 12b-1; (b) a Shareholder Services Plan adopted by the Funds pursuant to all requirements of rule 12b-1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (c) no plan. Except for allocating to each class the expenses associated with that class, granting shareholders of a class the right to vote on matters solely concerning that class, and the differing class designations, the classes must be the same.

6. In Investment Company Act Release No. 16959 (May 17, 1989), the Commission issued a conditional order (the "Existing Order") that permitted the Trust Series to invest in portfolios consisting both of shares in one of the Funds and United States Government and other types of zero coupon obligations. The two existing Trust Series hold shares in the AIM Weingarten Fund Series of AIM Equity Funds, Inc. ("Weingarten").

7. Under the terms of the Existing Order, shares of only one of the Funds may be sold for deposit into any one Trust Series at net asset value. The Fund must waive any otherwise applicable sales load with respect to all shares sold or deposited in any Trust Series. In addition, any rule 12b-1 fee received by the Sponsor in connection with the distribution of Fund shares to the Trust must be rebated to the Trustee. Lastly, as a condition to granting relief ("Condition (h)"), applicants agreed that no shares of any Fund that has established more than one class of shares will be deposited in any Trust Series and that no Fund, shares of which have been deposited in any Trust Series, will thereafter establish additional classes of shares.

8. Some of the Funds, including Weingarten, wish to establish additional classes of shares. These shares will be offered to financial institutions for their fiduciary accounts without sales loads or rule 12b-1 fees. Applicants therefore propose to delete Condition (h) from the Existing Order.

9. Any future Trust Series will invest only in one class of Fund shares. No class of shares sold to a future Trust Series will adopt or incur any expenses under a rule 12b-1 plan or shareholder services plan.

10. Applicants do not expect to create new classes without the sales load or 12b-1 fees with respect to the existing Trust Series because of the expense of effecting such a change. Therefore, rule 12b-1 fees would continue to be rebated with respect to existing Trust Series. If Weingarten adopts a shareholder service plan, any expenses incurred with respect to this plan would be rebated in the same manner as the rule 12b-1 fees.

11. In accordance with the Existing Order, the Funds will waive any sales loads on: (a) Reinvestment by unitholders of capital gain distributions received from a Trust Series with respect to a Fund's shares; (b) a transfer of Fund shares held by a Trust Series to unitholders upon termination of the Trust; and (c) reinvestment in Fund shares of the proceeds of zero coupon obligations distributed to a unitholder. Any investor wishing to take advantage of the foregoing would open an account to acquire shares of a class for which such investor otherwise would be eligible. Any materials used to describe the options available to the investor will include information about all classes available to such investor.

12. Applicants acknowledge that all representations in the application for the Existing Order will continue to apply except as expressly described in the present application, and that all conditions to the Existing Order will continue to apply except for the deletion of Condition (h).

13. Applicants believe that the deletion of Condition (h) permitting multiple classes is appropriate in the public interest, and consistent with the protection of investors and the purposes

and provisions of the Act, and therefore satisfies the requirements of section 6(c).

14. One major purpose of section 12(d)(1) is the prevention of duplication of fees. Applicants argue that the requirement that the Sponsor rebate rule 12b-1 fees received on shares of the Funds held in a Trust Series is designed to prevent unitholders of a Trust Series from paying duplicative selling expenses. Applicants contend that this objective could be met by establishing a class with no rule 12b-1 fees without resorting to a cumbersome rebate mechanism.

15. Applicants argue that the sales generated by the creation of the new classes for financial institutions would benefit the Funds through economies of scale due to increased Fund size.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19157 Filed 8-12-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1443]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Paperwork Reduction Act of 1980, Public Law 96-511

SUMMARY: Bearers of U.S. Passports may require to: amend the passport for a name change; correct the descriptive data; add visa pages; and extend the validity of a limited passport. The Passport Amendment/Validation Application is provided for this purpose. It is necessary to submit a statement with an application for a new passport when a previous valid or potentially valid passport cannot be presented. The Statement Regarding Lost or Stolen Passport form is provided for this purpose. The following summarizes the information collection proposals submitted to OMB.

1. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of informatin collection—Passport Amendment/Validation Application.
   Frequency—On occassion.
   Form No. —DSP-19.
   Respondents—Holders of U.S. Passports.
   Estimated number of respondents—12,510.
   Average hours per response—30 minutes.
   Total estimated burden hours—6,255.
2. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Statement Regarding Lost or Stolen Passport.
   Frequency—On occasion.
   Form No. —DSP-64.
   Respondents—Passport holders who cannot present a previous valid passport when applying for a new passport.
   Estimated number of respondents—30,000.
   Average hours per response—15 minutes.
   Total estimated burden hours—7,500.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: July 22, 1991.

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91-19125 Filed 8-12-91; 8:45 am]

BILLING CODE 4710-22-M

[Public Notice 1444]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Statement of Identity is used in making a determination of a passport applicant's eligibility to be documented as a citizen of the United States. The collection of this information often eliminates the need for an investigation. The Application for Confidential Verification of Birth is used in cases of suspected fraud and also to determine the nationality of a passport applicant not in the United States. The following summarizes the information collection proposals submitted to OMB.

1. type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Statement of Identity.
   Frequency—On occasion.
   Form No.—DSP-10.
   Respondents—Persons acquainted with a particular passport applicant.
   Estimated number of respondents—2,600.
   Average hours per response—15 minutes.
   Total estimated burden hours—650.
2. Type of request—Reinstatement.
   Originating office—Bureau of Consular Affairs.
   Title of information collection—Application for Confidential Verification of Birth.
   Frequency—On occasion.
   Form No.—DSP-16.
   Respondents—State government vital statistics offices.
   Estimated number of respondents—500.
   Average hours per response—30 minutes.
   Total estimated burden hours—250.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: July 22, 1991.

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91-19127 Filed 8-12-91; 8:45 am]

BILLING CODE 4710-22-M

[Public Notice 1445]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Department of State is requesting approval for the collection of information from nonresident aliens seeking to acquire the status of an alien lawfully admitted for permanent residence under the provisions of section 132 of the Immigration Act of 1990, Public Law 101-649, and from employers who agree to offer

employment to such aliens. Section 132 authorizes the issuance of 40,000 immigrant visas per year during fiscal years 1992, 1993, and 1994 to aliens who are natives of certain countries and who submit applications for selection during time periods to be specified by the Department of State. Proposed regulations for the implementation of section 132 were published by the Department of State on June 4, 1991, 56 FR 25386. Collection of the information required is necessary to permit implementation of the provisions of section 132. Without collection of the information, there can be no implementation of the program and, thus, no issuance of the 40,000 immigrant visas authorized by law. The proposed information collection contains the following:

1. *Type of review requested*—new.

Originating officer—Bureau of Consular Affairs

Title of information collection—application for selection for consideration for visa issuance under section 132 of P.L. 101-649.

Frequency—Once a year during each of fiscal years 1991, 1992, and 1993.

Form No.—None. (Applicants will be permitted to provide the required information on paper of their choice. The only requirement is that the information be set forth in the Roman alphabet and be legible.)

Respondents—Nonresident aliens hoping to be selected for immigrant visa issuance under the provisions of section 132 of Public Law 101-649, and U.S. employers who agree to offer such aliens employment.

Estimated number of respondents—unknown. (The Department has no basis for estimating the number of respondents or the number of responses per respondent as there is no limit upon the number of responses per respondent. During the mail-in period for a similar predecessor program, approximately 1.5 million pieces of mail were received from an unknown number of respondents.)

Average hours per response—0.50

Total estimated burden hours—unknown

Section 3504(h) of Public Law 96-511 applies.

Additional information or comments: Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7430.

Dated: July 22, 1991.

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91-19128 Filed 8-12-91; 8:45 am]

BILLING CODE 4710-22-M

[Public Notice 1446]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: A passport waiver is an exception to section 215(b) of the Immigration and Nationality Act, 8 U.S.C. 1185(b), which requires that an American citizen be in possession of a valid U.S. passport when entering or departing from the United States. Passport waivers are granted only when it is impossible for the applicant to obtain a passport prior to her/his departure and she/he possesses alternative citizenship evidence which can be carried with her/him. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Consular Affairs.

Title of information collection—Request by U.S. National for and Report of Exception to Section 53.1, Title 22 of the Code of Federal Regulations.

Frequency—On occasion.

Form No.—DS-1423.

Respondents—U.S. citizens requesting a waiver to 22 CFR 53.1.

Estimated number of respondents—2,500.

Average hours per response—15 minutes.

Total estimated burden hours—625

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: July 22, 1991

Warren E. Littrel,

Acting Assistant Secretary for Diplomatic Security.

[FR Doc. 91-19129 Filed 8-12-91; 8:45 am]

BILLING CODE 4710-22-M

Bureau of Diplomatic Security

[Public Notice 1452]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: The Retail Price Schedule Survey, which includes the Hotel and Restaurant Report and Living Pattern Questionnaire, is the primary source of information used by the Department of State in establishing and justifying temporary lodging, travel per diem and post (cost of living) allowances for all Federal civilian employees assigned abroad or traveling in foreign areas. It is also used by the Department of Defense to review travel cost data and establish cost of living allowances for Uniformed Services personnel outside the conterminous U.S. The following summarizes the information collection proposal submitted to OMB:

Type of Request—Reinstatement.

Originating Office—Bureau of Administration.

Title of Information Collection—Retail Price Schedule.

Frequency—Quarterly and Annually.

Form No.—DSP-23Y and DSP-23W.

Respondents—Merchants.

Estimated Number of Respondents—684.

Average Hours per Response—7 hours.

Total Estimated Burden Hours—1,817.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: August 1, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91-19183 Filed 8-12-91; 8:45 am]

BILLING CODE 4710-22-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for Molokai Airport, Kaunakakai, Molokai, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announce its determination that the noise exposure maps submitted by the State of Hawaii, Department of Transportation for the Molokai Airport 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 a proposed noise compatibility program that was submitted for Molokai Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 28, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 1, 1991. The public comment period ends September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, Honolulu Airports District Office, Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850, Telephone: (808) 541–1243. 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 submitted for Molokai Airport are in compliance with applicable requirements of part 150, effective August 1, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 28, 1992. 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 noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. 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 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 proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The State of Hawaii, Department of Transportation, submitted to the FAA on November 20, 1990 noise exposure maps, descriptions and other documentation which were produced during the preparation of the Molokai Airport Noise Compatibility Study dated December 24, 1990. 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 the State of Hawaii, Department of Transportation. The specific maps under consideration are Figures 4–1 and 6–4 in the submission. The FAA has determined that these maps for Molokai Airport are in compliance with applicable requirements. This determination is effective on August 1, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAA 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 a noise exposure map 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 from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map 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 FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Molokai Airport, also effective on August 1, 1991. 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 January 28, 1992.

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, and the proposed 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, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Blvd., room 3E24, Hawthorne, California 90261.

Federal Aviation Administration, Honolulu Airports District Office, 300

Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813.
State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819.
State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Kahului Airport, Kahului, Maui, Hawaii 96732.
State of Hawaii, Department of Transportation, Airports Operation and Maintenance, Molokai Airport, Hoolehua, Molokai, Hawaii 96729.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 1, 1991.

Herman C. Bliss,

Manager, Airports Division, AWP-600 Western-Pacific Region.

[FR Doc. 91-19165 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Airport Noise Assessment Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Airport Noise Assessment Working Group.

SUMMARY: Notice is given of the establishment of an Airport Noise Assessment Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its July 31, 1991, meeting (56 FR 27783, June 17, 1991), the subcommittee established the Airport Noise Assessment Working Group.

Specifically, the working group's task is the following:

Analyze and evaluate the noise distribution patterns that result from close-in and distant noise abatement departure profiles. Make comparisons between the current national standards, existing non-standard procedures, and proposed national standards and document the effects the noise patterns generated by the proposed standard would have on airport communities.

The Airport Noise Assessment Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **"FOR FURTHER INFORMATION CONTACT"** expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Airport Noise Assessment Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19171 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Autopilot Engagement Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Autopilot Engagement Requirements Working Group.

SUMMARY: Notice is given of the establishment of an Autopilot Engagement Requirements Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Autopilot Engagement Requirements Working Group.

Specifically, the working group's task is the following:

Determine the criteria for autopilot engagement. The current regulation (§ 121.579) does not address existing autopilot technology. This working group would require the expertise of TERPS specialists, flight test engineers, and air carrier pilots.

The Autopilot Engagement Requirements Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person

listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Autopilot Engagement Requirements Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19172 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Wet Leasing Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Wet Leasing Working Group.

SUMMARY: Notice is given of the establishment of a Wet Leasing Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Wet Leasing Working Group.

Specifically, the working group's task is the following:

> Determine the criteria that parties to lease agreements must meet including operational control criteria, the kinds of operations authorized, and the specific procedures and limitations to be incorporated into Parts 121 and 135 operations specifications.

The Wet Leasing Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Wet Leasing Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19173 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Fuel Requirements Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Fuel Requirements Working Group.

SUMMARY: Notice is given of the establishment of a Fuel Requirements Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at that meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 2, 1991), the subcommittee established the Fuel Requirements Working Group.

Specifically, the working group's task is the following:

> Determine fuel supply requirements for international and overseas operations including criteria for minimum fuel, diversion fuel, contingency fuel and alternate fuel. Determine fuel requirements related to redispatching. Develop regulatory language for revision of Parts 121 and 135 and advisory material for publication as one or more advisory circulars.

The Fuel Requirements Working Group will be comprised of experts from those organizations having an interest in

the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section (10)(d) of the Federal Advisory Committee Act. Meetings of the Fuel Requirements Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19174 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee; Noise Abatement Takeoff Profiles Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Noise Abatement Takeoff Profiles Working Group.

SUMMARY: Notice is given of the establishment of a Noise Abatement Takeoff Profiles Working Group by the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Air Carrier Operations Subcommittee was established at the meeting to provide advice and recommendations to the Director, FAA Flight Standards Service, on air carrier operations, pertinent regulations, and associated advisory material. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Noise Abatement Takeoff Profiles Working Group.

Specifically, the working group's task is the following:

Determine close in (flaps down) and distant (flaps up) standard takeoff profiles and prepare the material for incorporation into Advisory Circular 91-53.

The Noise Abatement Takeoff Profiles Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not necessarily be a representative of one of the organizations of the parent Air Carrier Operations Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption "**FOR FURTHER INFORMATION CONTACT**" expressing that desire and describing his or her interest in the task and the expertise or she would being to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Noise Abatement Takeoff Profiles Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19175 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Air Carrier Operations Subcommittee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Air Carrier Operations Subcommittee.

SUMMARY: Notice is given of the establishment of an Air Carrier Operations Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. David S. Potter, Executive Director, Air Carrier Operations Subcommittee, Flight Standards Service (AFS-201), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8166; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized in section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups made up of experts from those having an interest in an issue to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion, rather than presenting it directly to the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the newly enacted Negotiated Rulemaking Act of 1990 (P.L. 101-648).

The Air Carrier Operations Subcommittee will provide advice and recommendations to the Director, Flight Standards Service, FAA, on air carrier operations, pertinent regulations, and associated advisory material. The membership of the Air Carrier Operations Subcommittee consists solely of the following members of the Aviation Rulemaking Advisory Committee:

- Aerospace Industries Association (AIA).
- Air Freight Association.
- Air Line Pilots Association (ALPA).
- Air Transport Association of America (ATA).
- Airbus Industrie.
- Airline Passengers Association of North America, Inc. (APANA).
- Airport Operators Council International/American Association of Airport Executives (AOCI/AAAE).
- Alaska Air Carriers Association (AACA).
- Allied Pilots Association (APA).
- Association of Flight Attendants (AFA).
- Aviation Consumer Action Project (ACAP).
- Boeing Commercial Airplane Group.
- Flight Dispatchers, Meteorologists, & Operations Specialists Union.
- Flight Safety Foundation (FSF).
- Helicopter Association International (HAI).
- International Air Transport Association (IATA).
- International Foundation for Airline Passengers.
- Joint Aviation Authority (JAA).
- Joint Council of Flight Attendants.
- McDonnell Douglas Corporation.
- National Air Carrier Association, Inc. (NACA).
- National Air Transportation Association, Inc. (NATA).
- National Association of Trade and Technical Schools (NATTS).
- NOISE.
- Regional Airline Association (RAA).

Notices establishing five Air Carrier Operations Subcommittee working groups (the Noise Abatement Takeoff Profiles, fuel Requirements, Wet Leasing, Autopilot Engagement Requirements, and Airport Noise Assessment Working Groups) are published elsewhere in this issue of the **Federal Register**. The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on August 7, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-19176 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

International Conference on Aging Aircraft and Structural Airworthiness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting sponsored jointly by the Federal Aviation Administration and the National Aeronautics and Space Administration (NASA) concerning aging aircraft and structural airworthiness.

DATES: The meeting will be held on November 19-21, 1991, at 8:30 a.m. each day.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard DeAnnuntis, Atlantic Science and Technology Corporation, Cherry Hill, New Jersey, telephone (609) 751-0237.

SUPPLEMENTARY INFORMATION: The FAA and NASA will jointly sponsor an International Conference on Aging Aircraft and Structural Airworthiness on November 19-21, 1991. The purpose of the meeting is to provide the aviation community with information with respect to the progress made by the FAA, NASA, and the world aerospace industry in solving structural related aging aircraft problems. Future concerns will be addressed and technical activities planned. Following the opening morning session on the first day, the conference will include a review of ongoing activities in structural performance, nondestructive evaluation, maintenance and repair, international activities, and commuters. All sessions will include a question and answer period.

Attendance is open to the interested public. There will be a registration fee of $150.000 Interested persons may register in advance by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT,** or during the morning of November 19 at the conference location.

There will be a block of rooms set aside at the Hyatt Regency for attendees desiring accommodations. Please contract the Hyatt Regency Hotel, telephone (202) 737-1234.

Issued in Atlantic City, New Jersey, on July 22, 1991.

Mr. Bruce M. Singer,

Deputy Service Director, Engineering, Research, and Development Service, FAA Technical Center.

[FR Doc. 91-19166 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-13-M

Martime Administration

[Docket S-881]

American President Lines, Ltd.; Application for Amendment of Existing Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application dated July 23, 1991, requests amended waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, for foreign-flag operations of APL, under Operating-Differential Subsidy Agreement, Contract MA/MSB-417.

APL's Existing Services

APL now performs four subsidized containership services described in appendix A to APL's operating subsidy agreement. Its two transpacific services cover the range of former Trade Route (TR) 29 to/from California for up to 108 annual sailings (Line A) and to/from Oregon-Washington for up to 80 annual sailings (Line B). Former TR 29 includes ports in the Far East on the continent of Asia from the U.S.S.R. to Thailand, inclusive, Japan, Taiwan, and the Philippines. Under active consideration by the Maritime Administration is APL's application to conform its Lines A and B services to new TR 2. APL's two Extension services add authority to serve ports of Southeast and South Asia and the Persian Gulf-Red Sea on up to 28 sailings to/from California (Line A Extension) and up to 80 sailings to/from Oregon-Washington (Line B Extension). APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its Line A and Line B services primarily with line-haul vessels making direct calls at most major foreign TR 29 ports, including Yokohama, Kobe, and Okinawa, Japan; Kaohsiung and Chi-lung, Taiwan; and Hong Kong. Korea and the Philippines are served by APL's subsidized feeder vessels

The APL Extension services are currently performed by a feeder network that includes four subsidized U.S.-flag APL owned vessels providing service on a relay basis to Singapore, Colombo, and Fujayrah via Kaohsiung, and a fifth U.S.-flag APL owned vessel serving the Persian Gulf over Fujayrah.

APL also operates chartered foreign-flag feeders in and to Extension areas under authority of a section 804 waiver (Waiver 6 in appendix G to APL's operating subsidy contract, granted June 3, 1988, for a period of five years—Docket S-819). That current waiver authority is to permit APL to own or charter and operate 10 foreign-flag vessels as described:

No. ships	Capacity	Between	Service area
1	350 FEU.	Extension [1] port.	[3] Persian Gulf—Gulf of Oman.
	port coverage:	Fujayrah or Khor al Fakkan.	Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, inducement ports.
2 [2]	450 FEU each.	Extension area port.	Karachi, other ports in India.
	port coverage:	Fujayrah..	Krachi, ports in India.
2 [2]	950 FEU each.	Extension area port.	Karachi, other ports in India, Gulf of Oman.
	port coverage:	Colombo.	Karachi, ports in India, Fujayrah, Masqat.
2	400 FEU each.	Extension area port.	[3]west coast India.
	port coverage:	Colombo or Fujayrah, Singapore, or Madras.	Bombay, Mangalore, Porbandar, Cochin, optional Jamnagar/Tuticorin.
3	300 FEU each.	Extension area port.	Bay of Bengal ports.
	port coverage:	Colombo or Singapore.	Calcutta, Chalna, Chittagong, Madras, inducement Vishakhapatnam/Paradip.
1	250 FEU.	Singapore.	mainland Malaysia.
	port coverage:	Singapore.	Port Kelang, Pinang, Pasir Gudang.
1	300 FEU.	Singapore.	Indonesia.
	Port coverage:	Singapore.	Djakarta, optional Surabaya/Semarang.

[1] As described in Appendix A.
[2] Alternative authority; either deployment may be utilized, but not at the same time.
[3] The west coast India feeder vessels may, after a voyage to India, upon return to the relay port, proceed on a voyage to the Persian Gulf-Gulf of Oman, after which, upon return to the relay port, the vessels will commence the next voyage to the west coast of India.

In connection with the unusual cargo capacity demands in connection with Desert Storm, the above described waiver was temporarily modified commencing on January 25, 1991, for a period of 210 days, as follows:

(1) to the extent not already included, the port coverage of APL's three feeder services operating in or to the Arabian Sea, Gulf of Oman, and Persian Gulf—the Persian Gulf-Gulf of Oman service, the Karachi service, and the west coast India service—be expanded to include ports in the Gulf of Oman (principally Fujayrah and Masqat), Oman (principally Mina Raysut), and Karachi;

(2) An increase from one to two in the number of feeder vessels of 700 FEU capacity that APL may operate in its Persian Gulf-Gulf of Oman feeder;

(3) Authority to operate a single feeder vessel of up to 350 FEU capacity between either Colombo or Fujayrah and ports in the Red Sea exclusive of Egypt and Ethiopia;

(4) Authority to operate a three vessel feeder, using vessels of up to 700 FEU capacity, between Singapore and one or more of APL's major extension area ports—Colombo, Madras, Bombay, Cochin, Karachi, Fujayrah, and Dammam; and

(5) In addition to the four specific authorities next above, authority to coordinate all APL feeder services providing capacity to or through the Arabian Sea (i.e., the existing Persian Gulf/Gulf of Oman, Karachi, and the west coast India services, and the added Red Sea and Singapore West Asian services) by combining sailings and/or interchanging vessels operated in those services. Any such combination and interchange authority, as to any individual service area component, would be performed subject to the overall capacity limitation contemplated in that service area's individual authority.

Of those authorities, APL has identified some services which the Operator now requests be included in the waiver, until June 8, 1993.

The requested amendments are (1) to serve the Persian Gulf-Gulf of Oman with two 350 FEU feeders, or, alternatively one 700 FEU feeder, and to include all of Oman in the service area; (2) the Red Sea feeder service, including Gulf of Aden and Oman, but excluding Egypt and Ethiopia, be continued with a single 350 FEU vessel; (3) to serve the Indian subcontinent in the Madras-Colombo-Bombay range with two 350 FEU vessels.

The APL letter application contains an attachment which is a restatement of the entire proposed Waiver 6, including the next above-described amendments. The proposed waiver description is as follows:

No. ships	Approximate capacity	Between	Service area
2 [1]	350 FEU each	Extension area port	Persian Gulf—Gulf of Oman, Oman.[3]
	Port coverage	Fujayrah or Khor al Fakkan	Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, Mina Raysut, Inducement ports.
1 [1]	700 FEU	Extension area port	Persian Gulf—Gulf of Oman, Oman.[3]
	Port coverage	Fujayrah or Khor al Fakkan	Dubai Ad Dammam, Al Kuwayt, Bahrain, Masqat, Mina Raysut, Inducement ports.
2 [2]	450 FEU each	Estension area port	Karachi, other ports in India.
	Port coverage	Fujayran	Karachi, ports in India.
2 [2]	950 FEU each	Extension area port	Karachi, other ports in India, Gulf of Oman, Oman.
	Port coverage	Colombo	Karachi, ports in India, Fujayrah, Masqat, Mina Raysut.
2	400 FEU each	Extension area port	west coast India.[3]
	Port coverage	Colombo or Fujayrah, Singapore, or Madras	Bombay, Mangalore, Porbandar, Cochin, optional Jamnagar/Tuticorin.
3	300 FEU each	Extension port	Bay of Bengal ports.
	Port coverage	Colombo or Singapore	Calcutta, Chalna, Chittagong, Madras, inducement Vishakhapatnam/Paradip.
1	250 FEU	Singapore	mainland Malaysia/
	Port coverage	Singapore	Port Kelang, Pinang, Pasir Gudang.
1	300 FEU	Singapore	Indonesia.
	Port coverage	Singapore	Djakarta, optional Surabaya/Semarang.
1	350 FEU	Extension area port	Red Sea (excluding Egypt and Ethiopia) Gulf of Aden, Oman.
	Port coverage	Colombo or Fujayrah	Juddah, Hudaydah (Al Ahmedi) Port Sudan, Aqaba.
2	350 FEU each	Extension area port	Indian Subcontinent.
	Port coverage	Singapore	Colombo, Madras, Bombay, Cochin.

[1] Alternative authority; either deployment may be utilized, but not at the same time.
[2] Alternative authority; either deployment may be utilized, but not at the same time.
[3] The west coast India feeder vessels may, after a voyage to India, upon return to the relay port, proceed on a voyage to the Persian Gulf-Gulf of Oman, after which, upon return to the relay port, the vessels will commence the next voyage to the west coast India.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 27, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: August 7, 1991.

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91-19131 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-81-M

Maritime Administration

[Docket S-883]

American President Lines, Ltd.; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Foreign-Flag Slot Charters

American President Lines, Ltd. (APL), by application dated August 2, 1991, requests waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended, (Act), for foreign-flag slot charters by APL on vessels of Orient Overseas Container Line Inc. (OOCL) pursuant to APL's participation in a reciprocal slot exchange and coordinated sailing agreement, designated Federal Maritime Commission (FMS) No. 203-011340, and in a Master Slot Charter Agreement, both between APL and OOCL.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Comments must be received no later than 5 p.m. on August 27, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: August 8, 1991.

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91-19181 Filed 8-12-91; 8:45 am]

BILLING CODE 4910-81-M

[Docket S-882]

Lykes Bros. Steamship Co., Ltd.; Application for authorization to act as general agent for a foreign-flag company

By application of July 26, 1991, Lykes Bros. Steamship Co., Inc. (Lykes) requests the Maritime Administration's authority to the extent required to act as general agent for Di Gregorio Navegacao Ltda. (De Gregorio) in the trade between the east coast of South America and the U.S.

Lykes has been approached by Di Gregorio, a Brazilian company, to act as their general agent throughout the United States and appoint on their behalf subagents as necessary in the United States to represent their soon-to-be-initiated services. Di Gregorio has been granted operating authority by the Brazilian Government to initiate a liner

service to the United States and has contracted for two RO/RO vessels presently under construction in Brazil. To establish a service and to prepare for introduction upon delivery of the two RO/RO vessels now under construction, Di Gregorio intends to commence this service during the third quarter of 1991 with chartered-in combination breakbulk/container vessels operating on a 42-day voyage.

The service would commence as a combination breakbulk/container service employing vessels of 15–25,000 deadweight tons and a container capacity of 300–700 TEU. This would afford 21-day intervals between sailings. Upon delivery of their first RO/RO, it is anticipated that it would become a three-vessel service with a 14-day frequency and, upon delivery of the second RO/RO vessel, would become a four-vessel service with 10-day frequency between ports on the east coast of South America and the United States. Investigations are also under way for a similar service between the east coast of South America and the gulf coast of the U.S. As general agent for these Di Gregorio services, Lykes would perform sales and solicitation services, equipment management services, husbanding, documentation, advertising, and all other necessary agency functions requisite for a successful Di Gregorio service.

Lykes believes that the special circumstances behind this application are extremely unique. Lykes was selected by Di Gregorio as the company best situated to assist this fledgling operator from a developing country to successfully launch a maritime venture between the east coast of South America and the United States. This proposed relationship between a Brazilian and an American company provides a unique opportunity for mutually beneficial cooperation between citizens of the two trading partners which, in turn, Lykes feels, could strengthen international relations between the U.S. and Brazil.

Lykes asserts that this proposed agency agreement presents a valuable opportunity for Lykes. Denial of a waiver would result in the loss of this business opportunity without any provable gain or benefit to any other U.S.-flag carrier, subsidized or unsubsidized. Lykes maintains that Di Gregorio will enter the U.S./Brazil trade whether or not Lykes is granted a waiver to meet its agency requirements in the U.S. Consequently, Di Gregorio will need to procure agency services from some company whether it be Lykes or another carrier or agent.

Lykes contends that there is substantial good cause for granting a waiver for this agency agreement because the proposed agency agreement is a prudent business opportunity for Lykes to increase the efficiency of its shore side operations and to reduce the overhead costs of those operations to Lykes.

Lykes avers that the additional revenue earned as a result of the agency agreement will contribute to Lykes' overall operating results by allowing it to recover overhead costs that would otherwise have to be shouldered completely by Lykes. This, of course, will strengthen the economic health of Lykes, whether or not the overall financial impact of the agreement is significant from an accounting standpoint in terms of Lykes' balance sheet.

Also, according to Lykes, there is no possibility of subsidy diversion under this agreement, which is a principal concern under section 804.

The principal component of the Di Gregorio service in the initial stages will be the breakbulk component, which Lykes states will not be competing with any American flag services. If service to the gulf is initiated, it will only compete with breakbulk services presently provided by Lykes on an inducement basis. In fact, Lykes views such competition to be beneficial rather than detrimental. An increase in service to the shipping public should have the effect of developing a greater interest in, if not a demand for, liner service. This, in turn, would benefit Lykes' inducement service by providing more opportunities for providing such service.

For containerized cargo, Lykes notes that Di Gregorio's partial containership service will initially compete with the extensive containership service of Crowley Maritime, which presently employs three U.S.-flag container vessels and three foreign-flag container vessels with an approximate voyage length of 42 days between the U.S. east coast and the east coast of South America.

With respect to the RO/RO component of Di Gregorio's service, which will materialize in 1992–93 upon delivery of the two RO/RO vessels currently under construction in Brazil, Lykes states that there is no U.S.-flag RO/RO operator presently in any of the U.S. trades to and from the east coast of South America.

In light of the above, Lykes feels that there is serious doubt that the introduction of this new service will have any adverse effect at all on U.S.-flag service in the U.S./Brazil trade, much less that the provision of agency services by Lykes will have such an effect. To the extent that there were any adverse effect, in Lykes' view, it could only be insignificant.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Merchant Marine Act, 1936, as amended, and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 27, 1991. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

Dated: August 7, 1991.

By Order of the Maritime Administrator

Joel C. Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 91–19130 Filed 8–12–91; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, August 16, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19391 Filed 8-9-91; 3:10 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on August 6, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, August 14, 1991.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposal to revise the Federal Reserve's policy regarding borrowing by examiners.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19392 Filed 8-9-91; 3:01 pm]

BILLING CODE 6210-01-M

AGENCY HOLDING THE MEETING: BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, August 19, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: .

1. Proposed purchase of check processing equipment within the Federal Reserve System.
2. Proposed acquisition of currency processing equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 9, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19389 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-91-25]

TIME AND DATE: August 21, 1991 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda of future meetings.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731-TA-525 (Preliminary) (Nepheline Syenite from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: August 8, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-19338 Filed 8-9-91; 1:02 pm]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-91-24]

TIME AND DATE: August 15, 1991 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

In conformity with 19 C.F.R. § 201.35(c)(1), Commissioners, Brunsdale, Lodwick, Rohr, and Newquist determined that the Commission business required that a meeting be called with less than 10 days' notice and that no earlier announcement of such meeting was possible, and directed the issuance of this notice at the earliest practicable time.

MATTERS TO BE CONSIDERED:

1. Agenda for week of August 26, 1991.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731-TA-469 (Final) (HIC Flat Panel Displays from Japan)—briefing and vote.
6. Inv. 731-TA-485 (Final) (Gene Amplification Thermal Cyclers from the United Kingdom)—briefing and vote.
7. Any items left over from previous agenda.
8. Report of The Secretary of action pursuant to memorandum CO62-0-038.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: August 8, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-19337 Filed 8-9-91; 12:46 pm]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 5-91, Notice of Meetings, Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral

hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time and Subject Matter

Thurs., Aug. 22, 1991 at 10:00 a.m.—Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC on August 9, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91-19362 Filed 8-9-91; 2:22 pm]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Week of August 12, 19, 26, and September 2, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 12

Friday, August 16

9:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 5, & 7)

10:00 a.m.
Briefing on Uncertainties in Implementing the EPA HLW Standards (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Program Fraud Civil Remedies Act (10 CFR Part 13) —Final Rule (Tentative)
b. Appeal of LBP-91-19 (Arizona Public Service Company, et al. (Palo Verde Nuclear Station, Units Nos. 1, 2 and 3)) (Tentative)

Week of August 19—Tentative

Wednesday, August 21

9:30 a.m.
Briefing on Program for Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) for Advanced Reactors (Public Meeting)

2:00 p.m.
Briefing by NRC Staff on International Programs (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 26—Tentative

Wednesday, August 28

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of September 2—Tentative

There are no meetings scheduled for the Week of September 2.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserve 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 Meetings Call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: August 9, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-19378 Filed 8-9-91; 2:23 p.m.

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 56, No. 156
Tuesday, August 13, 1991

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 EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1992 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Correction

In notice document 91-18207 beginning on page 36780 in the issue of Thursday, August 1, 1991, make the following corrections:

1. On page 36780, in the third column, insert the following above the third table:

"Annual Income Levels (Continued)

Alaska"

2. On page 36781, in the first column, insert the following above the table:

"Hawaii"

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

Correction

In rule document 91-16874 beginning on page 32330 in the issue of Tuesday, July 16, 1991, make the following correction:

On pages 32331 and 32332, in the table, remove the heading reading "Proposed Base (100-year) Flood Elevations".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OPH-009-P]

RIN 0938-AE24

Health Maintenance Organizations; Group Specific Ratings

Correction

In proposed rule document 91-16241 beginning on page 31597 in the issue of Thursday, July 11, 1991, make the following correction:

1 On page 31598, in the second column, in the first complete paragraph, in the eighth line, after "group" add "for a contracted benefit period is based on the actual experience of the group".

2. On page 31599, in the second column, in the first complete paragraph, in the 13th line, "following" should read "allowing".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 338

[INS Number: 1267-91]

RIN 1115-AB84

Endorsement of Name Change on Certificate of Naturalization; Electronic Recordkeeping

Correction

In rule document 91-15875 beginning on page 30679 in the issue of Friday, July 5, 1991, make the following correction:

§ 338.12 [Corrected]

On page 30680, in the first column, in § 338.12, in the third line from the end of the paragraph, "recordkeeping" was misspelled.

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1839

RIN 2700-AB09

[NASA FAR Supplement Directive 89-8]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

Correction

In rule document 91-16517 beginning on page 32115 in the issue of Monday, July 15, 1991, make the following corrections:

1839.7001 [Corrected]

1. On page 32116, in the first column, in section 1839.7001(b), in the second line, "administrator" should read "Administrator".

1839.7003-2 [Corrected]

2. On the same page, in the third column, in section 1839.7003-2(a) introductory text, in the third line from the bottom, "installation" should read "installations".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

Correction

In notice document 91-16527 beginning on page 31973 in the issue of Friday, July 12, 1991, make the following correction:

On page 31975, in the table, in the entry for "Washington", in the second column, in the second line, "586-234" should read "586-2340".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-18177; S7-7-91]

RIN 3235-AD91

Amendment to Rule 2a-7 Under the Investment Company Act

Correction

In rule document 91-13404 beginning on page 26028 in the issue of Thursday,

June 6, 1991, make the following correction:

1. On page 26028, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the first line, "Council" should read "Counsel".

2. On page 26029, in the second column, in the eighth line from the top, "of" should read "or".

3. On the same page, in the third column, in the first full paragraph, in the third line, "singlerated" should read "single-rated"; and in footnote 11, paragraph (1), in the second line from the bottom, "delegates" should read "delegate".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF- 312]

Technical Amendments

Correction

In rule document 91- 15562 beginning on page 31076 in the issue of Tuesday, July 9, 1991, make the following correction:

On page 31079, in the second column, in amendatory instruction 37., and in the section heading entitled "General", "24.255" should read " 24.225"

BILLING CODE 1505-01-D

federal register

Tuesday
August 13, 1991

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Proposed Determination of Critical Habitat for the Northern Spotted Owl; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Revised Proposed Determination of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) originally proposed designation of critical habitat for the northern spotted owl (*Strix occidentalis caurina*) on May 6, 1991. The Service hereby revises its proposed designation of critical habitat for the northern spotted owl, a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The northern spotted owl, referred to herein as spotted owl or owl, is a forest bird that inhabits coniferous and mixed conifer-hardwood forests. The current range of the northern spotted owl extends from southwestern British Columbia through western Washington, western Oregon, and northwestern California south to San Francisco Bay. Proposed critical habitat units are located primarily on Federal lands and to a lesser extent on State lands. The Service has not included private and tribal lands in this proposal.

This proposed critical habitat designation would result in additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency. Section 4 of the Act requires the Service to consider economic and other relevant costs prior to making a final decision on the size and scope of critical habitat. The Service solicits data and comments from the public on all aspects of this proposal, including additional information on the economic impacts (costs and benefits) of the designation, methods of evaluating costs and benefits accruing from the designation, the amount and distribution of owls and owl habitat (particularly dispersal habitat), and why any particular lands (regardless of ownership) should or should not be designated as critical habitat.

DATES: Comments from all interested parties must by received by October 15, 1991. The Service intends to conduct one public hearing at each of the following locations:

1. Monday, September 9, Redding, California;
2. Wednesday, September 11, Medford, Oregon;
3. Tuesday, September 17, Olympia, Washington;
4. Thursday, September 19, Portland, Oregon.

Each hearing will be held from 1 to 4 and 6 to 9 p.m.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Assistant Regional Director, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 Northeast 11th Ave., Portland, Oregon 97232. The complete file for this rule, including comments and materials received, will be available for public inspection, by appointment, during normal business hours at the above address. The public hearings will be held at the following locations:

1. Redding—Holiday Inn, 1900 Hilltop Dr., Redding, Ca.
2. Medford—Nendell's Inn, 2300 Crater Lake Hwy., Medford, Ore.
3. Olympia—Washington Center for the Performing Arts, 512 S. Washington St., Olympia, Wash.
4. Portland—Bonneville Power Administration, Auditorium, 911 N.E. 11th Ave., Portland, Ore.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Fish and Wildlife Enhancement at the above address (503/231-6159 or FTS 429-6159); Mr. Barry S. Mulder, Spotted Owl Coordinator, at the above address (503/231-6730 or FTS 429-6730); and Mr. Mel Schamberger, Chief, Terrestrial Branch, U.S. Fish and Wildlife Service, National Ecology Research Center, 4512 McMurray Avenue, Fort Collins, Colorado 80525-3400 (303/226-9409 or FTS 323-5409).

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On January 28, 1987, the Service received a petition requesting that the northern spotted owl be listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). A 90-day finding was issued on July 23, 1987, acknowledging that the petition presented substantial information indicating that listing might be warranted. On December 17, 1987, the Service made a 1-year finding that listing the northern spotted owl was not warranted at that time. Notice of this finding was published in the **Federal Register** on December 23, 1987 (52 FR 48552).

On May 5, 1988, several environmental organizations filed suit challenging the Service's finding that listing was not warranted. On November 17, 1988, the court in that suit (*Northern Spotted Owl* v. *Lujan*, No. C88-573Z, Western District, Washington) ordered the Service to reanalyze the evidence and determine whether to issue a revised petition finding.

On April 25, 1989, the Service issued a revised finding indicating that listing the northern spotted owl as a threatened species throughout its entire range was warranted. On June 23, 1989 (54 FR 26666), the Service published a proposal to list the northern spotted owl as a threatened species. After reviewing all applicable information and public comment, the Service published a final rule to list the northern spotted owl as a threatened species on June 26, 1990 (55 FR 26114). The Service did not propose to designate critical habitat for the northern spotted owl within the listing rule because the Service found that critical habitat was not determinable at the time. The Service subsequently began planning an approach to propose critical habitat.

On August 10, 1990, the plaintiffs filed an additional motion seeking to compel the Service to immediately propose critical habitat. On February 26, 1991, the Court ruled that the Service had violated the Act in failing to designate critical habitat concurrently with listing the owl. The Court ordered the Service to propose a rule on critical habitat and to publish a final rule at the earliest possible time permitted under the appropriate regulations.

The Service published a proposed rule to designate critical habitat for the northern spotted owl on May 6, 1991 (56 FR 20816). The May 6 proposal announced the Service's intention to publish a revised critical habitat proposal in early August 1991, to allow for the fullest possible consideration of public comment on the economic and other relevant impacts of a designation and the subsequent completion of the Service's economic analysis. This new proposal supersedes all aspects of the May 6 proposal.

Public comments on this revised proposed rule will be accepted for 60 days from the date of publication in the **Federal Register** (see "**DATES**"). The Service intends to publish a final critical habitat rule within 60 days after close of the public comment period.

Ecological Considerations

The northern spotted owl is one of three subspecies of spotted owls

recognized by the American Ornithologist's Union. For a complete discussion of the ecology and life history of this subspecies, see the Interagency Scientific Committee's *A Conservation Strategy for the Northern Spotted Owl* (Thomas *et al.* 1990), the Service's three status reviews (USDI 1987, 1989, 1990), and the June 26, 1990, final rule listing the northern spotted owl as a threatened species (55 FR 26114). These documents incorporate the majority of current biological information on the subspecies used to develop this proposed critical habitat rule. Additionally, the Service reviewed biological data from owl studies made available since the summer of 1990. These new references are included in the Service's administrative record. New data are incorporated and cited where relevant. None of the new biological data substantially contradicted previous studies on the ecology of the subspecies summarized in the above documents.

The northern spotted owl is known from most of the major types of coniferous forests in the Northwest. The range of the northern spotted owl is from southwestern British Columbia, through western Washington, western Oregon, and northern California south to San Francisco Bay where forested habitat still exists. The ranges of the northern and California spotted owls adjoin in the Pit River area of Shasta County, California.

The range of the northern spotted owl encompasses five major physiographic provinces that depict local climatic and geological conditions (Franklin and Dyrness 1988). These conditions are responsible for the development of the respective vegetative landscapes within each province. Reference to these provinces provides an artificial method of subdividing owl populations. From north to south, the provinces include the Washington Cascades, Olympic Peninsula, Oregon Coast Ranges, Oregon Cascades, and Klamath Mountains. Thomas *et al.* (1990) divided the owl's range into 10 separate areas to reflect differences in spotted owl numbers, distribution, habitat use patterns, and habitat conditions. The 10 provincial subdivisions described by Thomas *et al.* (1990) include the Washington Cascades East and West, Olympic Peninsula, Southwestern Washington, Oregon Coast Ranges, Oregon Cascades East and West, Klamath Mountains, California Cascades/Modoc, and the Northern California Coast Range.

Populations are not evenly distributed throughout the owl's range due to variation in habitat conditions resulting from human-induced disturbances, often exacerbated by landownership patterns, and to a lesser extent natural disturbances. The greatest numbers of spotted owls are found in the west-central Cascade region of Oregon (based on information obtained during section 7 consultation with the Forest Service and the Bureau of Land Management (Bureau), and information viewed during the congressional mapping effort in June 1991) and the Coast Range of northwestern California (G. Gould, 1991 California Department of Fish and Game, biologist, pers. comm.); the majority of owls are found on Forest Service lands. The owl is uncommon in certain areas, e.g., in southwestern Washington and northwestern Oregon; thus, its distribution is now somewhat discontinuous over its range.

Northern spotted owls have been observed over a wide range of elevations, but avoid high elevation, subalpine forests. The range of elevation in which spotted owls occur extends from 70 feet (21 meters) above sea level in the Olympic Peninsula of Washington to over 6,000 feet (1800 meters) above sea level in California.

Vegetative composition of spotted owl habitat changes from north to south within its range. The spotted owl inhabits forests dominated by Douglas-fir (*Pseudotsuga menziesii*) and western hemlock (*Tsuga heterophylla*) in coastal forests of Washington and Oregon. At higher elevations on the west slope of the Cascades in Washington and Oregon, stands containing Pacific silver fir (*Abies amabilis*) are commonly used by owls. Owls use mixed conifer stands that may include Douglas-fir, grand fir (*Abies grandis*), and ponderosa pine (*Pinus ponderosa*) on the east slope of the Cascades.

In southern interior Oregon, habitat further changes to a drier Douglas-fir/mixed conifer composition with a corresponding shift in the predominant prey base, from northern flying squirrels (*Glauocomys sabrinus*) to woodrats (*Neotoma* spp.). Spotted owls most commonly use Douglas-fir, mixed-conifer, and coastal redwood (*Sequoia sempervirens*) forest types in California, but are also found in mixed conifer-hardwood habitat types and in stands dominated by ponderosa pine in the eastern portion of the range in California. Habitat for the northern spotted owl in parts of southern Oregon and northern California is not continuous, but occurs naturally in a mosaic pattern, especially in the southern interior portions of the bird's range. This type of pattern also occurs to some extent at lower elevations in the eastern Cascades in Oregon and Washington.

Forests in the northwestern United States exhibit natural variation in terms of species composition, stand age, climatic and soil conditions, slope steepness and aspect, and other factors. Forest structure varies in several measurable ways: Canopy closure varies from closed to relatively open, as a function of tree size, stocking density, and species composition; canopy layering ranges from multi-layered stands composed of two or more tree heights to single-layered stands; average tree diameter varies with tree age, species, and soil and climatic conditions; and the amount of decadence (deformed, broken, and rotting trees, standing and down dead material, etc.) varies with factors such as stand age, fire, wind, and forest pest influence. Factors such as rainfall, elevation, slope, and aspect influence microclimatic conditions.

Although spotted owl habitat is variable over its range, some general attributes are common to the subspecies' life-history requirements throughout its range. Timber stands supporting successfully reproducing pairs of northern spotted owls typically feature the following attributes: A moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy with large >30 inches diameter-at-breast-height (dbh) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly. These forest characteristics usually develop with increasing forest age, but their occurrence may vary by location, forest practices, and stand type and condition.

The age of a forest is not as important in determining habitat suitability for owls as are vegetational and structural elements. Northern interior forests typically require 150 to 200 years to attain the attributes of breeding and roosting habitat; however, characteristics of breeding and roosting habitat are sometimes found in younger forests, usually those with significant old-age remnant trees from earlier stands. The remanent old forest attributes are products of fire, wind storms, "sloppy" logging operations, or highgrading (removal of the most economically valuable trees). As one moves south or toward the coast in the species range, these attributes are

attained at younger ages due to more favorable growing conditions, site productivity, microclimate, and so forth. The components of breeding habitat are present in relatively young forests (60 or more years of age) in some portions of the subspecies range. However, nearly all nest and roost sites are located in the portions of these stands containing the oldest trees (Thomas *et al.* 1990). Owl survey data indicate that northern spotted owls are disproportionately found in association with older forests (Thomas *et al.* 1990, USDI 1990).

Spotted owls are most often associated with the previously mentioned habitat characteristics for breeding and roosting, but may use a wider array of forest types for foraging and dispersal, including more open and fragmented habitat. In forests that do not provide nesting and roosting attributes, dispersal habitat, at a minimum, consists of forests with adequate tree size and canopy cover to provide at least minimal foraging opportunities and protection from avian predators. Such areas allow juvenile and adult owls to move successfully within and between blocks or islands of nesting and roosting habitat. Habitat sufficient to permit dispersal is essential to connect areas of habitat that support nesting, roosting, and foraging. Current definitions of suitable spotted owl habitat do not contain estimates of the amount of habitat that contributes just the dispersal component.

Owls having an array of habitat types within their home ranges select for older forest >200 years), use mature forest (100-200 years) in proportion to its availability, and tend to avoid younger forest (< 100 years) or use it in relation to its availability (USDI 1989). Different studies over the owl's range demonstrate that owls select older forests for foraging (USDI 1990); roost sites are also strongly associated with older forests.

In the coastal redwoods of California, spotted owls have been observed nesting in stands that had acquired characteristics associated with owl presence in as little as 40–60 years (Pious 1989). Redwood-dominated forests in coastal northern California comprise about 7 percent of the owl's overall range. They develop these habitat characteristics in a shorter time following harvest than other timber-types because of unique characteristics and conditions, such as fast-growth (redwoods are a stump-sprouting species), good soil, high precipitation levels, a long growing season, an understory of other conifers and hardwoods, and an abundant prey base (Thomas *et al.* 1990). Although the forests in this area are younger in age than in other parts of the owl's range, structural habitat characteristics associated with owl presence are similar to those observed elsewhere.

Northern spotted owls have large home ranges and utilize large tracts of land containing significant acreage of older forest to meet their biological needs (USDI 1990). As the quality and quantity of habitat declines, annual home range sizes increase. Thomas *et al.* (1990) indicated median annual pair home range sizes varied from a high of 9,930 acres for the Olympic Peninsula to a low of 2,955 acres for the Oregon Cascades. Actual annual pair home range size varied from 1,035 acres in the Klamath Province to 30,961 acres in the Washington Cascades (USDI 1990).

Forest structure also differs significantly because of varied management practices within the range of the spotted owl. In many areas, management practices have resulted in fragmented patches of older forests, separated by large patches of younger forests that have yet to develop habitat characteristics used by owls. This condition may have led to increased competition with barred owls and predation by great horned owls and other open-forest predators. Barred owls have greatly expanded their range in recent years. The Service knows of three instances of hybridization between barred and spotted owls; the first generation is fertile (Meslow pers. comm. 1991). As habitat becomes more fragmented, the direct effects of increased predation and competition would become more pronounced.

Past forest-management practices also have resulted in a forest age distribution unnaturally skewed toward younger stands. Often, when forests are clearcut, the area is replanted with single or few species of the same age for maximal wood-fiber production. Site-preparation activities, such as prescribed burning, often remove the standing dead or down material. As timber plantations increase in age, timber managers may control competing vegetation, such as hardwoods, through the use of herbicides or mechanical methods. Such silvicultural practices result in timber stands lacking in diversity of the attributes discussed above, and therefore lacking in diversity of the animal species supported.

Historical logging practices in some areas, such as the mixed conifer zone of southern Oregon, along the east side of the Cascades in Oregon and Washington, and in parts of interior northern California, consisted of more selective timber harvesting than in other areas, leaving remnant patches of stands with varying ages and older forest characteristics. Such uneven-age management practices usually result in more ecologically diverse stands. Techniques such as individual tree selection, retention of hardwoods, and retention and/or creation of standing and down dead material seem to replicate more natural forest conditions than do intensive management practices such as clearcutting. In managed stands, spotted owls are more often found in these types of areas than those subject to even-age regeneration following clearcutting. More data are needed to ascertain the compatibility between types of management and long-term spotted owl reproductive success.

As a result, the distribution of current owl habitat is highly variable. Most remaining large tracts of suitable habitat ar found on Federal lands except in the redwood zone of northern California. Remaining suitable habitat on most private lands that the Service is aware of tends to be fairly discontinuous and unevenly distributed; most is associated with small clumps not previously harvested.

Opportunities exist for forest management that is compatible with maintenance of owl habitat and owl populations. For example, forest management practices could provide forest stands of different ages that exhibit appropriate habitat characteristics for the owl to ensure that sufficient younger-aged stands mature at an adequate rate to provide replacement habitat for older stands lost due to logging or natural causes and should provide an adequate quantity and distribution large contiguous blocks of older forest needed for spotted owls.

Management Considerations

Current and historic spotted owl habitat loss is largely attributable to timber harvesting and land conversion practices, although natural disturbances such as forest fires have caused losses as well. Habitat for northern spotted owls has been declining since the arrival of European settlers. Although the extent of suitable habitat before the 1800s is difficult to quantify, estimates of 17.5 million acres in 1800 and 7.5 million acres currently (Thomas *et al.* 1990) suggest a reduction of about 60 percent in the past 190 years. Other estimates suggest that the reported decline in historical habitat may have been as high as 83 to 88 percent (USDI 1990). Historically, habitat reduction has not been uniform throughout the owl's range, but has been concentrated at

lower elevations, particularly in the Coast Ranges. Past logging practices have had the greatest impact on the status of the owl in northwestern Oregon and southwestern Washington.

Although timber harvest in the Northwest has a long history, spotted owl habitat over its range has decreased most rapidly since the 1960s. Based on information from the Forest Service (as stated in USDI 1990), the amount of suitable spotted owl habitat (i.e., for nesting, roosting, and foraging) on unprotected Forest Service lands in Washington and Oregon has declined by approximately 3.4 million acres (60 percent) over the last 30 years; there are no estimates on the decline of other dispersal habitat. While future events are difficult to predict, past trends strongly suggest that much of the remaining unprotected spotted owl habitat could disappear within 20 to 30 years, and on some forests, the unprotected habitat could disappear within 10 years (USDI 1990). Additional information can be found in the Service's assessment of spotted owl habitat (USFWS 1991a).

Prior to listing the spotted owl as a threatened species, many different approaches to spotted owl management and research were being implemented by various Federal and State resource agencies. Attempts began in the mid 1970s, often in an uncoordinated and inconsistent fashion, to focus on managing the owl and avoiding conflicts with harvest but were unsuccessful (Thomas *et al.* 1990). In light of growing uncertainty surrounding the status of the spotted owl, an Interagency Agreement was signed by the Bureau, the Service, the Forest Service, and the National Park Service establishing a committee of scientists to re-evaluate the current management status of the subspecies (Thomas *et al.* 1990). The charter commissioning this Interagency Scientific Committee (ISC), mandated in section 318 of Public Law 101–121 in October of 1989, specifically directed the group to develop a scientifically credible conservation strategy for the northern spotted owl.

On April 4, 1990, the ISC released *A Conservation Strategy for the Northern Spotted Owl* (hereafter referred to as the ISC Plan) (Thomas *et al.* 1990). This plan, which focused primarily on Federal lands, used the best available biological information on the subspecies and outlined a strategy to ensure long-term viability for the owl in well-distributed numbers throughout its range. The ISC developed a scientifically credible conservation strategy, applying the principles of conservation biology and population modeling, and utilizing current spotted owl research data. The ISC recommended implementing a system of Habitat Conservation Areas (HCAs) capable of supporting multiple pairs of spotted owls and a standard for the remaining forest matrix to provide dispersal between the HCAs (50–11–40 rule). The 50–11–40 rule was developed to provide dispersal by requiring that 50 percent of the forest matrix outside of the large reserve areas (i.e., HCAs) be maintained in stands with trees averaging 11 inches or more in dbh and with at least 40 percent canopy closure. In addition, the ISC recommended an adaptive management strategy and further research on the owl's biology and management. No individual part of this management plan was designed to stand alone.

The ISC's analysis and conclusion assumed that, if fully implemented by the Forest Service and the Bureau beginning in Fiscal Year 1991 and with continuing adaptive management, the plan should provide for the owl's survival for a 100-year period. Recommendations were also made for owl habitat management on State, private, and tribal lands. The ISC acknowledged a number of population and habitat risk factors associated with the long-term nature of the strategy that may compound over time. Full implementation of the ISC Plan provides protection for a population that is smaller than currently known to inhabit Northwest forests, and, in fact, will probably result in a near-term loss of a "significant portion" of the existing spotted owl population (Thomas *et al.* 1990). The ISC Plan, under a worst-case scenario, may result in a protected population that would be about 50 percent of the currently known number of spotted owl pairs. The projected number was based on the loss of all owl pairs outside of HCAs, although it is expected that some unknown number of pairs would occur in other reserved areas, in forested areas unsuitable for timber harvest, and in older managed forest stands. The surrounding forest matrix would offer marginal foraging and some roosting and nesting opportunities for dispersing owls, but would most importantly promote genetic and demographic exchange among the HCAs and physiographic provinces. The risk associated with the long-term success of this plan on overall owl numbers is based on the expectation that the HCAs would recover sufficiently to support a stable population of owls.

The Forest Service issued a notice on October 3, 1990, (55 FR 4112) which vacated their previous spotted owl management guidelines and established the agency's intent to conduct future timber operations "* * * in a manner not inconsistent with * * *" the ISC Plan. On August 6, 1990, the Bureau released its management guidelines for the northern spotted owl which incorporated parts of the ISC Plan (i.e., HCAs, the 50–11–40 rule only where possible), while emphasizing the Bureau's requirements under the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA) to analyze other alternatives during preparation of new resource management plans. The Bureau's guidelines established interim guidance until Fiscal Year 1993 when resource management plans are to be completed.

The ISC Plan was prepared before the owl was listed as threatened and did not explicitly address recovery, critical habitat, or any other aspect of the Endangered Species Act. The Service recognizes the importance of the ISC Plan and acknowledges that it plays an integral role in the owls' conservation; the ISC Plan complements this revised critical habitat proposal by offering protection for all facets of the owls' life history, especially for dispersal outside of critical habitat units. The ISC concept emphasizes the importance of managing large and well-distributed blocks of suitable habitat for owls that are sufficiently connected to maintain a stable population throughout the owls' range.

Relationship to Recovery

Section 2(c)(1) of the Act declares that

> all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

Section 3(3) of the Act defines conservation to include all measures needed to recover the species and justify its removal from the list of endangered and threatened wildlife and plants. The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of designated critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits and conservation planning on State and

private lands); section 6 (cooperative State and Federal grants); land acquisition; and research. Other Federal laws also require conservation of threatened and endangered species: The National Forest Management Act, the Federal Land Policy Management Act, and various other State and Federal laws and regulations.

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of these activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management, so that a species can be removed from the list of endangered and threatened wildlife and plants. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Service considers the conservation of a species in its designation of critical habitat. The designation of critical habitat will not, in itself, lead to the recovery of the species, but is one of several measures available to contribute in the conservation of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) that require special management. The protection given critical habitat under section 7 also immediately increases the protection given to these primary constituent elements and essential areas and preserves options for the long-term conservation of the species. The protection of these areas may also shorten the time needed to achieve recovery.

Designating critical habitat does not create a management plan; it does not establish numerical population goals, it does not proscribe specific management actions (inside or outside of critical habitat), and it has no direct effect on areas not designated. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans, management plans, and in section 7 consultation. Areas outside of critical habitat also have an important role in the conservation of a listed species that is not addressed through designation of critical habitat.

The designation of critical habitat may be reevaluated and revised at any time that new information indicates that changes are warranted. The Service will reassess proposals for designation of critical habitat if land management plans, recovery plans, or other conservation strategies are developed and fully implemented that may reduce the need for the additional protection provided by any critical habitat designation.

Critical Habitat

Definition

In proposing to designate critical habitat for the northern spotted owl, the Service has reviewed its overall approach to the conservation of the spotted owl undertaken since the proposed listing of the owl in 1989. In addition, the Service has reviewed all available information that pertains to the habitat requirements of this subspecies. The inherent difficulties in designating critical habitat for wide-ranging species, such as the owl, dictate that not all habitat within the range of the species be included in the proposed designation. Based upon the parameters discussed below, the Service made judgments about the appropriateness of including specific areas. The following explanation describes the Service's approach in developing this proposal.

Critical habitat is defined in section 3(5)(A) of the Act as:

> (i) the specific areas within the geographic area occupied by a species * * * on which are found those physical and biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species.

The term "conservation," as defined in section 3(3) of the Act, means

> * * *to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

The Service believes that the definition of critical habitat, while explicitly mentioning the features essential to conservation of a species, implicitly requires that the areas themselves be essential to the species' survival and recovery. Not all areas containing those features of a listed species' habitat are necessarily essential to species' conservation. Conversely, areas not currently containing all of the essential features, but with the capability to do so in the future, may still be needed for the long-term recovery of the species, particularly in certain portions of the range, and may be proposed as critical habitat. However, areas not included in critical habitat that contain one or more of the essential features are also important to the species' conservation and would be addressed under other facets of the Act and other conservation laws and regulations (e.g., National Forest Management Act (NFMA)).

For the spotted owl loss of an entire critical habitat unit could, in some cases, preclude recovery or reduce the likelihood of survival of the species. Further, gradual degradation of a critical habitat unit to the point where it no longer fulfills the overall function for which it was proposed (e.g., nesting, foraging, roosting, or dispersal) could preclude the survival and recovery of the species. The level of disturbance a critical habitat unit can withstand and still fulfill its intended purpose is variable throughout the owls' range and will need to be reviewed in the context of its current status, condition, and location; critical habitat units in some areas may not be in as desirable a condition to support healthy local populations of owls as units in other areas.

Primary Constituent Elements

The Service is required to base critical habitat proposals upon the best scientific data available (50 CFR 424.12). In determining what areas are to be proposed as critical habitat, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements, as stated in 50 CFR 424.12, include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter,
- Sites for breeding, reproduction, rearing of offspring; and generally;
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) that support nesting, foraging, roosting, and dispersal are essential to the conservation of the northern spotted owl. These elements were determined from studies on owl habitat preferences, including habitat structure and use, prey preferences, etc., throughout the range of the species (see Thomas *et al.* 1990 and USDI 1990 for a list of references). These attributes include a moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy with large >30 inches dbh) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and

other evidence of decadence); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly. The types and quantity of these characteristics may vary by location, stand type, and condition. Dispersal habitat is more variable (see later discussion under the *Connectivity* subheading of this section).

The proposal focuses on areas of coniferous and mixed coniferous-hardwood forests that contain these elements and conforms with accepted principles of conservation biology. These areas contain both "suitable" and "unsuitable" habitat. Many definitions of "suitable" spotted owl habitat are currently used throughout the species' range; however, the term "suitable" generally refers to habitat which provides the constituent elements of nesting, roosting, and foraging. Current estimates of suitable habitat (i.e., for nesting, roosting, and foraging) do not contain estimates of the additional amount of forested acres that may meet only the dispersal needs of the owl. This critical habitat proposal for the spotted owl is not limited to habitat that meets previous definitions of "suitable," but includes habitat with any of the primary constituent elements (i.e., nesting, roosting, foraging, or dispersal).

Relationship to ISC Plan HCAs

The ISC used principles of conservation biology and attendant guidelines to identify a network of HCAs throughout the range of the owl. The HCAs were selected as the starting point for proposing critical habitat for the following reasons: The ISC conservation strategy is based upon the best available information on spotted owls gathered and analyzed over the past 20 years; the ISC Plan represents the best science on the conservation of the northern spotted owl and has been thoroughly peer-reviewed; the areas selected as HCAs were identified by experts familiar with the species and its habitat, based on the principles of conservation biology; and use of the HCAs is consistent with the Service's other conservation efforts (e.g., it has been the focus in section 7 consultation). Some HCAs were not included in this proposal because they were already protected in wilderness, State parks, or national parks and monuments, or contained little or no suitable owl habitat. Additional areas that contained the primary constituent elements were also identified to comply with the Act and facilitate recovery.

The Service's identification of areas containing the primary constituent elements described above was based on the ISC's five principles of conservation biology associated with spotted owls:

- Development and maintenance of large contiguous blocks of habitat to support multiple reproducing pairs of owls;
- Minimizing fragmentation and edge effect to improve habitat contiguity;
- Minimizing dispersal distance to facilitate interaction between blocks of breeding habitat;
- Maintaining connectivity between habitat blocks to allow movement and dispersal; and
- Maintaining range-wide distribution of habitat to facilitate recovery.

Critical habitat is based on the fundamental framework of the ISC Plan. The success of the ISC Plan in recovery will depend upon the long-term protection of a network of HCAs, composed of large blocks of habitat expected to support multiple pairs of breeding owls, combined with management to maintain dispersal habitat in the remaining forest matrix (50–11–40 rule, discussed under the *"Connectivity"* subheading of this section). All of these components are important to maintaining a stable, well-distributed population of spotted owls that has sufficient connectivity to avoid isolation of individual blocks, segments, or provinces. The ISC Plan further requires that the plan be adapted through time as warranted by research and owl and habitat monitoring data.

HCAs set long-term objectives on development of habitat to support projected owl pair targets. Presently, HCAs include both suitable and unsuitable habitat. An element of risk exists with implementation of this plan because suitable owl habitat and owl pairs outside of the HCAs will continue to be lost through timber harvest in the near-term before habitat 2in the HCAs has recovered to the point that it is capable of supporting the expected future number of pairs. It is possible that, in some cases, the present HCAs will never recover to the extent that the ISC anticipated. The near-term loss of owl habitat and owl pairs prior to full habitat recovery within the HCAs could lead to a significant decline in the owl population which may increase the amount of time it will take to achieve owl recovery.

Adjustments to Legally-described Boundaries

The Act requires the Service to specifically identify, map, and legally describe areas proposed for critical habitat designation. After selecting HCAs as the starting point, the Service made several types of adjustments. To facilitate legal definition, critical habitat unit boundaries were described to adjacent section lines. Lines were adjusted up or down depending upon the amount and quality of habitat within the adjacent sections.

In addition to adjusting the HCA boundaries to meet the Act's requirement of legally definable critical habitat boundaries, the Service made other changes. The HCAs were accepted, as recommended by the ISC, except where new information (e.g., suitable habitat mapping viewed during the June 1991 congressional old-growth mapping effort) indicated that peripheral areas of poor-quality habitat were included. Portions of HCAs were not included in critical habitat if unsuitable habitat was identifiable on available maps and the exclusion would not affect the size and spacing recommendations in the ISC Plan.

Critical Habitat Associated with HCAs

The Service proposed HCAs and in some cases additional adjacent areas as critical habitat. Areas of existing habitat contiguous with some HCAs were included in this proposal for several reasons. For example, suitable nesting habitat, usually supporting known owl pairs, was included along with adjacent HCAs primarily to provide near-term population stability for the spotted owl to reduce the near-term risk associated with the ISC Plan. Such adjustments may shorten the recovery period by increasing habitat protection around existing HCAs that are deficient in suitable habitat or numbers of pairs.

The Service focused on the existing situation in each of the physiographic provinces and primarily on Federal lands where most large tracts of suitable habitat exist. Variations within and between provinces (e.g., habitat quality, numbers of pairs) may result in differences in near- or long-term protection needs. Critical habitat units were often proposed to address specific problems that exist both within and between physiographic provinces. Although forest conditions change over time, most of the problems noted below result from recent human-induced disturbances. Regardless of the existing variation, all of these areas play an important role in maintaining a stable owl population over its range.

The following provides a summary of problems identified by specific area (Thomas *et al.* 1990, USDI 1990):

- Olympic Peninsula: Isolation of owls due to lack of linkage to other provinces; poor distribution and quality of existing habitat; high level of fragmentation; low population size; and variable to low reproductive success;

• Washington Cascades: Poor distribution and quality of existing habitat; high level of natural and manmade fragmentation (e.g., north Cascades); low population size; variable reproductive success; competition with barred owls; and localized deficiencies in habitat connectivity;

• Southwest Washington: Lack of connectivity; little remaining habitat; poor distribution and quality of existing habitat; very low population size; and lack of Federal ownership;

• Oregon Cascades: Localized deficiency in habitat connectivity; poor distribution and quality of existing habitat in some areas; high level of fragmentation in some areas (e.g., areas of concern); and low population size in some areas (e.g., east side);

• Oregon Coast Ranges: Low population size; poor distribution and quality of existing habitat; high level of fragmentation; lack of sufficient linkage to other provinces; low reproductive success; and large areas of land not in Federal ownership;

• Oregon/California Klamath: Poor distribution and quality of existing habitat in some areas; high level of natural and manmade fragmentation; and localized deficiencies in habitat connectivity;

• California Coast Range: High level of human-induced fragmentation; and little land in Federal ownership; and

• California Cascade/Modoc: Low population size; poor distribution and quality of existing habitat; high level of natural and human-induced fragmentation; poor reproductive success; insufficient linkage among provinces and with the range of the California spotted owl; and intermingled landownership.

In addressing the above factors, primary consideration was given to existing suitable habitat and known owl pairs (including resident single owls that may signify the presence of a pair) that were not included in existing HCAs (although some critical habitat units included category 3 HCAs recommended by the ISC) and where the Service believed that additional protection should be considered to reduce the risk to recovery.

However, the focus was on habitat quality and not on population numbers. Enhancement of the existing HCAs occurred primarily in provinces where current habitat conditions are extremely fragmented (e.g., the Oregon Coast Ranges and Shasta/McCloud); where owl populations are far below the ISC pair target for HCAs (e.g., the Olympic Peninsula); and in areas where a large portion of the habitat within the HCAs is presently unsuitable (e.g., the southern portion of the Washington Cascades). When including other areas, the Service considered factors similar to those outlined in the ISC Plan on contiguity, shape, habitat quality, spacing, and so forth. Areas with minimal fragmentation were selected over areas with more extensive fragmentation. The selection of areas adjacent to HCAs included additional pairs of owls and resident singles so as to assist in meeting the pair targets identified in the ISC Plan.

The spotted owl requires relatively large contiguous areas of habitat to meet its life requisites. Logging and other activities have reduced much of the habitat in some areas to small, fragmented, and isolated stands that are not expected to support the remaining pairs over time. In some cases, those types of stands were proposed as critical habitat when they were needed to promote future development of large contiguous habitat areas or serve as key linkage areas with the potential to support future breeding.

Critical Habitat Not Associated with HCAs

When areas unconnected to HCAs were proposed as critical habitat, primary emphasis was given to special areas (identified in the ISC Plan) or areas of concern, as determined through knowledge gained over the past 2 years as stated in the Service's status reviews (USDI 1990) and section 7 biological opinions (USFWS 1991b and c). The Service also considered the condition and suitability of existing habitat, known pairs of owls, and distribution of HCAs. The principles of conservation biology were used to determine whether to propose certain critical habitat units. Such considerations included the type of habitat (e.g., dispersal habitat), spacing (e.g., distance between areas), location of the area, size of the forest stand (e.g., sufficient to support $\leq$ two pairs), habitat contiguity, and proximity to existing HCAs. The role of different landownerships, the amount of habitat on those ownerships, and the relative role of those areas in contributing to owl conservation were also considered.

Connectivity

In order to achieve recovery, habitat must be available for owls to move throughout their range to provide genetic and demographic exchange between subpopulations, to recolonize formerly-occupied portions of the subspecies' range (linkage), and for juvenile owls to disperse from their natal areas (dispersal). Both functions are types of connectivity. Dispersal habitat must be able to provide protection to owls from avian predators, provide marginal foraging opportunities, and allow juvenile and adult owls to move successfully within and between blocks of nesting habitat.

Random dispersal and movement of spotted owls led to the development of the 50–11–40 rule by the ISC (Thomas *et al.* 1990). Given owl dispersal characteristics and general harvest practices, the ISC suggested that the general forest landscape on Federal lands should be maintained in a condition that would allow successful owl movement between HCAs and other protected areas. A suitable habitat condition in the surrounding forest matrix is important to maintaining linkage between critical habitat units. The 50–11–40 rule also was recommended for non-Federal lands, but on a voluntary basis.

Habitat that meets the species' needs for nesting, roosting, and foraging also provides for dispersal. However, habitat that supports dispersal does not always support the other constituent elements and, thus, may not be classified as "suitable" under current definitions. Habitat that allows for dispersal may currently be marginal or unsuitable for nesting, roosting, or foraging; however, it provides a linkage function that is essential for recovery. Presently, habitat which meets the 50–11–40 rule (Thomas *et al.* 1990) is believed to meet the needs of northern spotted owls for dispersal. However, the 50–11–40 rule prescribes a specific landscape condition to be achieved through land management practices which is beyond the scope of this critical habitat proposal. Although the 50–11–40 rule is not included in critical habitat, it remains an important part of the present overall conservation strategy for the owl.

The Service did identify, in certain locations within the owl's range (i.e., State-owned lands in southwest Washington, northwest Oregon, and the coastal redwood zone of California), critical habitat units that are intended to provide a "stepping stone" linkage function. In some cases, the only constituent element currently supported by these areas is dispersal habitat. These areas should provide sites where owls moving across the landscape can find shelter and prey and may someday provide nesting habitat as well. To be truly successful as stepping stones, these areas must provide some level of nesting habitat to support an adequate distribution of owls. The need to protect linkage throughout the owl's range will increase if habitat conditions (quality and/or quantity) continue to decline.

Although relatively few owls remain in the area between the Olympic Peninsula of Washington, east to the Washington Cascades, or south to the Siuslaw National Forest of Oregon, linkage within this area is essential to the recovery of the subspecies. Encouraging development of suitable nesting habitat could maintain and improve linkage in portions of the subspecies' range. Current conditions, resulting from natural and human-induced habitat loss, highlight the need for the protection of all spotted owls and their habitat that exist or may develop over time. Other non-Federal, as well as Federal lands, are important in maintaining that linkage.

In its status reviews and in biological opinions addressing the spotted owl, the Service identified other areas of concern where habitat linkage within and between physiographic provinces is at risk due to past management practices. These areas are frequently associated with intermingled (checkerboard) Federal and non-Federal landownership patterns. The areas of concern are the Interstate 90 area within the Washington Cascades province; the Columbia Gorge, which encompasses an extensive zone between the Oregon and Washington Cascades provinces; the Santiam Pass within the Oregon Cascades province; the Interstate 5 area in southern Oregon; and the Shasta-McCloud area within the Klamath province of northern California. The Interstate 5 area consists of three distinct sub-areas: The Southern Willamette-North Umpqua, Rogue-Umpqua, and South Ashland, where linkage between the Oregon Cascades, Oregon Coast Ranges, and Klamath provinces is at risk.

The May 6 proposal included significant amounts of both public and private lands within these areas of concern in order to provide for habitat linkage (see 56 FR 20819). The Service focused on the condition, suitability, and location of existing habitat and distribution of HCAs in addressing this issue in the present proposal. The available information suggests that the private lands in these areas generally lack large amounts of suitable nesting, roosting, and foraging habitat and that most remaining large tracts of suitable habitat are on Federal lands. In contrast to its approach in developing the May 6 proposal, the Service believes it should concentrate on the near-term linkage problem in these areas. The Service, therefore, has focused on existing habitat and on increasing the size of critical habitat units associated with HCAs in these areas in order to reduce near-term risk to the species.

Summary of Critical Habitat Discussion

A variety of factors were considered when identifying areas to be proposed as critical habitat. Primary emphasis was given to HCAs and areas of concern. The condition and suitability of existing habitat and location of known pairs of owls were also considered. The principles of conservation biology (as outlined in the ISC Plan) were used to determine whether to designate areas in addition to those HCAs that are within proposed critical habitat. In making these determinations, the Service considered factors such as the quality of habitat, spacing, location of the area, size of the forest stand, habitat contiguity, and proximity to existing HCAs. The Service also considered the role of different landownerships, the amount of habitat on those ownerships, and the relative role of those areas contributing to owl conservation.

Differences from Previous Proposal

The Service has used more recent information to update the May 6 proposal, but has followed the same approach in proposing critical habitat. The areas that were proposed as critical habitat in the May 6 notice form the basis for the areas proposed for designation in this rule. However, the criteria that were used during the preparation of the May 6 proposal were reviewed to focus on those aspects that were most important to the delineation of critical habitat. These criteria (as explained in the Critical Habitat section) were used to refine boundaries and to make decisions about the inclusion or exclusion of specific areas. Changes in approach were incorporated in the following manner:

(1) Private, tribal, and some State lands were not included;

(2) New information was incorporated to refine previously identified critical habitat units; and

(3) Previously proposed linkage areas within areas of concern were revised. The reasons and basis for changes to the previous proposal are discussed below.

State, Private, and Tribal Lands

The most significant difference between this revised proposal and the previous proposal is that private, tribal, and some State lands are not included in the revision. Except for California, the Service generally lacks comprehensive information on spotted owl habitat quality, forest practices, and owl populations on many private lands. The information that is available suggests that throughout much of the owl's range, particularly in parts of Washington and Oregon, private lands generally lack large amounts of suitable nesting, roosting, and foraging habitat due to past and ongoing forestry practices. The suitable habitat that remains on these lands outside of California is also fairly widely dispersed and in smaller stands in relation to existing habitat on Federal lands. These lands may, however, provide dispersal habitat. Owl dispersal needs are not completely understood and the existence of current habitat on these lands is not well-defined, making identification of specific dispersal areas difficult.

In the previous proposal the Service proposed to include large areas of non-Federal lands as critical habitat in the four areas of concern. In readdressing this issue in the present proposal, the Service now believes the most appropriate approach is to focus on existing suitable habitat in order to reduce the near-term risk in these areas. The Service chose not to propose the private land areas, which have relatively little suitable habitat, and to increase the amount of critical habitat on Federal lands around HCAs where more extensive areas of suitable habitat currently exist.

The Service considered the role of State environmental protection and forest practices laws in determining not to include private and some State lands in this critical habitat proposal. All three States have some form of environmental law regarding threatened and endangered species. Of the three States, California has the most comprehensive State forest practices laws, requiring minimization of impacts to listed species from timber harvest activities. In both California and Washington, the States have incorporated into their forest practices review process the Service's four-step approach for avoiding incidental take of owls during timber harvests on private lands. Oregon has not yet adopted similar review procedures.

The Service expects the three States to play a more active role in the conservation of the owl on State and private lands through the HCP, recovery, and other processes. The Service will continue to review the State laws applicable to these lands before making a final determination on the relative importance of these lands in the owls' conservation.

Although a greater proportion of owls occur on private lands (primarily in the redwood-dominated forests of the coastal region) in California, than in the other States, the Service has reassessed the May 6 proposal and now believes

that additional protection through critical habitat is not necessary at this time for those lands. As discussed elsewhere (see Background section), forest growing conditions and an abundant prey base in that part of the subspecies' range lead to the development of suitable nesting, roosting, and foraging habitat in a much shorter time following harvest than in the remaining portion of the owl's range. Although the stability and reproductive success of these owls over time is not well understood, the Service believes that an owl population can be maintained throughout the Redwoods region with some changes in forest management and that designation of only some areas as critical habitat within that region would be inappropriate. In other parts of the owls' range in California, some selective harvest techniques may be compatible with spotted owls. To address these areas, the State and a number of private companies have initiated the section 10 HCP process to develop timber harvest plans that are more compatible with owl conservation. The Service believes that the plans developed through this process may provide a basis for maintaining owls on private lands.

The Yakima Indian Nation in Washington practices predominately selective harvest methods. Similar to the methods in some parts of northern California these methods may also be compatible with maintenance of an owl population. The Yakima Nation is in the process of conducting research on the effect of timber harvest practices on spotted owls to refine an owl management plan for the Reservation. More information is necessary on the compatibility of these types of techniques wherever they are practiced to ascertain whether they are truly compatible with spotted owl presence and maintenance of a stable owl population. The Service has been working with the Bureau of Indian Affairs and some Indian Nations to assist in the development of forest management plans on other tribal lands that are compatible with spotted owls. The Service expects to continue these discussions and believes that this process can provide sufficient protection.

The Service envisions that private and tribal lands have a role in the conservation of the owl (e.g., in providing some level of nesting habitat and in connectivity), but their precise role for spotted owl protection is more appropriately addressed through aspects of the recovery planning and HCP processes than through designation of critical habitat. Private and tribal lands throughout the range were not included for the aforementioned reasons. The Service specifically solicits additional comments and information on this element of the revised proposed rule.

Although State laws provide for potential protection, some State lands are retained in this revised proposal because they have particularly high value for the conservation of the owl. For example, State lands that were identified in the ISC Plan are proposed for critical habitat designation since these lands provide essential "stepping stones" for maintaining nesting habitat in a well-distributed manner throughout the range of the owl. Because of their location within the range of the owl, State lands in southwest Washington, northwest Oregon, and coastal California provide opportunities to maintain linkage between physiographic provinces and other identified areas. In order for these State lands to fulfill the intended steppingstone functions, they must be managed to eventually support adequate levels of nesting, roosting, and foraging habitat. Other State lands included in the May 6 proposal are important, but not essential, for owl conservation and, therefore, are not included in the revised proposal.

Consideration of New Information

The revised proposal is also based on new biological and economic data, and material received during the public comment period and from State and Federal agencies. The Service has met and discussed various aspects of this proposal and related issues with some members of the ISC, the recovery team, and State and Federal agencies. In June 1991, Congress requested most of the original ISC members, as well as other old-growth experts, to oversee various agency biologists in an effort to map and prioritize the importance of old-growth stands on Federal lands within the range of the owl. The Service used the information on suitable habitat and owl locations considered by this group, as well as habitat and owl location information from private entities and the public, to help refine the May 6, 1991, critical habitat proposal. Consideration was also given to the Service's approach to conserve the owl through section 7 and HCP activities conducted for this subspecies over the past 2 years, along with clarification of the roles of critical habitat and different landowners (as previously discussed under the *Definition* subheading of the Critical Habitat section).

In revising the previous proposal, the Service focused on the existing situation within each of the physiographic provinces and in the general vicinity of the critical habitat unit. Variations within and between provinces (e.g., existing habitat quality and quantity, distribution of existing suitable habitat, low numbers of pairs, etc.) led to differences in required near- or long-term protection strategies.

The Service refined the May 6, 1991, proposal to give more consideration to existing suitable habitat and known pairs of spotted owls, especially where the Service felt that additional protection or special management needed to be considered. For example, in the Oregon Coast Ranges province, additional areas were identified as critical habitat due to the extremely fragmented habitat conditions and in response to comments received during the public comment period. In the Olympic Peninsula province, additions to HCAs were identified because the provincial owl population is far below the ISC pair target, and demographic isolation is a major concern. Within the Shasta/McCloud area of California, new areas were identified where the Service determined that existing HCAs did not contain the most suitable habitat.

Boundaries were adjusted to exclude non-habitat areas to the extent possible where new information clearly indicated that peripheral areas of non-habitat were included in the previously proposed critical habitat units, particularly as a result of squaring off HCAs to section lines to facilitate legal descriptions. Exclusion of all such areas via boundary revisions was not possible. In cases where critical habitat units unavoidably contain small towns, farms, man-made structures, or other non-habitat areas, those areas will be unaffected by critical habitat designation because they do not contain any of the primary constituent elements of spotted owl critical habitat. In other words, even though such areas will be included on the maps, they will not be affected by the section 7 no adverse modification requirement because that requirement focuses on protection of the primary constituent elements as required by the Act. Where HCAs contained significant areas of unsuitable habitat, the Service made a few modifications that resulted in excluding areas within an HCA from critical habitat. However, in all cases the proposed critical habitat units retain the size and spacing recommendations contained in the ISC Plan.

Consideration of Areas of Concern

The Service has also changed its approach to critical habitat in the areas of concern. The Service did not propose

corridors for movement because owls disperse randomly, not along well-defined corridors, and there are unanswered questions about the biological effectiveness of corridors. In proposing critical habitat in the areas of concern, the Service included both the HCAs and existing adjacent blocks of suitable habitat within its proposal. This process not only focused on the immediate need for suitable habitat blocks (i.e., for nesting, roosting, and foraging), but also resulted in closer blocks of habitat that facilitate movement of owls between critical habitat units and throughout their range. Thus, the revised proposal emphasizes the importance of maintaining suitable habitat for all 4 constituent elements. As described previously, private lands in those areas included in the May 6 proposal were not included because they have relatively little existing suitable habitat that meet the desired criteria.

In the revised proposal, critical habitat designation concentrates on existing suitable spotted owl habitat, which can in turn help improve essential linkage and associated dispersal in the near-term by maintaining well-distributed blocks of currently suitable nesting habitat for owls. That is a difference for Federal lands between the ISC Plan and this revised proposal. The ISC Plan emphasizes the future potential of areas, whereas critical habitat primarily emphasizes current habitat conditions and provides near-term protection for these areas until long-term plans are implemented.

The Service recognizes the importance of all lands within these critical habitat units, but did not propose to incorporate all habitat, especially all dispersal habitat, within critical habitat units. Emphasis was placed on those areas requiring more immediate protection due to habitat conditions within the proposed units, provinces, or in relation to the need for range-wide distribution. Because other means exist for addressing the dispersal/movement habitat needs of the spotted owl in the forest matrix outside of critical habitat units on Federal lands, the Service concluded these areas are not in need of the additional management attention provided by critical habitat. However, the Service does expect that the dispersal needs of the owl on Federal lands will be addressed through maintenance of the 50–11–40 rule or other scientifically acceptable approach. The recovery planning process, currently underway, will address dispersal on a range-wide basis. Reviewing Federal land managers' timber sale programs through section 7 analyses is another method of addressing owl dispersal. The development of HCPs through the section 10 process is also an avenue to address dispersal and other needs (i.e., some level of acceptable nesting) on non-Federal lands.

Effects of the Designation

Total Acres Included in Critical Habitat

The revised proposed rule for the designation of critical habitat for the northern spotted owl identifies 181 areas encompassing a total of approximately 8.2 million acres. The Service has identified 61 critical habitat units totaling 1.8 million acres in California, 77 units totaling 3.8 million acres in Oregon, and 43 units totaling 2.7 million acres in Washington. This includes 6.4 million acres of Forest Service land, 1.3 million acres of Bureau land, 440,000 acres of State land, and about 60,000 acres of military lands (Table 1). The totals in Table 1 include all Federal and State lands within the proposed critical habitat units.

TABLE 1. APPROXIMATE ACREAGE OF PROPOSED CRITICAL HABITAT UNITS (CHUS) FOR THE NORTHERN SPOTTED OWL (ROUNDED TO THE NEAREST THOUSAND ACRES)

	California	Oregon	Washington	Total
U.S. Forest Service	1,570,000	2,510,000	2,370,000	6,450,000
Bureau of Land Management	160,000	1,130,000	160	1,290,160
State	60,000	130,000	250,000	440,000
Military	0	0	60,000	60,000
Total	1,790,000	3,770,000	2,680,160	8,240,160
Number of CHUs	61	77	43	181

Acreage totals for any private or other lands that may be intermingled within the proposed critical habitat units were not included in the totals if the areas were large enough to be identified through the geographic information system (GIS). Developed areas, such as towns, airports, roads, and water bodies are not proposed for designation as critical habitat even if physically situated within the boundaries of proposed critical habitat units because they will never contain primary constituent elements. If possible, the acreage totals were adjusted to reflect their exclusion. However, in some cases it was not possible using the GIS to physically remove these acres from the total acreage figures. They should not make a significant difference in actual total acres; however, the total acreage figures may be slightly overestimated.

A direct one-to-one comparison should not be made with the acreage figures included in the previous May 6 proposal. The acreage figures included in the Service's previous proposal were calculated by hand and included some errors in total acreage, primarily due to previous mapping difficulties and the quality of the existing data at the time of the previous proposal. However, the Service was requested to provide the data for comparative purposes (Table 2).

TABLE 2. COMPARISON OF TOTAL ACREAGE FOR REVISED CRITICAL HABITAT UNITS (CHUS), UNITS PREVIOUSLY PROPOSED (CHAS), AND HABITAT CONSERVATION AREAS (HCAS) (FIGURES ARE APPROXIMATE AND ROUNDED TO THE NEAREST THOUSAND)

	CHU	CHA	HCA[1]
	Total Acres	Total Acres	Total Acres
U.S. Forest Service	6,450,000	6,460,000	5,330,000

TABLE 2. COMPARISON OF TOTAL ACREAGE FOR REVISED CRITICAL HABITAT UNITS (CHUS), UNITS PREVIOUSLY PROPOSED (CHAS), AND HABITAT CONSERVATION AREAS (HCAS) (FIGURES ARE APPROXIMATE AND ROUNDED TO THE NEAREST THOUSAND)—Continued

	CHU	CHA	HCA[1]
Bureau of Land Management	1,290,160	1,390,000	940,000
National Park Service	NA [1]	NA [2]	620,000
State	440,000	600,000	760,000
Military	60,000	80,000	70,000
Private	NA	3,000,000	NA
Tribal	NA	72,000	NA
Total	8,240,160	11,602,000	7,720,000

[1] From ISC Plan; includes wilderness and National Park Service acreage.
[2] Acreage for National Park Service lands (and other lands already in protected status) are not included in critical habitat.

The Service also examined the amount of suitable habitat and number of known pairs within critical habitat units in the preparation of this proposal. Table 3 provides a comparison of the suitable habitat and owl pairs currently located within the HCAs and revised critical habitat units to the total known number of pairs and estimates of suitable habitat throughout the range of the owl. Federal and State agencies assisted the Service in obtaining these numbers. However, in some cases the Service had to hand calculate some of acreage estimates using a dot grid system. Therefore, the numbers are approximations only. However, they provide an example of the amount of existing suitable habitat (that meets current definitions of habitat that supports nesting and roosting) that may be protected in critical habitat, along with the count of the known number of owl pairs (estimated over the past 5 years) currently found in those areas.

TABLE 3. COMPARISON OF ESTIMATES OF SUITABLE HABITAT (TOTALS ARE ROUNDED TO THE NEAREST THOUSAND) AND KNOWN OWL PAIRS

State	Total		HCA		CHU	
	Acres[1]	Pairs	Acres	Pairs	Acres	Pairs
California	1,140,000	721	570,000	293	299,000[2]	251
Oregon	3,610,000	1,667	1,100,000	430	1,710,000	679
Washington	2,420,000	442	990,000	226	1,220,000	364
Total	7,170,000	2,830	2,660,000 [3]	949	3,220,000	1,294

[1] Totals were updated from Thomas *et al.* 1990; acreage figures for private lands were not available (all acreage figures are estimates).
[2] Totals are incomplete for California (totals for two Forests and the Bureau were not provided).
[3] Totals for suitable habitat within national parks are not included (it is assumed that some percentage of the 620,000 acres, but not all, include habitat suitable for spotted owls).

Distribution of Owls and Owl Habitat

To help place the acreage totals (from the above tables) in perspective, the Service has updated the estimates previously identified in the ISC plan and the Service's 1990 status review; further information can be found in the Service's assessment of owl pairs and habitat (USFWS 1991a). The majority of owls and suitable spotted owl habitat (i.e., for nesting, roosting, and foraging) are found on Federal lands, primarily on Forest Service land. A large percentage are also located on Bureau lands in Oregon. There are no current estimates of the amount of additional habitat that contributes to dispersal (e.g., that currently would be managed under the 50–11–40 rule on Federal lands); some of these lands are included in critical habitat (see Critical Habitat section).

Congressionally-designated wilderness and national park systems contain less than 1.8 million acres of suitable habitat spread over the range of the owl and may support fewer than 300 pairs of owls (Thomas *et al.* 1990). These lands are certainly essential to the conservation of the species; however, the Service has not included them in this proposed critical habitat designation because their current designation as wilderness, national park, or national monument already provides adequate protection against potential habitat-altering activities. These lands, by themselves, do not provide adequate protection for spotted owls, nor would they support a viable population.

Management Aspects of Critical Habitat

The Service's intent in proposing critical habitat is to provide habitat that contains constituent elements in sufficient quantities to maintain an abundant and stable population of owls throughout its range. This proposal will help reduce the risk associated with the near-term reduction in owl numbers and cumulative loss of habitat anticipated from the interim implementation of the ISC Plan and other management plans. Critical habitat offers additional protection through section 7, but it does not replace the HCA network and management recommendations for the intervening forest matrix recommended by the ISC. Designation of critical habitat will, however, provide short-term regulatory protection for HCAs, protection in key areas outside of HCAs (e.g., in areas proposed for designation where habitat or pair deficiencies exist or areas of high risk as identified by the ISC), an ecological buffer to HCAs, and/or protection of areas currently in need of additional protection (e.g., areas where linkage problems occur). Critical habitat will help to retain options until long-term conservation plans are accepted and fully implemented.

The Service has not done a risk analysis for critical habitat because there are no numerical goals upon which to evaluate the efficacy of the proposal. That is not its intended purpose. The ISC analysis clearly identifies the short-term risk associated with the

implementation of the ISC Plan, especially if all parts of that plan are not fully or adequately implemented. Over the past year, the Service's section 7 analyses have begun to demonstrate the effects of continued timber harvest that in the short-term may increase the risk associated with the ISC Plan. Critical habitat will, through additional protection provided by section 7, help reduce the short-term risk until a long-term conservation plan is implemented.

Although critical habitat is not intended as a management or conservation plan, association with the ISC Plan leaves the perception that critical habitat is a form of that plan. The ISC, critical habitat, and other conservation processes are working with the same land base containing specific locations of older forests; it is therefore inevitable that these processes overlap. Emphasizing large blocks of suitable habitat in all recovery and management processes for the northern spotted owl is essential to local population stability (although without connectivity between them, the blocks themselves will probably not maintain long-term ecosystem stability). Critical habitat uses the ISC Plan as a starting point because it represents the best available data and because it lays out a framework for identifying and evaluating habitat that is founded on scientific principles. Designation of critical habitat does not offer specific direction for managing owl habitat. That type of direction, as well as any change in direction, will come through the administration of other facets of the Act (e.g., section 7, HCP process, and recovery planning) or through the development of land management plans addressing the owl.

The Service expects that Federal and non-Federal agencies will produce biologically sound, long-term land management plans that contribute to the conservation of spotted owls. Biologically credible plans such as the ISC Plan offer opportunities for resolving conflicts between timber management and owl conservation and offer a basis for present and future land management decisions. The Service will revisit its designation of critical habitat if land management plans (e.g., environmental impact statements, forest plans, resource management plans), a recovery plan (if implemented through land management plans), or other conservation strategies are developed and fully implemented in a coordinated and consistent manner throughout the range of the owl.

Biodiversity and Ecosystem Protection

Designation of critical habitat for the northern spotted owl may benefit other forest species, particularly those that depend upon large blocks of older forest and occur within the proposed areas. However, this is a dynamic and complex issue that includes both spatial and temporal components that is not fully addressed by the designation of critical habitat alone. Moreover, it is not a legitimate basis for designating critical habitat for the owl and did not factor into the proposed designation.

In 1990, the Service identified species that were candidates for listing under the Act and were found within the HCAs selected by the ISC. The Service has updated that list to include those species that may benefit from designation of critical habitat for the spotted owl (a list is maintained in the administrative record). About 60 listed, proposed, or candidate species have been observed within areas proposed for designation as critical habitat. Although not all of the known locations of these species are found within critical habitat units, management of these units for the spotted owl pursuant to section 7 of the Act may be of benefit to these species. Further research and evaluation of data will be necessary to determine the interrelationships of these species to older forests and whether management for the spotted owl will adequately provide for their conservation, thereby reducing the need for listing of proposed and candidate species. The Service has not had the opportunity to consider the value of critical habitat to these species in this proposal. Further, many areas that are proposed for designation have not been surveyed for these species.

In addition, the recent congressionally-directed old growth effort has also identified areas that are important to maintaining a late successional forest ecosystem network within the range of the owl. This effort addressed the owl and numerous other forest species and processes, and includes more acreage to accommodate these components of the ecosystem. The Service has not had the opportunity to review the product of this effort to determine its relationship to the spotted owl. However, the Service was able to use the suitable spotted owl habitat maps that were provided for this effort; these are maps that have been updated since the ISC effort in 1990.

The HCA network was derived using maps that identified existing suitable habitat for the northern spotted owl. Critical habitat designations were based on the HCA system along with additional areas that contained suitable habitat and other areas important to distribution or connectivity; updated habitat maps were used. The recent congressionally-directed old growth effort also focused on the owl conservation areas to ensure that owls were adequately protected in any potential old growth reserve system that would also address other forest species and processes. All of these proposals, although created to meet different goals, are based on a habitat base that is diminishing over time. Comparison of the maps that have been developed over the past few years underscores the limitations that exist in trying to identify habitat to be protected or conserved for this or other forest species. There is a limited remaining habitat base; all land management planning exercises will need to focus on this same habitat base.

Designation of critical habitat may contribute to the conservation and management of the Northwest's forests as one component in the management or maintenance of characteristic species and processes. Research is beginning to identify the importance of maintaining ecosystem processes upon which is built the stability of the system and thus the stability of the species and populations that depend on that system. Such functions as hydrology, bank stability, nutrient cycling, predator/prey cycles, fisheries restoration (e.g., salmon), local microclimates, and others are all interdependent. They can benefit from conservation approaches that focus on unity of the ecosystem as opposed to a piecemeal approach that does not take into account the interrelationships of all processes.

Preservation of separate blocks of habitat will not by themselves contribute to ecosystem stability. Linkage between the blocks of habitat is a necessary component. Critical habitat designation may contribute to regional biodiversity by protecting natural ecosystems of sufficient size and quality to support native species. Critical habitat may also help in retaining ecosystem values through a combination of preservation, conservation, and compatible management of forest habitat with emphasis given to older forest values and characteristics, as well as protection of listed, proposed, and candidate species. For example, critical habitat designation may also help maintain important nesting habitat for migrating birds (e.g., neotropical migrants), many of which are seriously declining in numbers. Current international efforts to maintain tropical forest habitat in Central and South America may be enhanced by complimentary efforts to maintain

suitable habitat for species that nest in forests of the Northwest.

Conservation of biodiversity will help to retain or maintain ecosystem integrity and complexity for multiple species. To ascertain long-term needs and species interactions, strong emphasis should be given to monitoring and research projects on the richness of the forest ecosystem in the Northwest. These should include the study of human population and development pressures on a regional scale to gain a better understanding of the complex biotic relationships and to help mold a better approach to ecosystem conservation. The Service strongly supports the recent efforts to resolve Northwest issues at the ecosystem level.

Available Conservation Measures

Section 7 Consultation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

If critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Prior to formal designation of critical habitat section 7(a)(4) of the Act and 50 CFR 402.10 of the regulations require Federal agencies to confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. The Service expects to confer on some projects for which biological opinions on the effects of Federal actions on the spotted owl have already been issued. Conference reports provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are not legally binding.

If an agency requests, and the Service concurs, a formal conference report may be issued. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14 as if the critical habitat were designated, not proposed. Such a formal conference report may be adopted pursuant to 50 CFR 402.10(d) as the biological opinion when the critical habitat is designated if no significant information or changes in the action alter the content of the opinion.

Conference on Current Activities

A number of Federal agencies or departments fund, authorize, or carry out actions that affect lands that the Service proposes to designate as critical habitat. Among these agencies are the Bureau of Land Management (Bureau), Forest Service, Department of Defense, Bureau of Mines, Corps of Engineers, Bureau of Reclamation, Federal Energy Regulatory Commission, and Federal Highway Administration. The Service has identified numerous activities proposed within the range of the northern spotted owl that are currently the subject of formal or informal section 7 consultations. These include the Forest Service's and Bureau's land management planning exercises (e.g., the Forest Service's spotted owl environmental impact process), annual timber sale operations, and other more localized projects, such as hydroelectric developments; road, trail, and powerline construction; land exchanges; resort development; and a number of smaller actions (e.g., campground construction).

Federal agencies are responsible for determining whether or not to confer with the Service on their actions and should consider a number of factors when determining whether any proposed action may destroy or adversely modify proposed critical habitat. Among these factors are impacts of the action on the primary constituent elements of nesting, roosting, foraging, and dispersal habitat; consistency of the proposed action with the intent of the ISC Plan; geographic considerations; the extent of fragmentation or current habitat suitability within the critical habitat unit; the level of incidental take associated with the action; and the extent of the action (e.g., campground maintenance versus a 40-acre clearcut). The Service will review the action agency's determination on a case-by-case basis and will concur whether or not the action is likely to destroy or adversely modify critical habitat. In order to concur, the Service will consider the effect of the proposed action on the above elements along with the reasons why that particular area was proposed to be critical habitat.

Basis for Analysis

The evaluation of actions that may adversely modify northern spotted owl critical habitat should consider a number of factors, such as the present condition of the habitat, the number of current pairs, the reproductive success of breeding pairs, the expected time to regenerate sufficient habitat to support an effective population in a particular area, and local and regional problems. While the Service looked at the entire range of the owl in determining an approach to critical habitat designation, its section 7 analysis of activities affecting owl critical habitat will consider provinces, sub-provinces, and individual critical habitat units, as well as the entire range. All proposed actions should be viewed as to their impacts on all 4 constituent elements relative to the potential for adverse modification on individual critical habitat units.

The range of the owl is subdivided into physiographic provinces as discussed in the Background section of this proposed rule. These subdivisions are not based upon identification of separate populations of owls, but rather on geographical habitat differences. The provinces and local populations of owls are for the most part interrelated and interconnected. The loss of one or more provinces, or even a major part of a province, could lead to genetic and demographic isolation of parts of the owls' range. Potential isolation could have a greater near-term effect on some areas (e.g., Olympic Peninsula, Washington Cascades, Oregon Coast Ranges, California Shasta/Modoc) because of the present status of owls and owl habitat within those areas, than on other areas (e.g., Klamath, Oregon Cascades). In the long-term, however, the concern over population stability would be similar in all areas. Population stability for the owl may depend on the relative location of large stable population reserves (sources) that act as

sources for areas that have insufficient owl numbers (sinks) or are subject to population fluctuations (Thomas *et al.* 1990).

The loss of a critical habitat unit(s) could have a detrimental effect on the stability of the province or at the least on that portion of the province where the loss occurred. That, in turn, would also have an effect on linkage to other provinces potentially leading to isolation and instability. At the lowest level, each critical habitat unit is related to, and dependent upon, each adjacent unit, just as each province is dependent on each adjacent province. The loss of one unit could result in local instability, affecting dispersal and connectivity and, thus, reducing local population levels. Over time the resulting effect could lead to greater problems at the province level, and ultimately at the species level.

Provinces, sub-provinces, and individual units are all part of a habitat network important to maintaining a stable and well-distributed population over the range of the owl. Present conditions vary throughout the range of the owl with the result that some areas may be less able to sustain continuing impacts than others at any given time (e.g., the Olympic Peninsula). Each project will need to be reviewed as to its impacts at all levels.

Examples of Proposed Actions

Activities that disturb or remove the primary constituent elements within designated critical habitat units may adversely modify the owl's critical habitat. These activities may include actions that would reduce the canopy closure of a timber stand, reduce the average dbh of the trees in the stand, appreciably modify the multi-layered stand structure, reduce the availability of nesting structures and sites; reduce the suitability of the landscape to provide for safe movement, or reduce the abundance or availability of prey species.

In contrast, activities that would have no effect on the critical habitat's primary constituent elements almost certainly would not adversely modify the critical habitat. However, even though an action may not adversely modify critical habitat, it may still affect spotted owls (e.g., through disturbance) and, therefore, be subject to consultation under the jeopardy standard of section 7 of the Act, as determined after consideration of the aforementioned factors.

Areas proposed for designation as critical habitat support a number of existing and proposed commercial and noncommercial activities. Commercial activities that may affect the spotted owl critical habitat include timber harvests, salvage activities, other wood fiber utilization (e.g., paper, firewood), sand and gravel extraction, mining (e.g., open pit), activities associated with oil and gas leases, snag creation/removal, construction of hydroelectric facilities, geothermal development, and construction of alpine ski areas and associated resort facilities.

Commercial activities not likely to destroy or adversely modify critical habitat include limited livestock grazing and various site-specific activities such as scenic tours and cavern exploration. Conducting owl surveys would not be likely to destroy or adversely modify critical habitat. Non-commercial activities are largely associated with recreation and are not considered likely to adversely affect critical habitat. Such activities include hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, organized motor-crosses, and various activities associated with nature appreciation. Additional activities include "personal use" commodity production, such as mushroom and plant gathering, Christmas tree cutting, and rock collecting, and are also foreseen as not having any adverse affect on critical habitat.

Examples of Potential Impacts

The Service assumes that HCAs will continue to be managed as recommended by the ISC. Timber harvest within HCAs that are also critical habitat would be inconsistent with the long-term development of large suitable habitat blocks and would, therefore, likely result in destruction or adverse modification of critical habitat. Proposed actions that are consistent with the ISC recommendations for activities within HCAs would not be likely to result in destruction or adverse modification of critical habitat.

Timber harvests proposed in critical habitat units, but outside HCAs, may or may not adversely modify critical habitat, depending on the current condition of the area and the degree of impact anticipated from implementation of the project. The Service envisions that, as habitat within the HCAs begins to recover, increasing levels of harvest will be allowable within the critical habitat portion outside of the HCAs. The potential level of allowable harvest in the non-HCA portions of critical habitat units will vary over time for each unit, depending on local and provincial owl populations and habitat conditions and will be determined on a case-by-case basis during consultation.

For actions that result in moderate impacts, reasonable and prudent alternatives identified by the Service may involve minor modifications to the project's configuration. In the case of a proposed upgrade of a powerline right-of-way corridor, for example, the Service may recommend that the corridor be expanded on one side of the existing corridor versus the other side to avoid impacts to habitat where the primary constituent elements are of higher quality. For projects that may result in more severe impacts, reasonable and prudent alternatives may involve more substantial project changes. In the case of a multiple-unit timber sale, the Service may recommend that certain units be reduced in size, reconfigured, relocated, or dropped altogether to avoid impacts to primary constituent elements. The Service may recommend alternate timber harvest prescriptions in certain forest types.

No reasonable and prudent alternatives may be feasible for some proposed actions. For example, in some areas clearcutting may be the only technologically and economically feasible means of cutting the timber; in these cases, no reasonable and prudent alternatives would exist. In other cases, due to a lack of existing habitat or high levels of fragmentation, no level of harvest may be possible without resulting in the destruction or adverse modification of critical habitat. In both of these situations, the Service would issue an adverse modification biological opinion with no reasonable and prudent alternatives.

Research on silviculture or other types of forest management practices may negatively affect critical habitat. However, the information that may result from such research may offset the perceived impacts of the action. Research on various silvicultural practices may lead to new methods that would shorten the time needed to produce suitable habitat, or timber harvest prescriptions that are more compatible with northern spotted owls. Wherever possible, research should be conducted outside of critical habitat units, coordinated throughout the subspecies' range, and based upon an approved long-term strategy.

Some activities could be considered to be of benefit to spotted owl habitat and, therefore, would not be expected to destroy or adversely modify critical habitat. Examples of activities that could benefit critical habitat in some cases include protective measures such as fire suppression or forest-pest eradication, as well as silvicultural treatments that may improve spotted owl habitat. There is a need for research to gather data that may support or refute

any potential benefits from actions such as these. At this time, they should be evaluated on a case-by-case basis.

In general, those activities which do not remove components of habitat for spotted owls or their prey species are not likely to destroy or adversely modify critical habitat. Each proposed action would be examined under section 7 in relation to its site-specific impacts. Thus, proposed actions such as commercial thinning of timber stands and other selective harvest prescriptions may or may not destroy or adversely modify critical habitat, depending on the type and extent of harvest and the pre-project condition of the area in relation to spotted owl habitat needs. The involved Federal agencies can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of spotted owls.

Federal activities outside of critical habitat are still subject to review under section 7 for their effect on owls. The Service expects that management activities outside of critical habitat on Federal lands would continue to be managed as recommended by the ISC or another scientifically valid approach.

Other Conservation Measures: Non-Federal Lands

Section 9 of the Act prohibits intentional and nonintentional "take" of listed species and applies to all landowners regardless of whether or not their lands are within critical habitat. Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities such as timber harvesting. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. An HCP would be approved and a section 10(a) permit issued if it would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

Due to limited Federal involvement, the Service expects that few if any formal section 7 consultations would be initiated for State lands that are included in proposed critical habitat. The States are still subject to the "take" prohibitions under section 9 of the Act, however, and may enter into the section 10 HCP process where appropriate.

The recommendations provided in the ISC Plan for State lands would form the basis for the Service's recommendations at this time. Examples are such recommendations as changes in harvest patterns and silvicultural techniques that help produce and maintain habitat that supports some level of breeding owls and improve linkages with other areas. The Service has been actively pursuing discussions with the States on these types of issues and expects to work closely with the States to provide guidance as appropriate.

The proposed designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the owl. Lands outside of critical habitat are important to providing nesting, foraging, roosting, and dispersal habitat for owls; they are subject to section 9 prohibitions. The Service envisions that the role of all landownerships in the conservation of the owl outside of critical habitat units will be addressed through section 7, the HCP process, the recovery planning process, and other appropriate State and Federal laws; recommendations for these lands were included in the ISC Plan (Thomas *et al.* 1990). Implementation of these types of recommendations are important to the overall conservation of the owl. The recovery plan will very likely specify some population density or breeding success rate of owls on private, tribal, Federal, and State lands outside of critical habitat. It is expected that recovery goals will be achieved in the future, probably by using other conservation mechanisms available to the Service and other landowners (e.g., land exchanges, conservation and development easements.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic effects and other relevant impacts, of specifying any particular area as critical habitat. The Secretary may exclude areas from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such areas as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species concerned. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude critical habitats based upon those impacts.

The economic effects of designating critical habitat for the spotted owl are the incremental impacts over and above those impacts that occurred as a result of implementation of management plans, such as the ISC Plan, and previous events, including the listing of the spotted owl as a threatened species in June 1990. The economic analysis considers the critical habitat impacts to be those incremental impacts that are expected as a result of the critical habitat proposal. Although not required to do so by law, the Service has included in the economic analysis report (USFWS 1991d) estimates of impacts from listing and from the ISC Plan.

Industry Trends in Impact Area

Forestry in the Pacific Northwest has exerted a significant influence on the economic and cultural development of that region. The timber industry is cyclical and markets in the Northwest were, until recently, more limited by demand than supply. The 1980s brought unprecedented change to the economics of timber-based industries. Competing demands for timber resources increased dramatically, and the declining base of older forests became the focus of political strife. The historical rate of timber harvest on public lands reached historically high levels from 1983–1987, and was seriously challenged through the court system. Federal law was used to challenge agency planning activities; legislation cited included NEPA, NFMA, FLPMA, and the Act. As a result, significant reductions of timber harvest from Federal lands occurred through the mid to late 1980s. These actions were primarily focused on protection of older forests, as well as on the spotted owl and other species. There was a growing public awareness that, once a stand of older trees or native forest was harvested, the intrinsic benefits and values of that stand, including aesthetic, preservation, and ecological values, were essentially lost. As a result, from 1988 to 1989 the timber harvest from Federal lands in Oregon was reduced 7.1% or 990 million board feet (mmbf) (Greber 1991). This occurred prior to the listing of the spotted owl as a threatened species and well before the proposal to designate critical habitat.

Numerous other factors impact the timber industry of the Northwest and nationwide. Increased mechanization is improving worker productivity; the past 10 years have brought a 32 percent increase in productivity, and an additional 7 percent is projected in the

next decade. This impact has translated into a decrease in the number of workers required to process one million board feet of timber (from 12.09 workers/mmbf in 1980 to 7.33 workers/mmbf in 2000) (Northwest Forest Resource Council 1989).

This job loss is partly due to other related trends in the timber industry that include the declining base of old-growth forests. Without harvest reductions, merchantable old-growth may be depleted in as little as 10 years in some regions and up to 50 years in others. Added protection of critical habitat plus other events that have already affected the timber industry accelerate the impacts, rather than allowing them to occur over a longer period of time. A related factor is the sustainability of previous harvest rates. Sessions *et al.* (1990) noted that the record level of harvest in 1983–1987 is not sustainable on Oregon forest lands; a 14 percent reduction in harvest must occur in the 1990s to reach sustainable harvest levels. Loss and modification of older forest habitat have led to the decline of the spotted owl. The spotted owl is a creature whose existence is closely tied to habitat structure of older forests and, as such, has also become part of the public controversy over how Federal lands are managed. The result will be a further reduction in timber harvest.

The export controversy is yet another source of uncertainty in analyzing the economic effects of the proposed spotted owl critical habitat designation. In 1988, 3.7 billion board feet (bbf) of timber were exported, also exporting some associated processing employment opportunities. The loss of logs due to the proposed critical habitat designation is equivalent to 4.5 percent of annual log exports. The market interactions of price and availability throughout the export market is complex. Some industry analysts have noted that, with naturally decreasing availability of large logs, the export market would be in a decline in the mid-1990s with or without further protection of older forests.

Many of the above factors cannot be subtracted directly from the overall economic effects, yet must be recognized as part of the market environment in which the timber industry operates. The primary impact to the timber industry is the reduction in clearcut harvesting practices within proposed critical habitat units. If industry is able to develop and implement harvest techniques that are compatible with habitat requirements of the owl, recovery of the owl may proceed more rapidly and the negative economic effects of critical habitat may be reduced.

Benefits

The conservation of the spotted owl and its habitat through designation of critical habitat may result in a wide range of benefits. These benefits include preservation of recreation and existence values which will increase the benefits for most affected activities. Scenic beauty contributes to the quality of forest recreational experiences. Aquatic benefits are enhanced by reducing sediment loads and improving water temperature which may lead to higher fishing and water-related recreational values. For example, empirical research on paired watersheds of the South Fork of Casper Creek in northern California (Rice *et al.* 1979) demonstrated that 42 cubic yards (approximately 60 tons of soil) per acre were lost from the watershed following logging and associated road construction. This soil loss was above that of baseline conditions, and the data were based on logging practices in place during the 1970s.

Many of the resource services provided by critical habitat are not marketed. The lack of market prices makes it difficult to value them in dollar terms, as compared to timber harvest and other activities (Peterson and Randall 1984). As a result, this analysis currently focuses on the cost impacts, primarily related to timber harvest. No comprehensive estimate of the benefits of designating critical habitat is feasible with available data. Rather, the analysis provides a discussion of the kinds of benefits that are expected to ensue, with empirical examples as available. For both the spotted owl and its habitat, existence values represent an additional category of non-use benefit, albeit one that remains difficult to measure. Furthermore, there are preservation benefits that society places on endangered species for the option of future recreational use, with the knowledge that the owl's natural ecosystem exists and is protected, and the satisfaction from its bequest to future generations. Many of these benefits are expected to increase in relative value over time. As human activities continue to reduce older forest habitat, the remaining stands will become proportionately less available and more valuable. Habitat protection for the spotted owl clearly benefits other species as well as the human use and enjoyment of these species.

Economic Baseline

In assessing the economic impacts of the proposed critical habitat, the Service has used the expected economic situation consistent with restrictions that were in place at the time of proposing critical habitat. The principal land use restrictions that were already in place were the forest and resource management plans, ISC Plan and its adoption by the Federal land managing agencies, and the listing of the spotted owl. The two major Federal land managers involved, the Forest Service and Bureau, have indicated their intent to implement most of the ISC Plan on an interim basis until they complete new resource management plans. The Bureau expects to implement the Jamison Plan, and the Forest Service stated in the **Federal Register** (55 FR 40412) that it would conduct timber harvest activities in a manner not inconsistent with the ISC Plan. The assumptions are that the HCAs of the ISC Plan would be protected from harvest; the Forest Service will implement the 50–11–40 rule on its lands, and the Bureau will implement 50–11–40 to the extent possible.

The ISC Plan is the most likely and realistic planning framework of which the Service is aware. The Service realizes that the Forest Service and Bureau decisions to adopt the ISC Plan in whole, or in part, are policy decisions subject to change. The Forest Service is currently enjoined by a court order from implementing the ISC Plan. However, the Service believes its assumption of ISC Plan implementation is more realistic then any alternative of which it is aware.

Most critical habitat units established in this proposed rule include a component of the HCAs. Additional lands adjacent to the HCAs were proposed as critical habitat to provide further protection of existing habitat. The Service assumes these adjacent lands would have been managed under the 50–11–40 rule, as per the ISC Plan, and that there will be no harvest in the HCAs as recommended by the ISC Plan.

For the purposes of this analysis, the Service has made two additional assumptions concerning reductions in planned harvest. The first is that, in areas added to the HCAs, 80 percent of the planned 1991 harvest above 50–11–40 rule may be subject to restrictions, allowing 20 percent of harvest planned in critical habitat additions to proceed without restrictions. A second assumption in the economic analysis is that there is a distinction between the effects of listing the species and the incremental effects of designating critical habitat. The listing and critical habitat effects in the additions to critical habitat units were separated as follows:

(1) 70 percent of the impacts are attributed to the listing of the species and application of the jeopardy standard and incidental take guidelines; and

(2) 30 percent of the impacts are attributed to the designation of critical habitat and application of the adverse modification standard.

The Service believes that jeopardy will be reached before adverse modification in the preponderance of consultations. The above assumptions resulted in part from an evaluation of section 7 consultations issued to the Forest Service and Bureau in 1990 and 1991 (USFWS 1991b and c). Each critical habitat unit was evaluated in relation to existing suitable habitat quantities, number of known owl pair sites, and distribution of suitable habitat within the unit. Actual expected impacts will vary by area and will be reviewed on a case-by-case basis. The above should be used for discussion purposes associated only with this analysis.

Affected Agencies

The Service assumes in the economic analysis that the impacts to Federal agencies are related to timber harvest and to other activities such as surface mining that physically alter critical habitat. The Forest Service and Bureau are the primary agencies affected by the proposed critical habitat designation. However, the States, Corps of Engineers, and certain Army installations within proposed critical habitat also may be affected. The Bureau, Forest Service, Corps of Engineers, Bureau of Mines, National Park Service, Fish and Wildlife Service, and Federal Energy Regulatory Commission have permitting responsibilities that may affect activities other than timber harvest. (See section on Available Conservation Measures). If a potential action would be limited or prohibited by another statute or regulation, it is presumed that those impacts are attributable to pre-existing restrictions and not to the ESA.

Economic Effects

The economic effects resulting from adverse modification of critical habitat (effects above those of listing and other land management decisions) are the subject of the economic analysis (USFWS 1991d); it identifies and quantifies, as feasible, the added probable costs and benefits that may result from critical habitat designation for the northern spotted owl. Economic effects are the costs or benefits to society of precluding or limiting specific land uses. Economic costs and benefits to society are defined as the changes in economic rents and consumer surpluses expected to be derived from the land area under consideration, with and without its designation as critical habitat. The economic analysis also considers regional economic impacts. Economic impacts are the employment and revenue consequences of critical habitat designation on local economies.

The Forest Service and Bureau data allow a comparison of their planned 1995 sales with recent harvest levels in the affected area. They show planned sales of 3,021 mmbf for Forest Service and 1,193 mmbf for the Bureau. For the Forest Service, that level is considerably below the average annual sale in the late 1980s, whereas the Bureau planned sale is slightly higher than the 1985–1989 average.

In deriving their estimates, the Forest Service and Bureau made somewhat different assumptions about the effects of the ISC strategy. Both assumed no timber sales in the habitat conservation areas. Forest Service assumed the 50–11–40 rule would apply to areas outside the habitat conservation areas as part of the ISC plan, which would reduce the planned harvest in those areas by about 72 percent, on average. The Bureau assumed only limited adoption of the 50–11–40 rule in its With-ISC volume estimates. Because the critical habitat units currently proposed differ in total area affected from the May 6 proposal, the With-critical habitat areas estimates provided by the Forest Service and Bureau are not directly used in this analysis. Instead, the With-critical habitat units timber volumes were developed based on the currently proposed acreages for the Forest Service and Bureau using productivity factors (BF/Acre) for each forest and Bureau District that are implicit in the timber volume estimates.

An average of 80 percent reduction in planned harvest on critical habitat units, outside the HCAs, is used as the basis for this analysis (as described above). This is consistent with the Forest Service limited harvest alternative which assumed that approximately 28 percent of planned harvest would be permitted in the areas added to the CHAs. Furthermore, for purposes of the analysis, the reduction in planned harvest attributable to the Endangered Species Act is allocated 70 percent to jeopardy and 30 percent to adverse modification, based on the Service's estimate of the likely outcome of the consultations.

Impacts on timber-based revenue, employment, and revenue sharing with affected counties are derived directly from these changes in timber volume. The revenue estimates incorporate the Forest Service rising price assumption whereby prices are projected to rise significantly by 1995 due to reduced Federal timber sales caused by implementation of the ISC strategy and critical habitat designation, the effects of the business cycle on the demand for lumber, and other factors influencing the timber economy, both regionally and nationally.

The gross loss to the U.S. Treasury from the reduced volume of timber sales attributed to critical habitat ($54 million annually) has a potential for two offsetting balances: First, the administrative cost of conducting the timber sales is a cost that will not have to be borne for the reduced volume; and second, road credits associated with the reduced volume will not have to be deducted from the sales value of the timber. Both of these offsetting balances have been estimated ($11 million annually) for each of the National Forests and the administrative costs have been estimated for the Bureau Districts in the Pacific Northwest States. The results of deducting the appropriate administrative costs and road credits shows a net loss to the U.S. Treasury attributable to the designation of critical habitat to be nearly $43 million annually, with full impacts occurring in 1995.

Estimates of timber-based employment effects caused by critical habitat unit designation were derived from IMPLAN input-output models of the regional economies. The IMPLAN modeling system was developed by Forest Service to assess the regional economic effects of changes in the availability of timber. The projected timber-based employment losses used revised job response coefficients that were adjusted to reflect the current productivity estimates for the timber industry and other factors. The reduction of timber sales results in a decrease of 2,458 direct, indirect, and induced jobs attributable to critical habitat impacts.

The potential loss of timber-based employment as a result of designating critical habitat for the northern spotted owl will be more significant in some counties of the three-state area than in others. Two key factors are the degree to which a county's timber industry relies on timber harvests in other counties and how important a part the timber industry plays in the county economy. These are also the counties where the greatest impact to the spotted owl has also occurred due to the degree of habitat loss from the past timber harvesting.

The county employment coefficients range from 8.77 to 18.47 with an overall

average of 12.87. The coefficients projected direct, indirect and induced employment effects. Designating critical habitat may cause a potential loss of 1,538 direct industry jobs, or 1.4 percent of the total employment (SIC 24). The percent of timber industry jobs lost varies by county and ranges from 0.0 percent to 6 percent. Oregon is the most heavily impacted with 1,201 direct jobs lost out of the total 1,538.

Federal timber-based revenues are shared with the States and counties where the timber is harvested (25 percent of gross revenues for Forest Service and 50 percent for the Bureau). Those payments are expected to be reduced by $20 million when critical habitat is designated. About 25 percent of Bureau land in Oregon are Coos Bay Wagon Road lands for which counties receive 6.5 percent of timber based revenue, based on the State severance tax rate. That lower rate of revenue sharing is not included in the estimates presented here, making the total revenue share lost an overestimate.

Predictions of impacts on either revenues or employment beyond 1995 are highly uncertain because so many important factors are subject to change over a longer period of time. For example, the Forest Service estimates indicate that stumpage prices will decline some 7 percent from their 1995 levels by the year 2000 due to fluctuations in the economy, reducing the critical habitat impact on revenues accordingly. Conversely, the private sector response to higher prices, which tends to offset the impacts of lower Federal timber sales, may not be sustainable over the long term.

A number of factors are expected to offset employment losses as a result of critical habitat designation over the longer term. Advances in silvicultural techniques that may permit timber harvest without adversely modifying spotted owl habitat have the potential to reduce impacts, as they become more widely implemented and more cost effective. The effects of such developments are as yet uncertain but, by allowing some timber harvest in critical habitat, they may reduce the longer term impacts on revenues and employment. Moreover, the Service expects that as second-growth timber stands in critical habitat mature, a portion of the annual yield may eventually be harvestable without adverse effects on spotted owl critical habitat.

There are other considerations which may, over time, affect the relative values society places on conservation of the spotted owl and its habitat versus the timber flow it can produce. A number of studies have shown that the value society places on preservation of unique or irreplaceable natural resources tends to increase as populations and real income levels increase (Krutilla and Fisher 1975). Thus, over the longer term, as increasing numbers of species are threatened or endangered and their habitats become increasingly scarce due to development and other pressures, a wealthier society may find that it places ever higher value on those few species and unique areas that remain.

Effects on Mining and Mineral Exploration

The U.S. Geological Survey has identified three areas (mineral terranes) with the potential for undiscovered deposits within the Medford Quadrangle and one additional terrane throughout the Cascade Mountains. The types of deposits that could be discovered include sulfides, epithermal veins, and porphyry copper.

Effect on State and Private Lands

Impacts of critical habitat designation may occur for timber and non-timber activities on State land where there is a Federal involvement (e.g., Federal funding, permitting, etc.) subject to section 7 of the Act. Impacts on State or private entities may also result if the decision on a proposed action in Federally-owned critical habitat, such as a right-of-way permit, could affect economic activity on adjoining non-Federal land. Each action would be evaluated by the Federal agency under section 7 in relation to its site-specific impact and spotted owl habitat needs.

Balancing Process and Criteria

Congress foresaw the possibility that, in some instances, the designation of critical habitat might have significant economic impacts, and therefore authorized the Secretary to exclude areas if the benefits of exclusion outweigh the benefits of inclusion as long as the exclusion would not lead to the extinction of the species [section 4(b)(2) of the Act]. During the process of developing this proposed rule, the Service adopted a process and set of criteria to use in balancing the economic costs and benefits for designating spotted owl critical habitat. Additional detail related to the balancing process and criteria are found in "Report on the Balancing Process and Criteria for the Northern Spotted Owl" (USFWS 1991e).

The process used to balance the economic costs and benefits of critical habitat designation included several steps. The Service first identified those areas that meet the definition of critical habitat in section 3(5) of the Act. Concurrently, an economic analysis was conducted to ascertain the anticipated economic consequences of designating these areas as critical habitat, using the county as the base level of analysis. Balancing criteria were developed from both the biological and economic perspectives.

The primary biological criteria were based on the availability of the four primary constituent elements (i.e., nesting, roosting, foraging, and dispersal), condition and quality of habitat, biological problems that existed in the local area, and location of the area within the range of the owl.

All counties in the impact area were screened against the economic criteria, and those counties with the highest vulnerability selected for additional review and discussion. The economic screening criteria used to identify the counties with the highest economic impact were:

(1) The 1990 county unemployment rate;

(2) County per capita income;

(3) Percent dependency on federal timber;

(4) Population per square mile;

(5) Percent of timber processed that is over 100 years old; and

(6) The relative size of the timber industry in the county.

Economic factors that were considered during the second level of analysis of the high impact counties included:

(1) Industry trends in the county from 1980–1990, including whether or not the county is becoming more or less dependent on the timber industry for employment;

(2) Human migration into or out of the county;

(3) Log flows into and out of the county; and

(4) Total log supply as compared to dependency on Federal timber supplies.

As a result of this two-tiered analysis, decisions were made to:

(a) Delete the area of critical habitat;

(b) Retain the area of critical habitat as proposed; or

(c) Modify the boundaries of the critical habitat.

The decision and the rationale were documented.

Mining, recreation, and other non-forest product impact areas were individually identified and evaluated to determine whether or not the critical habitat units could be modified to exclude those areas of high impacts. As a result the Service is proposing to exclude from critical habitat units all sold but unharvested timber sales. This affects about 4.7 bbf of timber and results in an avoidance of expenditures

to the Federal government of about $50 million.

Although the Service did not apply the formal economic analysis/balancing process to the approximately 3 million acres of private lands included in the May 6 proposal, the decision not to include private lands in the revised proposal is partially attributable to a judgment that the costs of including these areas as critical habitat outweigh the few benefits. Therefore, as explained previously (see Difference from Previous Proposal section), private lands were not included in this proposal. A comparison of the relatively small benefits to the potentially significant economic and other costs that might have resulted from designating these lands confirms the Service's judgment that these lands should not be included.

Summary of Comments and Recommendations

In the May 6, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of this revised proposal. The comment period was open from May 6, 1991, through June 5, 1991. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and asked to comment. On May 7, 8, or 9, the Service published notices in 29 newspapers in California, Oregon, and Washington announcing the publication of the proposed rule, and the locations, dates and times of the public hearings.

The Service conducted four public hearings on this issue: In Eureka, California on May 20, 1991; in Creswell, Oregon on May 22, 1991; in Olympia, Washington on May 23, 1991; and in Portland, Oregon on May 24, 1991. The Service accepted testimony from the public from 1 to 4 p.m. and from 6 to 9 p.m. on each of those days. The Service announced the dates, times, and locations of the public hearings in the **Federal Register** on May 7, 1991 (56 FR 21123).

During the 30-day comment period, the Service received approximately 16,400 written comments. In addition, 364 people testified at the 4 public hearings. The Service received comments from the Forest Service, Bureau of Land Management, Bureau of Indian Affairs (including the Quinalt, Hoopa, Warm Springs, Covelo, and Yakima Indian Nations), the Bonneville Power Administration, California Resources Agency (including the Department of Fish and Game), California State Board of Forestry, California Department of Transportation, Washington Department of Natural Resources, and several state colleges and universities. The Governor's offices of Washington and Oregon and members of legislatures from all three states submitted comments. One U.S. Senator and one member of the House of Representatives also submitted comments. The Service received comments from numerous county and local governments, environmental groups, timber and wood products associations, several law firms, and scientific organizations.

Although many people submitting comments did not state a clear position on the designation of critical habitat, the majority of the comments were concerned over the impact of the designation of critical habitat or over the amount of land being designated, but did not totally oppose designation. The remaining letters were either supportive (6 percent) or failed to state a position on the proposal (12 percent). Many of the letters received were form letters or petitions, or raised more than one issue. Of the letters submitted, 39 percent raised biological issues; 66 percent raised economic issues; 48 percent raised administrative, legal or procedural issues; and 3 percent suggested specific changes to critical habitat boundaries.

The comments received, whether written or oral, have been grouped under issues. The Service's general responses are summarized as follows:

Administrative and Legal Issues

Issue 1: A number of commentors stated that the Service's comment period, notifications on public hearings, and number of public hearings were insufficient for the public to become fully involved with the decisionmaking process. Many were concerned by the lack of decisionmakers present at the hearings. The Service should have personally notified every owner of land within proposed critical habitat.

Service Response: The Service recognizes the controversial nature of this proposal and has an extensive notification process described at the beginning of this section. To ensure the fullest possible consideration of public comments in developing this critical habitat designation, the Service decided to publish a revised proposal following a 30-day comment period on the initial proposed rule of May 6, 1991; four public hearings were held following the initial proposal. After publication of this revised proposal, the Service will hold a second public comment period (60 days) and conduct four additional hearings on this revised proposal (see "**DATES**" and "**ADDRESSES**"). Both written and oral comments received from the public have been and will continue to be considered by the Service in the development of this critical habitat designation. The Service believes that the public will have ample opportunity for their information to be considered in the final decision.

As with all public meetings involving endangered species listing issues, the critical habitat meetings were chaired by a hearings officer, with other Service administrators, managers, biologists, and public affairs specialists present. An information center was available at each meeting to provide written briefing materials and maps. Service biologists were also present to answer questions from the public. Service decisionmakers were present at the public hearings; however, these meetings are solely for the purpose of soliciting information from the public; no decisions are to be made at the public hearings. All information gathered is considered in the decisionmaking process.

Issue 2: Several individuals submitted comments regarding what individual at what governmental level should make the final decision on critical habitat. Some suggested that one person should not make the decision; rather a panel should have that responsibility. Some wanted the people of Washington, Oregon, and California to vote on the issue. Some suggested that people far removed from the Pacific Northwest do not have the personal experience necessary to make the decision.

Service Response: The Act requires the Secretary of the Interior to make decisions with respect to listing species and designating critical habitat. For most issues, the Secretary has delegated this responsibility to the Director of the Fish and Wildlife Service. The Director considers public comments, input from other agencies and governmental departments, and staff recommendations before making these decisions. The Service specifically published a preliminary proposed rule to allow for the fullest possible consideration of public comments. In addition, the Service has taken the unprecedented step to publish another proposal to ensure that the public had a second opportunity to review this issue.

Issue 3: Some commented that members of environmental groups, their attorneys, and the courts should not direct Service policy. Members of the public seemed to feel that the government has been "swindled and taken over by environmental radicals." Alternatively, many felt that the timber

industry had exerted too great an influence on the Service's proposal.

Service Response: The mission of the Service is to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people. Section 2(c)(1) of the Act declares the policy of Congress that all Federal agencies shall seek to conserve all threatened and endangered species and shall utilize their authorities in furtherance of the purposes. The basic purpose of the Act, as stated in section 2(b) is to provide the means for conserving ecosystems upon which endangered and threatened species depend. The Service has proposed a designation of critical habitat that would benefit the northern spotted owl, as required by the Act and in response to an order in *Northern Spotted Owl* v. *Lujan*, No. C88–573Z (W.D. Wash.) (Court), resulting from a suit brought against the Service by several environmental groups. Compliance with both the congressional mandates of the Act and the Court's order is required of the Service. While the Service considered comments of both environmental and industry groups, all written and oral comments were given equal consideration. Neither environmental groups nor forest product companies are directing Service policy.

Issue 4: A number of commentors stated that the Service's decisions to list the owl and to propose critical habitat were political. The Service would not have carried out these actions had they not been sued by environmentalists.

Service Response: The decisions to list the owl and to propose its critical habitat were based on the mandates of the Act. Although there have been many lawsuits affecting this and related issues, the Service has concluded from the evidence that the owl is threatened and that changes to forest management will need to occur to avoid its loss.

Issue 5: Some commented that the Service should prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) on the proposed designation of critical habitat prior to publishing a final rule.

Service Response: The decision in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th Cir. 1981), held that as a matter of law an EIS is not required for listings under the Act. The decision noted that preparing EIS's on listing actions does not further the goals of NEPA or the Act. The Service believes that, under the reasoning of this decision, preparing an EIS on the proposed critical habitat designation would not further the goals of NEPA or the Act. NEPA documentation may be done on Forest Service and Bureau management plans and activities that involve critical habitat; section 7 consultation is conducted on those actions.

Issue 6: A few commented that the Service should not finalize a rule of this magnitude because it will become precedent setting. Critical habitat for other wide-ranging species such as the red-cockaded woodpecker could also be proposed.

Service Response: The Act requires the Service to designate critical habitat to the maximum extent prudent and determinable at the time a species is listed as threatened or endangered. In the case of the northern spotted owl, the Service identified areas that contain essential habitat features (primary constituent elements) and areas that require special management. Proposed critical habitat designation for the spotted owl is not a precedent; the Service has designated critical habitat for more than 100 threatened or endangered species nationwide. This includes other wide-ranging species such as the whooping crane, which migrates from its wintering area in Texas to its nesting area in northern Canada. Designation of critical habitat is done according to the biological requirements of the subject species, so critical habitat designation for the spotted owl will not influence such designation for other species.

Issue 7: A number of commentors stated that the Service does not need to designate critical habitat because the species is already listed as threatened and section 7 can be used to protect the species. The guidelines that have been implemented to reduce "take of owls" in the three States adequately protect habitat.

Service Response: Section 9 of the Act refers to "take" of a listed species. The term "take" is defined in the Act and its implementing regulations as "to harm, harass, pursue, hunt, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct." Incidental take is taking that is incidental to, and not the purpose of, an otherwise lawful activity. The Service's guidelines on avoiding incidental take serve to minimize immediate impacts to individual owls, but do not contribute significantly to the species' recovery. The guidelines implemented by the three States are intended only to address take. However, implementation has been variable with only the State of California and some private landowners in California taking an active role in developing habitat conservation plans for owls. Similarly, section 7, in the absence of critical habitat, ensures that Federal actions will not likely jeopardize the continued existence of the species, but does not focus on long-term protection to the species' habitat.

Critical habitat, on the other hand, is an additional protective mechanism mandated for listed species when it is both prudent and determinable. Critical habitat identifies areas essential to species conservation and, thus, contributes to species recovery by protecting habitat whether or not it is currently occupied by the species. This statutory authority was intended by Congress to provide a mechanism to protect areas that will contribute to the long-term recovery of the species.

Issues Related to the Designation Process

Issue 8: Some stated that the Service should have coordinated the proposal with other land management plans such as the ISC Plan, Forest Service Forest Plans, and Bureau Resource Management Plans.

Service Response: The Service did take into consideration other owl planning efforts and has reviewed and discussed these efforts as appropriate. Neither the Forest Service nor the Bureau have yet adopted long-term management plans that provide adequate protection for owl habitat throughout the range of the subspecies. In using the best available scientific and commercial information in its evaluation for proposing critical habitat, the Service, by including the ISC Plan's HCA system, incorporated the foundation of current Forest Service and Bureau interim management plans. The Service discussed with some ISC and recovery team members, the Forest Service, and the Bureau during this effort, to ensure that the most current owl data and other information available was used to revise the critical habitat proposal. However, critical habitat is not a plan. It is an inventory of habitat and areas that contain the features essential to the conservation of the owl. Management of critical habitat will need to be addressed through the recovery and land management planning processes. The Service is assisting in these efforts.

Issue 9: The Service received several comments related to recovery planning. Many individuals believed that the Service should delay the designation of critical habitat for the northern spotted owl until the Department of the Interior has prepared a recovery plan and identified population levels needed before the owl can be removed from the

list of threatened species. Some suggested that the designation of critical habitat would circumvent the recovery planning process, in that the Service will have decided the specific land areas and management goals necessary to conserve the owl before the recovery team can begin its work. The designation of critical habitat may interfere with the recovery of the owl by precluding management options.

Many suggested that the Service could avoid designating critical habitat altogether by preparing a recovery plan. The recovery plan would not have the same adverse economic effects as would the designation of critical habitat because recovery plans contain no legally binding recommendations.

Service Response: The Act requires the Service to designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. The Act requires the preparation of a recovery plan for a species following its listing as endangered or threatened. Thus, the Act places the designation of critical habitat earlier in time than the development of a recovery plan.

The Service recognizes the relationship between recovery planning and critical habitat, because the Act joins the two processes through its definition of conservation. However, critical habitat is not a plan or strategy. It does not specify population goals, recovery objectives, nor identify specific management criteria for designated lands. These are to be done through the recovery planning process.

Critical habitat will not, in itself, lead to the recovery of the species. Critical habitat provides one of several measures available to contribute in the conservation of a species. Other measures provided under the Act include sections 7(a)(1) and 7(a)(2) (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species); section 9 (prohibition of taking of listed species); section 10 (habitat conservation planning on State and private lands); and section 6 (cooperative State and Federal grants).

Recovery planning is the "umbrella" that guides all of these activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas that are in need of protection or special management, so that a species can be removed from the list of endangered and threatened wildlife and plants. Recovery plans also include management recommendations for areas proposed or designated as critical habitat. Critical habitat promotes recovery by highlighting areas that should be given additional consideration in the recovery planning process. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) and that, by virtue of their location, require special management. Although the recommendations contained in recovery plans are not legally binding, critical habitat provides a regulatory mechanism to increase immediate protection of these primary constituent elements and essential areas and preserve options for the long-term conservation of the species. It is a very important tool. The recovery plan can and should recommend how to manage or change critical habitat. However, specific management actions specified in recovery plans can only be implemented through resource management plans.

In the case of the spotted owl, the recovery team has stated they will use a comparative economic analysis to evaluate the relative economic costs of the various biologically sound recovery alternatives, with the goal of selecting the least costly, biologically acceptable recovery option. The Service's regulations pertaining to critical habitat designation (50 CFR 424) require an economic impact analysis of proposed critical habitat designations and allow the Secretary to exclude areas from the proposed designation if the benefits from exclusion outweigh the benefits in designation, as long as the exclusions would not lead to extinction of the species. Thus, economics will be considered in each process.

Issue 10: The Service received comments that it should not designate critical habitat because land management should be the responsibility of the agencies or companies. Critical habitat is unnecessary because the Bureau of Land Management and Forest Service already consider all wildlife, including the spotted owl, during planning efforts. The timber companies also manage the land for a sustained yield of trees and therefore, provide for wildlife. Existing State and Federal laws and regulations provide adequate protection to owls and, therefore, the added regulatory constraint imposed by the designation of critical habitat is unnecessary.

Service Response: Although numerous State and Federal laws and regulations offer some protection to spotted owls, and to a lesser extent, owl habitat, none would provide the same degree of protection on Federal lands as would critical habitat designation. The Service is unaware of any regulations or laws, other than the Act, that mandate survival and recovery of species. While both the Bureau and the Forest Service consider species conservation in their planning, the Service determined during the listing process for the owl that current management on these lands was inadequate. This was one of the key factors in determining to list the owl.

Issue 11: Some suggested that the Service should only designate areas that require special management.

Service Response: The Act defines critical habitat to include areas containing physical and biological features essential to the species conservation and which may require special management or protection. The areas proposed meet this criterion of the Act.

Issue 12: A few commentors stated that the Service acted in an arbitrary and capricious manner in proposing critical habitat because it did not adequately define the criteria used to select the areas. The Service should clearly define the criteria used to select critical habitat.

Service Response: The Service selected a network of areas within the range of the northern spotted owl to propose as critical habitat, using the HCAs identified in the ISC Plan as the basis for its proposal. In selecting areas beyond those designated as HCAs, the Service focused on areas that supported the physical and biological features that constitute the primary constituent elements of nesting, roosting, foraging, and dispersal habitat. Other factors considered in the selection of critical habitat include habitat quality and condition (e.g., spatial arrangement of habitat blocks and fragmentation); size and spacing; provincial differences in land ownership and management patterns, habitat quality, and owl densities; local owl location data; range-wide demographic considerations; agency management plans; and public comments. The initial May 6, 1991, proposed rule included a discussion of the rationale and criteria used by the Service to propose critical habitat (56 FR 20818). These rationales and criteria are explained in more detail in this revised proposed rule.

Issue 13: Some individuals submitted comments pertaining to the Service's use of the ISC HCAs as a basis for the critical habitat proposal. Many felt that in adopting part of the ISC Plan as the basis for the critical habitat proposal,

the Service had adopted a management plan rather than identifying areas containing the primary constituent elements as required by the Act. Others felt that the Service violated the intent of Congress when it went beyond the HCAs contained in the ISC Plan. An alternative view was that the original placement of the HCAs was arbitrary and, therefore, the Service should not have started with those areas.

Service Response: The Service's use of HCAs as the basis of its critical habitat proposal reflects the Service's acceptance of the fundamental concepts and principles of ecology and conservation biology used by the ISC to develop the HCA network. This network of reserves represents a scientifically-derived and accepted array of habitat blocks, well distributed throughout the range of the species and spaced closely enough to promote dispersal of owls among them.

The Service's critical habitat proposal did not incorporate the management and research aspects of the ISC Plan, such as the requirement to manage all forest lands not within HCAs to meet the 50–11–40 rule or the suggested research and monitoring program. The Act requires the Service to identify specific areas that contain the essential physical and biological features (primary constituent elements) when it proposes to designate critical habitat. These constituent elements occur both within and outside of HCAs. The Service acknowledges that portions of the HCAs do not contain all essential elements of owl habitat, as the ISC based the HCAs on both current and expected future habitat values. In many cases, areas within HCAs that currently do not contain essential elements were removed from the critical habitat units identified in this revised proposal.

Critical habitat is not a plan as it does not specify population goals or management guidelines. It is the responsibility of a recovery plan or other land management plans to address the management of owl habitat both within and outside of critical habitat.

Issue 14: The Service received several comments regarding the presence of unsuitable habitat within the proposal. Some people believe that critical habitat should not be designated because the intent of the Endangered Species Act is to protect existing populations and habitats and not to create large set-asides for future habitat and populations. In any case, where a need for future habitat is demonstrated, Federal lands should provide for that need. The Service did not have the authority to identify potential habitat areas. The Service has designated too much critical habitat because the Act does not require the conservation of a species throughout its range. Examples of areas that should not be proposed include stands younger than 60 years of age, clearcuts, pastures, golf courses, buildings, towns, airports, and the like. Many felt that these areas should not be included even for the ease of writing legal descriptions. Others suggested that the inclusion of small isolated fragments within critical habitat is inconsistent with the owl's need for large contiguous blocks of habitat. Some suggested that the Service should be selective and only propose old-growth greater than or equal to 250 years of age.

Service Response: The Service identified large contiguous blocks of owl habitat containing the primary constituent elements of nesting, roosting, foraging, and dispersal habitat primarily on Federal lands. Where new information clearly indicated that peripheral areas of non-habitat were included in the previously proposed critical habitat, the Service attempted to adjust boundaries to exclude non-habitat areas to the extent possible. It was not possible to exclude all areas of non-habitat via boundary revisions. In some cases in this revised proposal, critical habitat units contain small towns, farms, or man-made structures. These areas, although physically located within the boundaries of critical habitat, are not included in critical habitat designation. The Service has withdrawn private lands originally proposed as critical habitat, which will eliminate most of the concerns about the inclusion of towns, buildings, golf courses, etc.

Areas not currently containing all of the essential features, but with the capability to do so in the future, may still be needed for the long-term conservation of the subspecies, particularly in certain portions of the range. In the case of the owl, some portions of the subspecies current range have become depleted in numbers of owls and lack sufficient habitat to support strong populations (e.g., the Oregon Coast Ranges, and southwest Washington). Although relatively few owls remain in these areas, these critical habitat units are integral to the recovery of the species throughout its range because they could provide "stepping stones" of nesting habitat linking this portion of the subspecies range.

In the case of forested areas on Federal land that do not currently contain all attributes of suitable habitat, the Service believes that habitat contiguity is important in conserving the spotted owl. The Service agrees that large contiguous blocks of habitat are preferable to small, fragmented, and isolated stands. However, large suitable habitat blocks do not exist over considerable portions of the subspecies' range. The Service has proposed critical habitat designation that would contribute to the maintenance of a well-distributed owl population over time. Where large habitat blocks are lacking, the Service included small parcels of existing owl habitat, often separated by younger forests, which can provide for spotted owl foraging and dispersal. Over time, large, contiguous habitat blocks will develop in these areas, reducing the amount of habitat fragmentation that currently exists. As discussed under the section titled "**AVAILABLE CONSERVATION MEASURES**," projects will be evaluated on a case-by-case basis, focusing upon the habitat conditions of the specific project site. Projects located in areas that lack any of the primary constituent elements may not result in destruction or adverse modification of critical habitat at this time.

Issue 15: Members of the public provided differing viewpoints on linkage areas. Some suggested that the Service should designate all lands capable of meeting the 50–11–40 rule as critical habitat and added that 50–11–40 represented a minimum acceptable habitat condition for dispersal. Others stated that evidence does not exist that indicates linkage areas are essential. Some believed that the inclusion of dispersal habitat as a primary constituent element is arbitrary and capricious because owls can disperse through almost anything.

Service Response: While it is true that spotted owls can fly through or over a variety of habitat types, it is well documented that certain "open" habitats increase the vulnerability of spotted owls to avian predation. The ISC Plan predicted that the 50–11–40 rule, when applied to the forest matrix outside of HCAs, would provide adequate dispersal opportunities between blocks of nesting habitat. However, because of the random dispersal behavior exhibited by owls, the Service has not proposed to designate corridors in this revised proposal. Because dispersal is one of the owl's life requisites, the Service retained dispersal habitat as one of the primary constituent elements within the critical habitat units. The Service believes the section 7, habitat conservation planning, recovery planning, and ongoing land management planning processes will provide for dispersal needs of spotted owls in the forest matrix between the proposed critical habitat units, and these are more appropriate vehicles to address this issue.

Issue 16: Some suggested that rather than designate critical habitat the Service should develop management techniques that would facilitate the more rapid development of habitat. Fire suppression, longer rotation times between harvest, precommercial thinning, and other silvicultural techniques have the potential to improve habitat quality for owls. Other techniques to increase the carrying capacity of an area include management to benefit prey populations and control predators.

Service Response: The designation of critical habitat does not prescribe particular management regimes in designated areas. The Service would favorably review proposed management schemes that would improve the habitat quality for northern spotted owls. Some activities could be considered to be of benefit to spotted owl habitat and, therefore, would not be expected to destroy or adversely modify critical habitat. Examples of activities that could benefit critical habitat in some cases include protective measures such as fire suppression or forest-pest eradication, as well as silvicultural treatments that may improve spotted owl habitat. There is a need for research to gather data that may support or refute any potential benefits from actions such as these. Proposed habitat modifications should be evaluated on a case-by-case basis. The Service expects that the recovery plan will identify adaptive management, research, and monitoring activities to facilitate owl habitat development both within and outside of critical habitat.

Issue 17: A few felt that critical habitat should not be designated because it would increase the degree of threat due to vandalism. If critical habitat is designated, many people will intentionally hunt and kill owls or burn forests.

Service Response: Habitat loss and fragmentation were the main factors that led to the listing of the northern spotted owl as a threatened species, not the direct loss of owls. In addition, the Act and its implementing regulations already prohibit unlawful taking of spotted owls and provide for severe civil and criminal penalties for violations of this prohibition.

Issue 18: Some stated that the designation of critical habitat will make the courts more likely to convict individuals of section 9 violations.

Service Response: Critical habitat is not statutorily linked to the prohibition of take under section 9 of the Act. All entities are still responsible for avoiding take regardless of where it is found.

Issue 19: A number of commentors felt the Service should consider the 66,000 acres protected due to the Dwyer decision.

Service Response: The decision of the U.S. District Court Judge Dwyer on May 23, 1991, enjoined the Forest Service Regions 5 and 6 from auctioning or awarding any additional timber sales that would log suitable spotted owl habitat until the Forest Service submits and implements a plan to ensure the viability of the northern spotted owl and writes an accompanying environmental impact statement.

Due to this injunction, 66,000 acres of suitable spotted owl habitat are temporarily protected that would otherwise have been logged. However, it is only a temporary injunction and these acres of habitat may be sold in the future. In addition, these acres alone would not be sufficient to ensure the conservation of the species.

Issue 20: Some commented that the Service has disproportionately included State-owned lands.

Service Response: Some State-owned lands included in the May 6 proposal are no longer included. The State-owned portions in this revised proposal have been included to provide "stepping stones" of nesting habitat, thereby improving linkage opportunities for owls. These are essential areas and were also recommended by the ISC. The Service believes that States have a responsibility to conserve species, and considered site-specific needs when determining what areas are essential to the conservation of the species. The proposed designation of State-owned lands highlights those areas deemed essential for the conservation of the subspecies.

Issue 21: Some agencies commented that the Service should use rivers, streams, roads, and ridge lines for critical habitat boundaries and legal descriptions rather than section lines.

Service Response: In the designation of critical habitat, the Service is required to legally define boundaries. In this effort the Service has primarily used section lines, although wilderness boundaries and forest boundaries have also been used. The Service also used named streams and rivers and major roads to legally define some of the critical habitat units. The Service welcomes site-specific recommendations, submitted during the public comment period, that identify legal descriptions using such features that would not compromise the integrity of proposed critical habitat units.

Issue 22: Some stated that the Service violated the Act in its excessive proposal to designate critical habitat. The Service should have concentrated on the areas essential to the conservation of the species, rather than hastily drawing lines on a map that encompass more than the minimum necessary to conserve the owl. By setting potential recovery of the owl as the standard, the Service has encompassed far more habitat than is mandated under the Act.

Service Response: The Act and its regulations do not contain requirements or restrictions regarding the size of critical habitat. The Act defines critical habitat to encompass those areas that contain the physical and biological elements essential to the species' conservation, e.g., nesting areas, feeding sites, roost sites, etc. (50 CFR 424.12). The Act defines conservation to include all actions necessary to bring the species to the point that protection under the Act is no longer required, i.e., the species is recovered (50 CFR 424.02). Highlighting areas that contain the elements considered essential to the conservation of the species through critical habitat designation thus promotes recovery. As discussed in the proposal, critical habitat does not in itself recover the species; it is but one component of the recovery process.

The Service's regulations at 50 CFR 424.12(c) require the Service to specifically identify, map, and legally describe areas proposed for critical habitat designation. A variety of factors were considered when identifying areas to be selected as critical habitat, including those areas essential to recovery. Primary emphasis was given to HCAs (identified in the ISC Plan) or areas of concern (identified in the Service's status reviews or section 7 biological opinions). The condition and suitability of existing habitat and known pairs of owls was also considered. Other factors considered include habitat quality, spacing, location of the area, size of the forest stand, habitat contiguity, and proximity to existing HCAs. The role of different land ownerships, the amount of habitat on those ownerships, and the relative role of those areas in contributing to owl conservation were also considered when identifying critical habitat. Thus, the Service proposed areas deemed essential for the conservation of the subspecies, in accordance with the Act and implementing regulations.

Issue 23: A number of individuals commented that the Service has proposed an extreme amount of critical habitat. No species could possibly need 11.6 million acres. Most people raising this issue stated their belief as an

intuitively obvious fact. Some stated that 8.4 million acres was enough for the ISC Plan, and that the Service's proposal is clearly excessive. Up to 3,800 acres per pair was seen as too much habitat. The May 6, 1991, proposal was considered too extreme, as it would allow the current population to increase.

Service Response: The comment that 3,800 acres of habitat is too much for a pair of owls is valid for certain portions of the subspecies' range; however, the designation of critical habitat was not based on the need to provide a certain number of acres of habitat for known pairs of spotted owls. The amount of habitat required by a pair of owls depends on the quality and quantity of available habitat, which varies considerably within and between physiographic provinces. Thomas *et al.* (1990) indicated median annual pair home range sizes varied from a high of 9,930 acres for the Olympic Peninsula to a low of 2,955 acres for the Oregon Cascades. Actual annual pair home range size varied from 1,035 acres in the Klamath Province to 30,961 acres in the Washington Cascades. As the quality and quantity of habitat declines, annual home range sizes increase.

Comparisons between acres of proposed critical habitat and acres in the ISC Plan HCAs are misleading, because the ISC Plan included both HCAs (breeding habitat reserves with no harvest allowed) and the requirement to manage all remaining forest lands outside of HCAs for dispersal habitat (i.e, the 50–11–40 rule). The ISC Plan was formulated specifically to address the long-term management of the spotted owl. Critical habitat is only one component of the Act's approach to conserve listed species. It provides an inventory of habitat that is associated with spotted owls and highlights those areas that contain the constituent elements essential to its conservation.

Critical habitat affects only those areas specifically designated as such and has no affect on areas outside of the boundaries that will be delineated in the final rule. Thus, the Service's proposed critical habitat designation affects a much smaller area than the ISC Plan, which affects, to some degree, the entire forest land-base.

The Service does not believe that the critical habitat proposal would cause an immediate increase in the number of spotted owls. There are many owl pairs and territorial singles that do not occur within a proposed critical habitat unit. Even with the protection of all owl pairs and habitat currently and potentially occurring within the proposed critical habitat units, the population likely will decline over time as its habitat continues to decline. The protection of habitat within proposed critical habitat units may allow the owl population to stabilize over time and eventually lead to recovery.

Issue 24: Many individuals submitted comments criticizing the Service's proposal because of a belief that the amount or configuration of habitat was inadequate. Some suggested that all suitable habitat be included in the proposal or that all of the forest matrix be included. Some suggested that using the HCA network as the basis was flawed and led to an inadequate proposal, because some respected scientists believe that the ISC Plan does not have a good chance of succeeding.

Service Response: The Act requires the Service to identify specific areas that contain the essential physical and biological features (primary constituent elements) when it proposes to designate critical habitat. Because the remaining suitable owl habitat containing these essential features occurs in a highly fragmented, disjunct pattern across the landscape, it is not technically feasible to identify, map, and legally describe every specific block of remaining suitable owl habitat. Many remaining patches of owl habitat are of such a small size or are sufficiently isolated from other habitat areas that they have limited, if any, value to owls. The Service therefore used the best available data to identify the most significant, large blocks of habitat that contained the physical and biological features essential to owls and that were well distributed throughout the range of the species.

The Service used the same principles of conservation biology as did the ISC (see Critical Habitat section) as a basis for beginning with HCAs when proposing critical habitat. The HCAs contain large contiguous blocks of suitable habitat and were designed to meet scientifically-accepted distribution and spacing patterns. Many areas of habitat were not included in the HCA system; however, the Service attempted to identify and include those areas with the constituent elements deemed essential for the conservation of the subspecies. Thus, the revised critical habitat proposal consists of the HCAs (excluding some peripheral areas of non-habitat), plus other areas of suitable habitat with the biological features essential to the conservation of the species. Critical habitat is not a substitute for the ISC Plan (HCAs and 50–11–40 rule) or the recovery plan which is currently being developed, nor is critical habitat designation alone intended to recover the species. It is one mechanism provided under the Act to be used in combination with recovery plan guidance, section 7 consultation, and section 10 habitat conservation planning to promote recovery of the species.

Issue 25: Many commenters suggested removing specific areas from the proposal. Such suggestions typically reflected concerns over inclusion of private lands in the proposal or were based in potentially conflicting uses, especially mining and ski areas. A smaller number of comments suggested removing areas which reportedly did not contain habitat for the owl.

Service Response: Most of the concerns regarding private and tribal lands will be alleviated due to the decision to not include these lands in the revised proposal. Areas suggested for deletion on the basis of perceived land use conflicts were deleted if they did not meet the criteria for inclusion, did not provide important benefits to the species, or it was determined that the economic impacts of inclusion outweigh the benefits provided the species. Areas suggested for deletion due to poor habitat were re-examined in terms of value to owls. In some cases, areas were deleted and owl needs were met by addition of nearby areas presenting fewer conflicts or better habitat. In some key areas, habitat currently in poor condition was retained due to its important location, lack of options, and high potential for contribution to recovery.

Issue 26: Many commentors suggested the addition of specific areas to proposed critical habitat. In most cases, the commentors stated that the suggested areas contain important habitat components or provide linkage between areas already proposed.

Service Response: All such requests were examined closely. In some cases, the suggested additions at least partially conformed with additions already under consideration as result of the Service's examination of updated habitat information. Areas were evaluated for addition using the following criteria: Presence of significant suitable habitat contiguous with the existing proposed unit, degree of improvement to the existing proposed unit, and importance to owls known to occur just inside the boundary of the existing proposed unit. Areas suggested to improve connectivity were seldom incorporated because the value of setting aside of travel corridors for owls is not understood nor fully accepted by the conservation community. Areas suggested for the benefit of other species were not included unless they met the above

criteria for northern spotted owls. Suggested areas that are in wilderness or other protected status were not added because they are not in need of further protection. Lands in private ownership were not added for a variety of reasons, as explained in the proposed rule.

Biological and Habitat-related Issues

Issue 27: The Service received numerous comments suggesting that a high level of "proof" should be required to justify a designation of critical habitat. These individuals indicated that the Service lacks sufficient information upon which to base a critical habitat determination. For example, new populations are being found all the time. Others suggested that the Service used out-dated information in the proposed designation of critical habitat (i.e., the ISC Plan and status report were prepared using data collected prior to 1989). These people wanted the Service to revise the rule to reflect more accurate information.

Some individuals suggested that the Service complete an inventory of all habitat including second growth, wilderness, and national parks before designating critical habitat. The Service should determine exactly where owls are located prior to designating critical habitat, and areas that do not contain owls should be excluded from critical habitat. Furthermore, it was suggested that the Service prove that its proposal is reasonable by publishing the locations of all known owls.

Service Response: The Service is required to use the "best available" information and to show that the areas proposed contain the primary constituent elements. The Service based its initial critical habitat proposal on the best information available at the time. The initial proposed rule was revised based on review of new information and data acquired from a variety of sources by the Service during the public comment period. New information sources included comment letters and reports submitted in response to the May 6, 1991, proposed rule, as well as revised habitat suitability and owl occurrence information which the Service actively sought from a number of sources during the public comment period to better incorporate updated information.

New information on habitat suitability and owl occurrence was reviewed by the Service and incorporated into this proposed rule during the Congressionally-mandated workshop on late successional forest habitat reserves held in Portland, Oregon, on June 6–10, 1991. The most current map information on owl habitat suitability and owl occurrence for national forests and Bureau of Land Management districts was presented at this workshop.

The Service has modified its original proposal to ensure that it reflects this information. The Service is very confident that its proposal represents a valid and correct product. The Service has reviewed all the information made available over the past year and has not found any substantial differences from the analyses that were provided by the ISC or from the Service's status reviews. The Service agrees that additional surveys can contribute useful information to this process, but conducting such surveys is not the Service's responsibility. The Service has determined that publication of owl location data, or the specific locations of any listed species, could increase the likelihood of illegal take and therefore would be imprudent.

Issue 28: A number felt that critical habitat should not be designated because existing reserved lands such as wilderness and national parks provide sufficient land for the owl. Recent inventories show that owls in some wilderness areas have a higher reproductive rate (e.g., in Washington wilderness areas).

Service Response: The Service concluded that the owl should be listed as a threatened species partly because insufficient habitat is protected within Congressionally-protected areas to adequately contribute to recovery or support a viable population of owls. In its 1990 status review of the northern spotted owl, the Service examined the likelihood that habitat within wilderness and national parks would support the owl. Using data from the Forest Service and National Park Service on the amount of suitable habitat within reserved areas, the Service concluded that the amount of habitat within these areas was not sufficient to ensure the long-term survival of the northern spotted owl. Currently protected habitats are concentrated in about one-third of the owl's current range, are separated by long gaps, and are of lower quality habitat.

Issue 29: Many people challenged the Service's descriptions of the habitat requirements of the owl. Some suggested that old-growth is poorer habitat than younger forests because the trees are rotted and dying. Younger forests have better prey bases than do older forests. For example, slash piles in clearcut areas often contain high densities of woodrats. Others believed that older forest habitat is decadent and dying and should be harvested so that trees can be planted.

Service Response: Timber harvest operations that leave openings in stands, slash piles, and downed logs may occasionally enhance prey habitat and result in higher prey densities, at least in the short-term. However, these are often the types of habitat in which owls cannot successfully forage. Prey abundance (foraging) is but one of the attributes of the subspecies' life-history needs associated with its habitats. For example, nesting structures require deformities such as cavities, snags, broken-topped trees, and mistletoe platforms which occur more frequently in older, more decadent timber stands. In addition, spotted owls forced to forage in open habitat are more vulnerable to predation by other raptors. Studies cited in this proposed rule have shown that owls prefer older forests (and associated structural components).

Newly planted forests take many years to develop the structural and species diversity of spotted owl nesting habitat. While harvest and replanting can sometimes enhance wood-fiber productivity, such forest management as clearcutting is not compatible with maintenance of spotted owl habitat, although some types of selective harvesting may be more compatible.

Issue 30: A few individuals commented that owls occur or nest in a myriad of habitats, including second growth, mixed hardwood forests, sagebrush, and in backyards. The Service should "prove" that the owl is tied to the old-growth ecosystem. Because owls occur in many habitats, designation of critical habitat is not necessary. Furthermore, proposing second growth as critical habitat is inconsistent with stating that owls require old-growth. In Oregon, old-growth can be as young as 42 years of age.

Service Response: As discussed in the Background section of this rule, existing scientific literature shows that spotted owls prefer a specific forest structure commonly associated with older coniferous forests for nesting, roosting, and foraging, and tend to avoid open spaces (i.e., clearcuts) where possible. In certain portions of the subspecies' range, younger forests provide the necessary habitat components. Owls will also use younger forests for dispersal and foraging, which are also constituent elements of the owl's life-history. Therefore, some of these younger forests have been proposed as critical habitat. Including some younger forests will fulfill some of today's needs for spotted owl foraging and dispersal

and will, over time, provide the replacement habitat necessary to remedy the highly fragmented nature of much of the existing owl habitat. The Service is unaware of any studies that consider sagebrush suitable owl habitat or the existence of 42-year-old stands of old-growth.

Issue 31: Some of the public suggested that critical habitat is unnecessary because trees are a renewable resource, and the Federal and State agencies and timber companies replant trees. Many said that more trees are planted than harvested each year and that there are more trees growing today than ever before. Therefore, new maturing forests are always available for spotted owls. Others suggested that those forested lands that have been managed and replanted should not be designated as critical habitat.

Service Response: Forests that are intensively managed for timber production are usually harvested on the shortest planting rotations that are profitable. These managed stands seldom reach 80 years of age, the time generally required for a forest to begin to develop the structural characteristics necessary to produce suitable owl habitat. Moreover, many timber producing forests are managed on an even-aged system, which does not promote the development of multi-species, multi-layered canopies, snags, cavities, etc. Single species stands of fast-growing trees alone do not produce owl habitat, because owls prefer a diversity of stand structure resembling old-growth. The Service only included forests that contain the constituent elements and that are essential to the conservation of the owl.

Issue 32: A number of individuals felt that the Service has no evidence that fragmentation adversely affects the owl and, therefore, should not designate critical habitat.

Service Response: The primary threat to the owl's survival and recovery is habitat loss or modification from timber harvest activities. The resultant habitat destruction has reduced much of the owl's remaining habitat to small, fragmented, and isolated stands.

Habitat fragmentation may have any of several adverse effects on the spotted owl including:

(1) directly eliminating key nesting, roosting, and foraging stands;

(2) indirectly reducing the survival of dispersing juvenile owls;

(3) perhaps increasing competition or avian predation;

(4) reducing population densities and social interactions between individuals;

(5) resulting in habitats that contain more owls than can be supported over time;

(6) increasing habitat suitability for a competing species, the barred owl (*Strix varia*); and

(7) resulting in demographic isolation due to widely spaced small populations. These factors interact to decrease habitat suitability for the spotted owl (Thomas *et al.* 1990).

Issue 33: The Service received numerous comments related to the causes of habitat loss for the owl and, therefore, the implications regarding the need for or the quantity of critical habitat proposed. Such comments included a belief that the Service had not proposed the designation of enough habitat, because fires and wind will continue to destroy some habitat. Such statements often included a view that the Service should propose to designate all habitat that is suitable for the northern spotted owl. Alternatively, some suggested that critical habitat should not be designated because natural factors such as fire and insect infestations are responsible for the degradation and reduction in available owl habitat.

Service Response: The Service agrees that natural events can destroy suitable owl habitat. However, it must be assumed that wildfires and insect infestations occurred throughout history and that the documented decline of the spotted owl throughout much of its range is due to human-induced habitat alteration, which is cumulative to natural events. The Service has little control over natural events and, therefore, must rely on appropriate forest management to achieve spotted owl recovery.

The ISC considered catastrophic events, referred to in their document as environmental stochasticity (Thomas *et al.* 1990), and concluded that the HCAs they recommended would probably withstand stochastic events. Based on the ISC's assessment, the Service is confident that the proposed critical habitat units, which encompass the HCAs and include additions of existing owl habitat for near-term protection, will be similarly adequate to withstand stochastic events.

Issue 34: Some stated the Service should not designate critical habitat for owls because they can fly to different habitat blocks if one of their areas is destroyed.

Service Response: Current data indicate that the population of spotted owls is declining because of habitat loss/degradation and that the rate of population decline is similar to the decline of suitable habitat (Thomas *et al.* 1990). The total amount of suitable habitat has been continually declining over the species range, with an estimated loss of 60 or more percent over the last 190 years (Thomas *et al.* 1990). Current trends indicate an average annual habitat loss of 1 to 2 percent on national forests, where the majority of remaining habitat occurs, although habitat loss in local areas may be higher. Owls use large areas of habitat to breed successfully and there are no presently unoccupied blocks of habitat for owls to colonize as their habitat is reduced. Designation of the northern spotted owl as a threatened species is clearly an indication that special measures are necessary to arrest and eventually reverse current habitat loss trends.

Issue 35: Some felt that critical habitat should not be designated because species like the owl that cannot adapt should be allowed to become extinct.

Service Response: In section 2 of the Act, Findings, Purposes, and Policy, Congress found that numerous species of fish, wildlife, and plants had become extinct and that other species had become so depleted in numbers that these species were in danger of or threatened with extinction. Furthermore, Congress found that these species of fish, wildlife, and plants were intrinsically valuable to the Nation and its people. These findings are the basis of the Endangered Species Act, the purpose of which is to conserve threatened and endangered species and the ecosystems on which they depend. The designation of critical habitat is but one mechanism provided under the Act to facilitate the recovery of listed species. It would be contrary to the Act and the mission of the Service to allow the northern spotted owl to become extinct without taking all reasonable preventative actions.

Issue 36: A couple of commentors felt the Service should use captive breeding in zoos as the preferred method to conserve the owl rather than setting aside habitat. Some suggested that the Service capture juvenile owls, raise them to adulthood, and then release the adults. The expansion of the HCAs and the designation of critical habitat in the areas of concern to facilitate movement is unnecessary because owls could be artificially moved from one area to another.

Service Response: The purpose of the Act is to protect the ecosystems upon which listed species depend. Captive breeding is a conservation measure sometimes used for a species whose

population is so low, often down to the last few individuals, that it is necessary to collect them into a captive breeding facility to safeguard the final existing genetic pool for that species. These few individuals would be given maximum protection to survive and breed in that facility. The captive breeding conservation measure is not to be used to release species' habitat for human exploitation. Given protection of the spotted owl's habitat, sufficient owls exist for natural recovery.

The Service has revisited the inclusion of large areas for connectivity within the initial proposal. Only areas which contain primary constituent elements were included in this revised proposal. By making additions, movement between critical habitat units is facilitated by reducing the intervening distance. This is of particular importance in areas of concern where both habitat quality and quantity is often-times minimal. Given that owl movement and dispersal is of a random nature, the Service believes the forest matrix outside of critical habitat units should be managed for dispersal through other means such as section 7 and the development of management, recovery, and HCP plans.

Issue 37: Some commentors wanted to know about the benefits of designating critical habitat as they relate to other environmental concerns (such as watershed protection, soil stability, protection of fisheries, reduction of greenhouse effect).

Service Response: Substantial benefits are anticipated as a result of this proposed critical habitat designation. A reduction in soil erosion and associated stream sedimentation, as well as a retention of water quality is expected in areas that are not logged. (The cessation of logging would, in itself, not increase water quality, but it would prevent further sedimentation and degradation of water quality that result from logging impacts to soil structure and erosion.) These effects should be beneficial to salmon and steelhead runs as well as to resident stream fish. The effect on global warming is difficult to ascertain without extensive studies and the development of predictive models.

Critical habitat for the northern spotted owl supports an ecosystem with unique characteristics. These ecological characteristics provide pleasure and enjoyment to individual users of wildlife, to participants of such outdoor activities as hiking and camping, and to those people who, although they have no plans to participate in on-site activities, obtain satisfaction from the existence of the habitat and its flora and fauna. The designation of critical habitat would significantly increase benefits from the use of the forest for such things as open space, scenic beauty, recreational opportunities, clean water supplies, reduced herbicide use, and the like.

Issue 38: A number of individuals felt that the Service should concentrate on multiple species management rather than proposing critical habitat for the northern spotted owl. Several individuals suggested the addition of specific areas for the benefit of other species. A few noted that designation of critical habitat will harm species that prefer younger forests.

Service Response: Designation of critical habitat for the northern spotted owl may incidentally benefit many other species, particularly those associated with older forest habitats. However, the proposed designation is intended to benefit only the owl and the Service did not add areas that would only benefit other species. The Service has no data indicating that species preferring lower seral stages are in a decline due to habitat shortage. Further, the Service does not anticipate a significant decline in early seral-stage habitat, since much of the land that has been managed for timber production will likely continue to be managed for timber production, including lands outside of critical habitat units and much private land. In addition, natural catastrophic events will continue and likely result in portions of critical habitat units being in early seral stages at a given point in time. Some species which utilize openings in forests, such as deer and elk, are also dependent upon adjacent stands of older forests for hiding and shelter.

Economic and Impact-related Issues

Issue 39: Many people felt that economic impacts needed to be carefully considered in the designation of critical habitat. Conversely, some felt that economics should not be part of the decision to designate critical habitat.

Some individuals used the Act's requirement to complete an economic analysis as a reason to avoid designating critical habitat, because the Service can modify critical habitat boundaries based upon economic impacts, provided that such modifications would not result in the extinction of the species.

Others criticized the Service's baseline in the economic analysis. Some individuals felt that the Service was arbitrary and capricious in conducting an economic analysis that only examined the incremental effects of designating critical habitat. These people felt that the Service should have examined the economic impacts of the initial listing of the owl and any other regulatory mechanisms offering protection to the owl as part of the economic analysis of designating critical habitat.

Service Response: The Act directs the Service to consider the economic and other relevant effects of the designation and to exclude specific areas where the costs outweigh the benefits of such designation, provided that such exclusion would not result in the species' extinction. Therefore, when designating critical habitat, the Service first selects areas using the best available biological information as the basis for the proposal and then has the option to modify boundaries based upon economic and other relevant considerations as long as such modifications do not lead to extinction. Failure to consider biological information in designating critical habitat for the owl would circumvent the process described in the Act. To the extent possible, the designation of critical habitat will reflect the Service's concern and evaluation of the economic and social impacts of the designation.

Section 4(b)(2) of the Act requires the Service to consider the economic and other relevant impacts of designating particular areas as critical habitat. It does not direct the Service to assess the impacts of both listing the species and designating its critical habitat. Moreover, section 4(b)(1)(A) of the Act explicitly precludes the Service from considering the economic impacts of listing a species as threatened or endangered. The congressional intent behind inclusion of this provision was to ensure that only relevant biological criteria are used to assess the ecological status of a species. In addition, prior to the proposed critical habitat designation, protective measures for the owl (e.g., Forest Service determination to be consistent with the ISC Plan, Bureau implementation of the Jamison Plan, and section 7 and 9 regulations as a result of listing) were in place and had created economic impacts not associated with critical habitat designation. Therefore, the Service evaluated the incremental economic effects due to designating critical habitat, over and above those effects of listing the species and of other owl protective measures. To do otherwise would impermissibly attribute to critical habitat designation impacts already caused independently by listing and the other protective measures.

Issue 40: Many individuals requested information about the employment multipliers used in determining the economic costs of the proposed critical habitat designation and the justification for using these multipliers.

Service Response: The Service used a computer model known as IMPLAN (developed and managed by U.S. Forest Service) to generate the employment multipliers. The IMPLAN model is used by the Federal Emergency Management Agency, Soil Conservation Service, Forest Service, Bureau of Land Management, Corps of Engineers, and National Park Service, as well as the Fish and Wildlife Service, to evaluate the impact of various Federal actions on employment. Productivity and allowable cuts are given by the Service for each forest and BLM district. Direct, indirect, and induced effects are calculated using regional IMPLAN models which incorporate the trade area. Multipliers in regions surrounding Seattle and Portland are adjusted to exclude the influence of these large urban areas.

Issue 41: Some individuals felt that the job loss predicted due to the critical habitat designation might be attributed to other factors such as automation, exports, foreign labor, and so forth. Some commentors projected that "automation, exports, foreign labor, and non-sustainable logging are the real culprits of job loss in the Northwest," and that the owl is being used as a scapegoat by the failing timber industry.

Service Response: Other factors have clearly been responsible for a large part of the decline in timber-related jobs in the Northwest. Factory automation has resulted in a dramatic conversion in the industry from a labor-dependent system to a highly automated system. According to the Northwest Forest Resource Council (1990), which evaluated the economic impacts of timber industry jobs for every mmbf of timber harvested (harvest multiplier), the multiplier has gone from a high of nearly 13 jobs/mmbf in 1981 to 9 jobs/mmbf in 1987, and the 1990 ratio is approximately 8 jobs/mmbf. Mechanization has reduced the number of workers felling trees, transporting logs, handling logs, and milling finished products. In addition, export of unprocessed logs further reduces the number of jobs available locally.

Competition from foreign processors for U.S. logs is a significant cause of the demise of domestic timber processing. Furthermore, a weak housing market has led to a decreased demand for lumber, leading to lower employment in the industry. Indeed, there are numerous factors other than the spotted owl listing and the proposed designation of critical habitat for the owl that have and continue to negatively impact employment opportunities in the forest products industry.

Issue 42: The Service should consider Executive Order 12606 on supporting the family prior to designating critical habitat for the northern spotted owl. The designation of critical habitat will very likely result in increased rates of drug and alcohol abuse, domestic violence, and divorce. For example, the Forks Abuse Program (in Washington State) works with victims of domestic violence and reportedly saw "an increase of 352% in requests for shelter for victims of domestic violence the first 6 months of 1990 as compared with the first 6 months of 1989."

Service Response: The designation of critical habitat for the spotted owl is one of many factors that affect employment in the Pacific Northwest. The Service does realize that job losses from the critical habitat designation may add to unemployment. The Service regrets that this may be an effect of the critical habitat designation and will comply with Executive Order 12606.

Issue 43: The designation of critical habitat will increase the number of drug dealers and marijuana plantations.

Service Response: This comment is speculative. The Service has no information on which to base a judgment.

Issue 44: The effects on public education due to lower tax receipts needs to be considered when designating critical habitat. Several commentors noted that public education services would be drastically reduced to such an extent that County, State, and Federal government assistance would be essential if basic educational services were to be maintained. One commentor questioned if the Service had taken into account that local government depends on tax revenue from timber receipts and wanted to know how many teachers would lose their jobs because the timber receipts were not available to help pay the costs.

Service Response: The actual economic impact on public education is dependent on other factors as well, including mill levy rates and property values. Since private lands are not included in this revised proposal, private land values should not decrease and, in fact, might increase because of the lower availability of Federal timber. Payments in lieu of taxes will decrease in those Counties that contain critical habitat units, with a net anticipated reduction to the Counties and States of $20 million. Fewer public services such as roads and schools are needed when the population migrates to other areas where work is available. The U.S. House of Representatives recently passed legislation increasing (from 25 to 90 percent of historic levels of the mid-1980s) the percentage of timber receipts that Counties can retain. This would lessen the impact of critical habitat designation on County treasuries.

Issue 45: Several people submitted comments asking the government to compensate the timber industry in some manner, suggesting the government should pay loggers and mill workers subsidies similar to those paid to wheat farmers and dairy workers. Others indicated that the government should compensate the timber industry for its loss in revenue due to the reduction in allowable timber harvest (from Forest Service and Bureau of Land Management lands). Some believed that the government should bear the responsibility for communities that have been allowed to cut timber beyond sustainable yield levels.

Service Response: Neither the Act nor any other law administered by the Service authorizes payment of the type of subsidies or compensation suggested by the comments. Consequently, this issue is a matter for other agencies and Congress to consider.

Issue 46: Some individuals inquired about the costs of the deterioration in the distribution of income arising from structural economic changes in timber dependent regions.

Service Response: Changing the distribution could increase or decrease tax revenue depending on whether the tax policies are progressive or regressive and on the direction of the change in the distribution. If deterioration in the distribution of income would lead to a tax revenue loss, it would necessitate a decrease in public services or an increase in taxes. Individual States and Counties determine their own spending/revenue patterns to provide public services. Structural economic changes do not lead to a deterioration in the distribution of income because other sectors of the economy benefit when there is a redistribution of income. Those counties that lose jobs in the timber industry may find that once these persons leave the area the remaining incomes are higher and much more stable since they will not depend as much on resource extraction, housing construction, and other cyclical and depressed industries.

Issue 47: Some commentors stated that the proposal should recognize the economic impacts of forest product

industries other than logging and sawmilling and that the economic analysis use not only sawmills but all timber processing and timber-based industries to effectively address the indirect employment effects of the proposal. The economic impact of the critical habitat designation on forest product industries other than logging and sawmilling needs to be addressed.

Service Response: If implemented, the proposed rule would result in logging reductions and would, thus, have an impact on downstream industries to the extent that supply cannot be accommodated by other sources. The economic analysis conducted by the Service took into account SIC (Standard Industrial Classification) groups 24 and 26, which included a large variety of wood-related products. A precise estimate of this logging reduction is difficult because of market factors of price, supply, and log export restrictions. As previously mentioned, IMPLAN was used as the base for the analysis to determine economic impact of the regions involved. Indirect employment effects were measured and include declines in all sectors that will occur because of the reduced timber products activity. The effects of decline in logging, milling, pulp, paper, and related wood products were all considered in the analysis.

Issue 48: A timber company noted that the

> * * * designation of additional areas beyond the Thomas Plan HCAs will result in a shift in recreational activities and probably a total reduction in overall recreational activity. Managed forest lands provide a vast and diversified recreation opportunity * * *. Except for a few old growth dependent species, designation of critical habitat will reduce opportunity for wildlife appreciation, bird watching, hunting, etc., as compared with managed forests.

One commentor remarked that

> * * * it is erroneous to assume that all non-market resource values increase when areas are designated as critical habitat. Critical habitat designation is likely to diminish recreational values, because access to recreational areas will be reduced. In addition, younger forests are beneficial to many species, especially game species. Hunting values generally are higher in forest mosaics that include some harvested areas.

Service Response: Both managed forest lands and old-growth forest lands provide opportunities for recreation. The net quantity and direction of the critical habitat induced change in recreational values is unknown. Managed forest land provides diversified recreational opportunities for a variety of recreationists because of its road system. Critical habitat designation for the spotted owl would not reduce recreation in the short-term because existing roads will remain available. Access for recreationists would not be restricted due to critical habitat designation. Also, the presence of old-growth forest habitat could increase certain *types* of recreational use. Many people enjoy areas that show fewer signs of human activity than a logged area. Further, while hunting participation may be relatively greater in a "forest mosaic," fishing participation may be relatively greater in unlogged areas where better water quality and reduced stream sedimentation promote fish populations. Many activities, road construction, and some logging will be allowed.

Issue 49: The critical habitat units' marginal contribution to owl protection or their marginal importance to timber supply was questioned.

> The analysis of each area should show that area's marginal contribution to owl conservation as well as its marginal importance to timber supply.

Service Response: The Service believes that the critical habitat designation's marginal contribution to owl protection, as defined in this proposed rule, is greater than the marginal contribution to timber supply. This reflects the legal mandate to the Service to provide protection to species designated as threatened or endangered. This designation is not a withdrawal of these acres from the timber base. Timber harvesting will continue, although it is expected at a reduced level.

Issue 50: Some individuals wanted to know whether the proposed critical habitat designation or the pre-existing timber development plan represents the highest-valued use of the affected lands.

Service Response: The Endangered Species Act requires the Service to designate critical habitat. The Act further directs the Service to consider the economic effects of the designation and to exclude specific areas where the costs outweigh the benefits of such designation, provided that such exclusion would not result in the species' extinction. The Service has carried out these mandates in this revised proposal. A redistribution of wealth always occurs if a subsidy is removed and/or a resource constrained.

Issue 51: Some suggested that the potential economic benefits of *not* designating critical habitat might be an important factor that should be considered. One commentor noted that

> * * * the Service has failed to analyze the potential economic benefits associated with *not* designating critical habitat in the areas identified * * *.

Service Response: The benefits of not designating critical habitat for the owl are the costs avoided. Not designating critical habitat for the owl would obviate the economic costs associated with the designation process. One might think of reduced logging costs as "benefits" to mills and increased federal subsidy to local schools as "benefits" to local taxpayers. Not designating would create these "benefits." The analysis considers these factors but designates them as costs since they may be benefits foregone if habitat is declared. In addition, it has been established by the Service that private lands will not be included in the critical habitat designations, which will greatly limit the effects on lands other than public lands.

Issue 52: Private landowners felt that due to the uncertainty of the impact on private lands from the designation of critical habitat, the values of these lands might be depressed. One commentor stated that

> It is extremely important that the agency recognize that even if the designation does not evolve into constraints on private harvest, the designation of critical habitat itself telegraphs a degree of uncertainty and legal risk that will inhibit land exchanges or investments in timber management and harvest plans, all of which will contribute to a substantial decrease in economic value as a consequence of the threat of future intervention.

Service Response: Although the revised proposal for critical habitat designation does not include private land, some indirect effects on private landowners may occur due to their feelings of uncertainty and risk. However, as the supply of timber from Federal land decreases, the Forest Service anticipates that stumpage prices will increase. It follows that the value of timberland will increase, benefiting private landowners. If Federal supply goes down, the remaining private supply would normally be expected to be worth more, not less.

Issue 53: Private landowners requested clarification of the costs involved with harvesting their wood prematurely due to the critical habitat designation.

Service Response: The harvesting of timber prematurely assumes that the landowners are doing so in response to changing stumpage prices. Short rotational periods on private lands have reduced the average size of logs, thus restricting the types and quality of finished products that can be manufactured from those logs. If

landowners believe that stumpage prices are going to fall, they may delay their woodcutting to minimize financial losses. If stumpage prices are going to increase, as the Forest Service anticipates, the landowners might harvest sooner to take advantage of the higher prices. In this case, the landowners would benefit more from increased stumpage prices than would have occurred without the critical habitat designation.

Issue 54: Some felt the Service should not designate critical habitat because it will increase the harvest pressure on and road construction in adjacent areas that are not designated. The resulting reduction in domestic wood products could lead to increased timber production activities in tropical rainforests. The designation of critical habitat also may encourage activities that are more environmentally damaging by causing a shift to more pollution-causing building materials. Some suggested that landowners would harvest their lands more quickly in advance of the final rule taking effect.

Service Response: The basis for this comment seemed to be an assumption that timber within critical habitat would not be harvested and, therefore, the forests would not provide needed timber supplies. The designation of critical habitat would add a layer to the level of review Federal projects already receive under section 7 of the Act. That added review would most likely result in a reduction of timber harvested or a modification of harvest methods in some cases. However, the designation of critical habitat does not ban all logging activities within critical habitat.

Both the Forest Service and the Bureau anticipate an increase in private harvesting in response to higher stumpage prices, making it profitable for landowners to harvest trees earlier than previously planned. Increased harvest may or may not result in increased road construction depending on the existing road network in the area to be harvested. The Service realizes that this may have a negative effect on future harvest on these lands through shortened rotations and lower quality wood. This is not an effect due solely to critical habitat. This trend has been increasing since before the listing of the owl. While the Service agrees that added pressure for timber production on areas outside critical habitat may occur, those areas would still be subject to scrutiny under State and Federal regulatory mechanisms. Proper timber management in these areas may continue to provide needed forest products.

The purpose of this proposal is to designate critical habitat for the protection of northern spotted owl habitat. Ramifications such as the effect on tropical rainforests are beyond the scope of this proposal and are more appropriately addressed in other forums. The Service is concerned, though, over the impact caused by any shift in resource use from one area to another.

Issue 55: The Department of Transportation questioned the additional costs for infrastructure improvements when roads are delayed or curtailed due to restricted access.

Service Response: Increased delays or costs for road construction are not anticipated as a result of this proposed rule. In exceptional cases, there might be requirements for modifications to alignments if they would impact nest trees.

Issue 56: Some of the public felt the designation of critical habitat would interfere with potential land exchanges.

Service Response: Designating critical habitat for the spotted owl would affect land exchanges where they involve Federal lands or where land exchanges are funded, authorized, or otherwise carried out by a Federal agency. Some Federal agencies, such as the Forest Service, have policies guiding agency action on land exchanges which involve habitat used by listed species. Land exchanges typically would undergo section 7 consultation between the Federal action agency and the Service to assure the proposed exchange would not jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat. It is likely that critical habitat in Federal ownership would remain under Federal management to assure that conservation of the species is promoted, in accordance with section 7(a)(1) of the Act. This would not affect land exchanges that are strictly private, as private lands are not included.

Issue 57: Several individuals believed that critical habitat would preclude all land uses and strongly opposed its designation. Others requested that the Service clearly define what activities could and could not take place within every single critical habitat unit. Support for these views came from the public's acceptance of multiple use mandates. Many suggested the continuation of specific activities that were thought to perpetuate habitat conditions needed by owls. Examples of such activities included certain timber harvest prescriptions, such as selective cutting and thinning, to facilitate the development of owl habitat. Even clearcut prescriptions were viewed as being compatible with owls in some cases (because Douglas-fir seedlings grow in full sun and because most clearcut prescriptions include stream buffers). Sometimes this issue was phrased in the form of a specific question, asking if acceptable uses included fishing, mining, bike riding, hiking, rock collecting, camping, firewood collecting, or others.

Service Response: The designation of critical habitat is not synonymous with setting aside wilderness, "locking up" land, or prohibiting all uses. Section 7 of the Act prohibits Federal agencies from authorizing, funding, or carrying out actions that would destroy or adversely modify critical habitat. Many activities would not be restricted in critical habitat units because they would have no effect on the primary constituent elements of the critical habitat. Activities considered not likely to adversely affect critical habitat include hiking, camping, fishing, hunting, bird watching, cross-country skiing, snowmobiling, off-road vehicle use, organized motor-crosses, mushroom and plant gathering, Christmas tree cutting, limited livestock grazing, rock collecting, maintenance of rights-of-way, and underground mining activities.

Activities that would disturb and/or remove spotted owl habitat components within designated critical habitat units may affect the owl and/or its critical habitat. Such activities are discussed in more detail under the section titled "**AVAILABLE CONSERVATION MEASURES**" in this rule. Each proposed project would be examined under section 7 in relation to its site-specific impacts. In most cases, the Service will offer recommendations to help agencies offset the impacts of their actions. These may result in modifications to the project. In some cases, there may be no acceptable alternative. On the other hand, if certain silvicultural practices are proven to enhance or perpetuate owl habitat, the Service could determine that those projects are not likely to destroy or adversely modify critical habitat.

Issue 58: Some individuals suggested that the Service should automatically prohibit certain activities through section 7 consultations. Such prohibitions included the harvest of any timber within critical habitat. Other individuals suggested that specific activities, such as use of existing access roads, construction of new roads, and construction and maintenance of utility corridors, be excluded from the requirement for review under section 7. Some wanted the agencies to maintain the status quo or current harvest rates and continue to evaluate the needs of

the owl. Others wanted the Service to prohibit all actions within proposed critical habitat until the final rule is published.

Service Response: The Service does not have the authority to automatically prohibit certain activities through section 7 of the Act or to automatically exempt certain projects from the requirements of section 7 of the Act for either proposed or final critical habitat designation. Section 7 of the Act requires Federal agencies to confer with the Service on actions that are likely to destroy or adversely modify proposed critical habitat and to consult on such actions once critical habitat is designated. The Service's comments and recommendations presented to Federal agencies as a result of proposed critical habitat conferences are advisory. If the Service's biological opinions resulting from consultation on designated critical habitat conclude that destruction or adverse modification would result, the Service provides reasonable and prudent alternatives, where possible, to avoid the destruction or adverse modification of critical habitat. Under the Act, the Service cannot prejudge the outcome of section 7 consultations regarding destruction or adverse modification of critical habitat.

Issue 59: The designation of critical habitat will create an additional layer of environmental surveys that must be completed.

Service Response: Federal agencies authorizing, funding, or carrying out projects that may affect listed species are required to conduct section 7 consultations with the Service. The consultation process normally involves surveys to determine species presence. That is true whether or not critical habitat has been designated for the species. The Act requires the Service to complete its review under section 7 of the Act within 90 days and to issue a biological opinion within 45 additional days. In practice, the Service issues biological opinions within 90 days of receiving the request regardless of whether or not critical habitat has been designated. The Service agrees that an analysis of the effects of a proposed action on critical habitat constitutes an additional level of environmental analysis, but this additional effort is carried out simultaneously with other environmental review processes, including the review under section 7 to determine whether jeopardy to a listed species would be likely to result.

Issue 60: Some noted that the designation of critical habitat would interfere with important cancer research because the designation would prevent the harvesting of yew trees.

Service Response: Where the yew occurs within proposed critical habitat boundaries, it is likely that yew bark could be harvested without adversely modifying the owl's critical habitat.

Issue 61: One commentor wanted to know how much increased lumber costs would decrease consumer surplus.

Service Response: The effect of increased lumber costs on consumer surplus depends on the final wood production unit's incremental change in price, the number of units sold, and the demand elasticity. Prices of lumber are expected to rise in response to the critical habitat designation, but since the reduction in timber harvests due to critical habitat designation in the Pacific Northwest represents only a small portion (.04 percent) of the nation's lumber supply, the price increases and the loss of consumer surplus should be very small.

Issue 62: Several individuals questioned whether the costs of wood products would increase due to a decreased supply.

The supposition that the price will rise due to supply reduction in the Northwest assumes that the lumber demand is elastic. If the timber supply from the Northwest were the only source of product to a specific region, the normal supply/demand/price parameters would apply.

Service Response: Wood product prices are elastic, and demand for those products will ultimately determine price. Prices have increased by 0.8 percent in the past 6 months (Producer Price Index), but it is impossible to predict whether this trend will continue or reverse. Nationally, the housing market has been in a slump, and demand has not been strong. In addition, other sources of supply such as the Southeast, Northern Midwest, or other locations may in part offset lower production from the Northwest forests.

Issue 63: Several individuals wanted to know the status of Forest Service and the Bureau of Land Management sold but unharvested timber.

Service Response: The Service reviewed the potential for restricting the harvest of sold but unharvested timber from public lands from both a biological and economic perspective. As a result, the Service determined that the economic impacts associated with the potential withdrawal of these sales would outweigh their biological contribution. This was influenced by the order issued by Judge Dwyer on May 23, 1991 (*Seattle Audubon Society et al.* v. *John L. Evans et al.*, No. C89-160WD (W.D. Wash.)).

In that decision, Judge Dwyer prohibited the Forest Service from offering timber sales in northern spotted owl habitat on Forest Service lands for the year 1991 and that portion of 1992 ending March 5 until such time as the Forest Service promulgates rules and guidelines for the protection of the northern spotted owl and writes an accompanying Environmental Impact Statement. In that order, the court stated that:

38. The injunction would not prohibit the logging of existing sales, but rather the sale of additional logging rights in owl habitat areas while the Forest Service was in the process of adopting a plan. Thus, timber sale reductions do not translate directly into harvest reductions.

By ordering an injunction against the proposal of new sales pending completion of an owl management plan and Environmental Impact Statement, the Court essentially removed all timber sales from Forest Service lands *except* those that have been sold but unharvested. The plaintiffs agreed not to protest the execution of those sales as reasonable relief for the industry, thereby making 4.778 bbf of timber available to the industry. Therefore, these timber sales constitute the only available timber for harvest from Forest Service lands until March 5, 1992. The removal of all or a portion of these areas from timber harvest would, in the opinion of the Service, create a severe economic impact on the timber industry and rural communities dependent upon that harvest for economic stability.

The Service determined that exclusion of these areas as critical habitat would not lead to the extinction of the northern spotted owl, based upon previous section 7 biological opinions for these sales, which found they would not jeopardize the continued existence of the species. These "no-jeopardy" opinions indicate that extinction will not occur.

Issue 64: One commentor felt that the economic analysis ignored the consequences of critical habitat designation on State law requirements and the resulting impacts on private landowners. According to the commentor, the critical habitat designation would trigger additional environmental review on the State level, which would trigger public interest and challenge additional environmental reviews on the State level, and it also fails to consider access to private lands.

Service Response: The proposed rule does not address the effects of State or other local requirements that result from critical habitat designation because the

Service has not been able to assess these requirements and their potential effects. The Service requests comments on these requirements and their potential effects.

Issue 65: The Service was asked to consider the economic impact that designating critical habitat for the northern spotted owl could have on private lands.

Service Response: No private lands are being proposed as critical habitat. However, private entities might be affected if they are involved in an activity to be authorized, funded, or carried out by a Federal agency (often referred to as a "Federal nexus"). For instance, if a private landowner required access across Federal critical habitat in order to gain access to his land, the Federal land managing agency's issuance of a right-of-way permit would be subject to compliance with section 7 of the Act. Although the decision on the permit could affect the private land, access has never been denied in the past as a result of section 7 consultation with the Service, although modifications to the proposed action on Federal lands might result (see next issue for further discussion). There should be little impact on private lands as a result of designating critical habitat on Federal lands.

Issue 66: The Service cannot use the granting access to private inholdings as an entry into the consultation process described under section 7, because 16 U.S.C. Sec. 3210a guarantees a private party's access to their land.

Service Response: The consultation process described under section 7 does not result in Service approval or denial of access, but rather an evaluation of the proposed project's impact on a listed species or its habitat. The Federal permitting agency, through consultation with the Service, may modify the location of an access road authorized through this project review process if it would adversely affect spotted owls or critical habitat. If the Service determines that construction of a road may result in destruction or adverse modification of critical habitat, the Service will present reasonable and prudent alternatives, such as route modification, so as to not destroy or adversely modify critical habitat. The Service expects that rarely, if ever, will the designation of critical habitat for the owl result in a Federal agency's denying access.

Issue 67: The Service should prepare a "taking implication assessment" pursuant to Executive Order 12630 prior to making a final decision on this issue.

Service Response: The Service will comply with Executive Order 12630.

Issue 68: Some individuals felt that the Service should examine the consequences of critical habitat designation for the owl on the balance of trade.

Service Response: Log exports from the Pacific Northwest have been, on average, 3,307 mmbf annually for the years 1985–1989, which represents approximately 1 percent of the value of all annual exports of the United States. The Service expects log exports to decrease because of higher stumpage prices resulting from critical habitat designation. Imports of finished wood products may also increase. Thus, the net impact on the balance of trade may be negative but insignificant.

Issue 69: Some questioned the degree to which restricting log exports would alleviate the timber supply shortage if the proposed critical habitat designation was implemented.

Service Response: Governmental export restrictions would increase timber availability for local buyers and would reduce competition for logs in the Pacific Northwest thus reducing costs to local mills. The industry estimates that on average, 3,300 mmbf of logs were exported annually during the late 1980s (17 percent of logs harvested); the proposed critical habitat designation is equivalent to 4.5% of the annual log exports.

If domestic timber were to remain inside the United States, more milling jobs would be available for processing of the logs that would have been exported. The Forest Service reported that they expect decreased exports due to increased stumpage prices. An industry analyst noted that in 5 to 10 years the amount of log exports from the United States may be reduced by 50 percent without imposing export restrictions of any kind. This would result from the increased stumpage prices in the United States and a concurrent significant reduction of the supply of export-quality logs.

Issue 70: The effect of critical habitat designation on the import of foreign wood was noted several times by commentors. Questions centered on whether the U.S. government would now force the American public to buy essential wood and paper products, at higher prices than today, from foreign wood suppliers whose record of environmental stewardship and fiber renewal generally lag far behind that of the U.S. wood products industry.

Service Response: If the domestic demand for wood is high at the same time supply from the Northwest is restricted due to critical habitat designation and exports continue, the need to import more foreign wood might arise. Without importing wood, local mills might not be able to pay the higher prices for logs in the marketplace and be forced to decrease production. The mills that would be able to obtain the higher priced logs would most likely pass the increased cost onto the consumer. However, other parts of the country (i.e., the Southeast and the Great Lakes region) might increase harvest activities in response to the increased stumpage prices. The supply from these alternative sources might compensate for some of the increased prices. Given the huge supply of timber in the U.S., wood product prices are unlikely to rise significantly over time if we maintain a competitive market with free trade.

Issue 71: Some individuals wanted to know what costs would result from lawsuits and court actions due to the Service's failure to specifically state which activities would be allowed on private lands.

Service Response: It is impossible to ascertain in advance the probable costs of court actions resulting from this proposed rule; however, the revised proposal does not include private lands.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and effective as possible. Consequently, the Service used the most current data available to evaluate habitat for consideration as critical habitat. For example, the Service does not have current verified data for private, State, and tribal landowners, making it difficult to completely evaluate existing habitat for northern spotted owls. In many portions of the species' range, landowners (particularly State and private lands) on adjacent lands have not provided equal or comparable amounts of information. Such discrepancies have resulted in a disproportionate emphasis on those private landowners who did provide data whether for this proposal or for other reasons.

These problems exist to greater extent with the Federal agencies (the Bureau, Forest Service, and National Park Service). Disparities among data sets with respect to different Federal (and State) agencies greatly increased the amount of time required to review the information. The data presented in this rule were basically derived using a geographic information system (GIS). Data used in the GIS, including landownership, boundaries of HCAs, wilderness, and the previous critical habitat units, and other data layers were supplied by four Federal and three State

agencies. Significant problems were encountered with data compatibility, and the Service has worked diligently to eliminate these errors to the maximum extent possible. This problem coupled with the lack of a common data base continues to hamper efforts to tabulate, track, and compare areas (e.g., spotted owl pairs, acres and condition of habitat). Comments are solicited to help correct remaining problems in the database.

In addition, different definitions of suitable habitat, which do not necessarily reflect biological differences between provinces, continue to be used by the agencies. Finally, a lack of understanding of the effects of various silvicultural prescriptions continues to lead to misinterpretations on the impacts of such harvest applications. The Service would like to reduce these limitations as much as possible and requests assistance in gathering any data or information, or in establishing research projects that would help overcome these deficiencies in the near future.

Therefore, comments or suggestions from the public, governmental agencies, Indian Nations, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Suggestions on how any of the above deficiencies or limitations could be reduced or eliminated;

(2) The reasons why any habitat (either existing or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act, particularly in regards to the Service's exclusion of tribal, private, and some State lands;

(3) Information regarding actions that should be considered necessary to achieve recovery of the northern spotted owl and the conditions that might allow it to be removed from the list of endangered and threatened wildlife and plants (the Forest Service and Bureau should include information on the relationship to existing or expected land management plans);

(4) Alternative methods to ensure linkage habitat in the areas of concern, including implementation of the 50–11–40 rule, or other means;

(5) Specific information on the amount and distribution of suitable owl habitat, forest land base, and numbers and distribution of owls by landowner and land designation (the Forest Service, Bureau, and other land managing agencies or affected parties should include updated information and maps);

(6) Specific information on the ability or values of proposed areas to support other listed, proposed, or candidate species and the relationship of this proposal to maintaining biodiversity and ecosystem integrity;

(7) Current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(8) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat;

(9) Economic values associated with benefits of designating critical habitat for the northern spotted owl. Such benefits include those derived from non-consumptive uses (e.g., hiking, camping, bird watching, etc.), watershed protection, air quality, soil retention, fisheries, "existence values," etc.;

(10) The methodology the Service might use, under section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat;

(11) The scope of timber harvest activities anticipated on Federal lands, or affected by Federal agencies, other than Forest Service and Bureau lands; and

(12) Non-timber related Federal activities (including Federally permitted, authorized, or carried out actions occurring on State and private lands) and economic costs associated with any alternatives being considered.

Public Hearings

Section 4(b)(5)(e) of the Act requires that a public hearing be held, if requested within 45 days of a proposed rule. As indicated under "**DATES**" and "**ADDRESSES**", the Service has scheduled four public hearings on this proposal due to the anticipated number of requests for such hearings.

Parties wishing to make statements for the record should bring a copy of their statement to the hearing. In anticipation of the large number of parties at each hearing, oral statements will be limited to 3 minutes. There are no limits on the length of the written statement presented at the hearing or subsequently submitted for the record. Written comments will be accepted from any party until the close of the comment period (see "**DATES**"). Written submissions will be given the same weight and consideration as oral comments presented at any hearing.

The Service intends to publish a final decision on this issue in early December of 1991. The final decision on this proposed designation of critical habitat will take into consideration the comments and any additional information received by the Service.

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).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat units, it is not clear whether significant economic impacts will result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

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U.S. Fish and Wildlife Service. 1991e. Report on the balancing process and criteria for the northern spotted owl. U.S. Fish and Wildlife Service, Fort Collins, Colorado.

Authors

The primary authors of this rule are Karla J. Kramer and Barry S. Mulder, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement (see "**ADDRESSES**" section); Steve Spangle, U.S. Fish and Wildlife Service, Sacramento Field Station; Michael Tehan, U.S. Fish and Wildlife Service, Olympia Field Station; and Randy G. Tweten, U.S. Fish and Wildlife Service, Portland Field Station.

The economic summary was prepared by John Charbonneau and Michael Hay, U.S. Fish and Wildlife Service, Office of Policy, Budget, and Administration, Washington, DC; and Richard Johnson and Mel Schamberger, U.S. Fish and Wildlife Service (see "**ADDRESSES**" section).

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.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "critical habitat" entry for "Owl, northern spotted", under BIRDS, to read "17.95(b)".

3. It is proposed to amend § 17.95(b) by adding critical habitat of the northern spotted owl (*Strix occidentalis caurina*) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife

* * * * *

(b) * * *

* * * * *

NORTHERN SPOTTED OWL: (*Strix occidentalis caurina*)

California. Areas of land and water as follows:

Description of C-1 taken solely from Bureau of Land Management Map; Happy Camp 1983, and Hoopa 1983, California.

Del Norte and Siskiyou Counties

T. 16 N., R. 2 E., Secs. 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 35, and 36, of the Humboldt Meridian.

T. 16 N., R. 3 E., Secs. 1, 7, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 17 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 9, 10, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, and 35, of the Humboldt Meridian.

T. 16 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, 22, 27, 28, 29, 32, 33, and 34, of the Humboldt Meridian.

T. 15 N., R. 2 E., Secs. 1, 2, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 15 N., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 15 N., R. 4 E., Unsurveyed Lands, Secs. 4, 5, 6, 8, 9, 16, 17, 20, and 23, of the Humboldt Meridian.

T. 14 N., R. 3 E., Unsurveyed Lands, Secs. 4, 5, 6, 10, 15, 25, 26, 27, 34, 35, and 36, of the Humboldt Meridian.

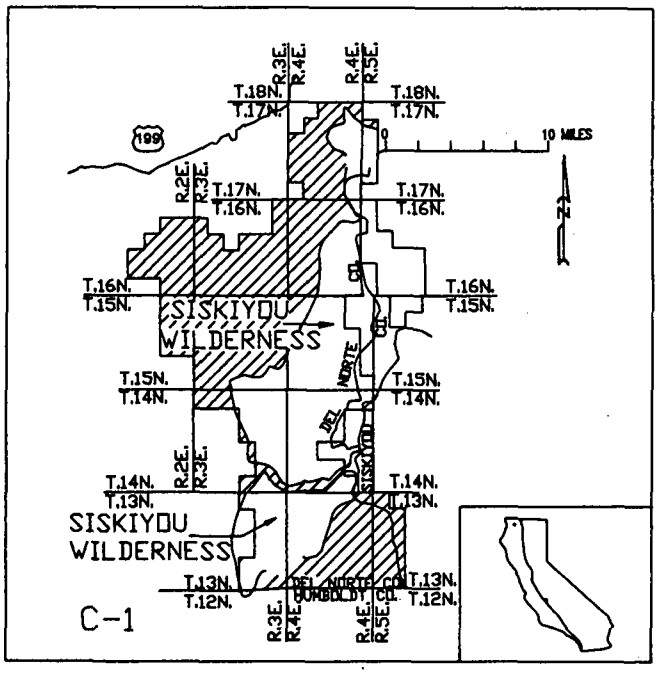
T. 14 N., R. 4 E., Unsurveyed Lands, Secs. 1, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 13 N., R. 3 E., Unsurveyed Lands, Secs. 3, 25, 26, 34, 35, and 36, of the Humboldt Meridian.

T. 13 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, ,27, 28, 29, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 13 N., R. 5 E., Unsurveyed Lands, Secs. 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Humboldt Meridian.

Excluding from the above areas any land within the Siskiyou Wilderness, and any private lands.



Description of C–2 taken solely from Bureau of Land Management Map; Hoopa 1983, California.
Del Norte, Humboldt, and Siskiyou Counties

T. 12 N., R. 4 E., Unsurveyed Lands, Sec. 36, of the Humboldt Meridian.

T. 12 N., R. 5 E., Unsurveyed Lands, Secs. 25, 26, 27, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 12 N., R. 6 E., Unsurveyed Lands, Sec. 33, and 34, of the Humboldt Meridian.

T. 11 N., R. 4 E., Unsurveyed Lands, Secs. 1, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Humboldt Meridian.

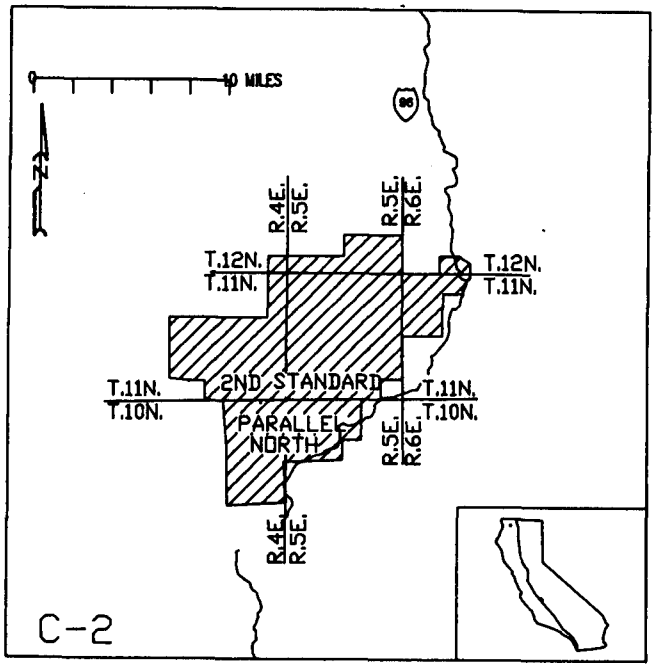
T. 11 N., R. 5 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 11 N., R. 6 E., Unsurveyed Lands, Secs. 3, 4, 5, 6, 7, 8, 17, and 18, of the Humboldt Meridian.

T. 10 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27, of the Humboldt Meridian.

T. 10 N., R. 5 E., Unsurveyed Lands, Secs. 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, and 18, of the Humboldt Meridian.

Excluding any private lands within the above area.



Description of C–3 taken solely from Bureau of Land Management Map; Hayfork 1982, California.
Trinity and Humboldt Counties

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T. 6 N., R. 5 E., Sec. 18, 19, 30, 31, 32, and 33, of the Humboldt Meridian.

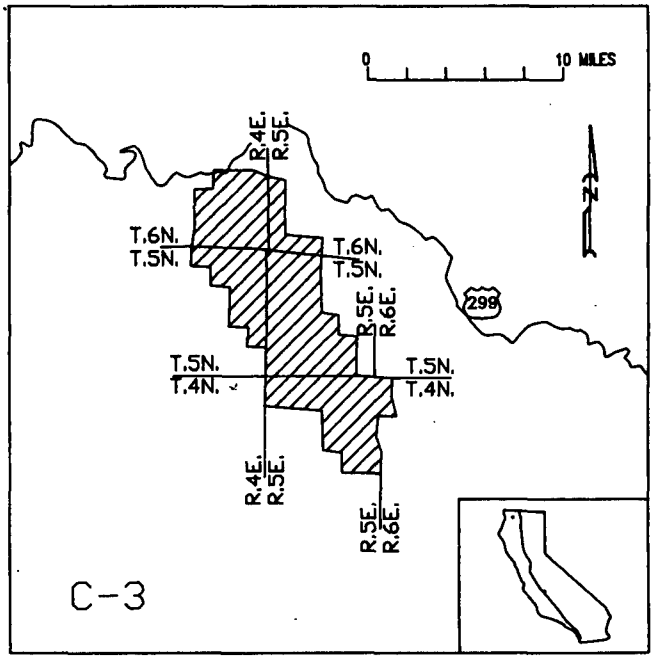
T. 5 N., R. 4 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 23, 24, and 25, of the Humboldt Meridian.

T. 5 N., R. 5 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 4 N., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, and 26, of the Humboldt Meridian.

T. 4 N., R. 6 E., Secs. 6, and 7, of the Humboldt Meridian.

Excluding any private lands within the above area.



Description of C–4 taken solely from Bureau of Land Management Map; Garberville 1979, California.

Trinity and Humboldt Counties

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T. 1 N., R. 6 E., Secs. 5, 6, 7, 8, 18, 19, 29, 30, 31, and 32, of the Humboldt Meridian.

T. 1 S., R. 5 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Humboldt Meridian.

T. 1 S., R. 6 E., Secs. 5, 6, 8, 17, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 2 S., R. 6 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 2 S., R. 5 E., Secs. 1, 2, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 2 S., R. 7 E., Secs. 19, 30, and 31, of the Humboldt Meridian.

T. 3 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 24, and 25, of the Humboldt Meridian.

T. 3 S., R. 7 E., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 4 S., R. 7 E., Secs. 5, 6, 7, and 8, of the Humboldt Meridian.

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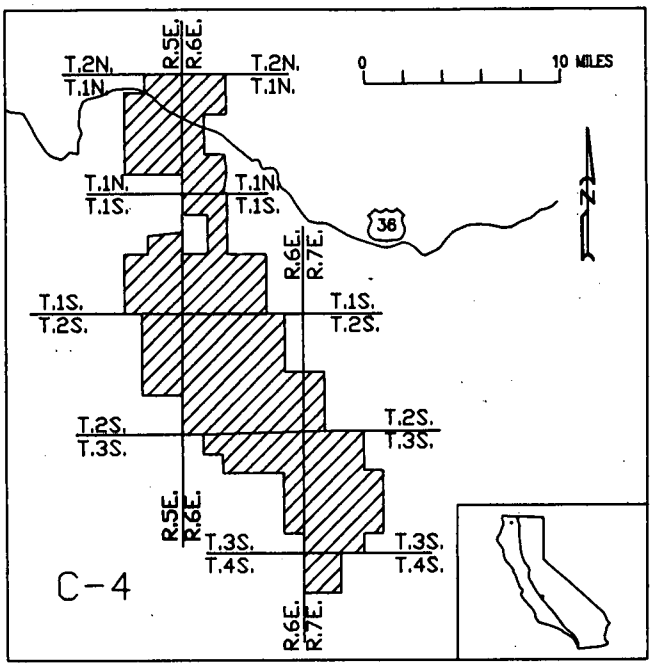


Description of C–5–C taken solely from Bureau of Land Management Map; Happy Camp 1983, California and Oregon.

Siskiyou County

T. 19 N., R. 7 E., Unsurveyed Lands, Secs. 33, 34, 35, and 36, of the Humboldt Meridian.

T. 18 N., R. 7 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 18 N., R. 7 E., Sec. 36, of the Humboldt Meridian.

T. 17 N., R. 7 E., Secs. 1, 2, and 3, of the Humboldt Meridian.

T. 19 N., R. 8 E., Unsurveyed Lands, Secs. 31, 32, and 33, of the Humboldt Meridian.

T. 18 N., R. 8 E., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28 29, 30, and 33, of the Humboldt Meridian.

T. 18 N., R. 8 E., Sec. 31, of the Humboldt Meridian.

T. 17 N., R. 8 E., Secs. 4, and 6, of the Humboldt Meridian.

T. 48 N., R. 12 W., Unsurveyed Lands, Secs. 19, 20, 21, 27, 28, 34, and 35, of the Mt. Diablo Meridian.

T. 48 N., R. 12 W., Sec. 36 of the Mt. Diablo Meridian.

T. 47 N., R. 12 W., Unsurveyed Lands, Secs. 1, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 46 N., R. 12 W., Secs. 2, and 3, of the Mt. Diablo Meridian.

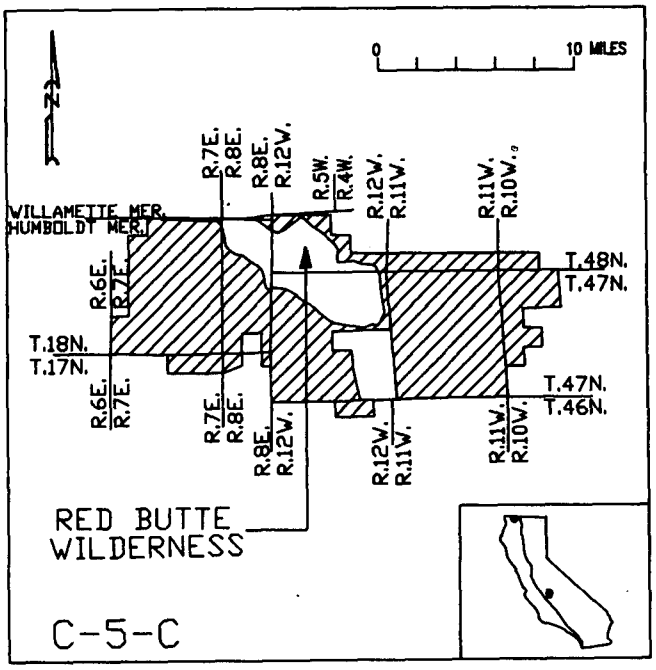
T. 48 N., R. 11 W., Unsurveyed Lands, Secs. 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 47 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 48 N., R. 10 W., Secs. 31, and 32, of the Mt. Diablo Meridian.

T. 47 N., R. 10 W., Secs. 4, 5, 6, 7, 8, 9, 18, 19, 20, and 30, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Red Butte Wilderness, and any private lands.



Description of C-6 taken solely from Bureau of Land Management Map; Happy Camp 1983, California and Oregon.

Siskiyou County

T. 16 N., R. 8 E., Unsurveyed Lands, Secs. 9, 15, 21, 22, 27, 28, 33, and 34, of the Humboldt Meridian.

T. 16 N., R. 8 E., Sec. 16 of the Humboldt Meridian.

T. 45 N., R. 12 W., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 12 W., Secs. 25, 26, 31, 32, 33, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 11 W., Secs. 27, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 45 N., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

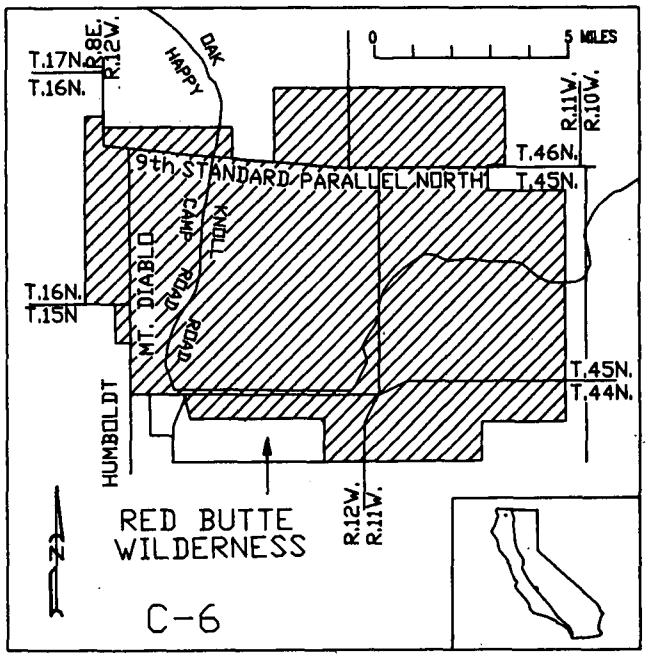
T. 44 N., R. 11 W., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, and 9, of the Mt. Diablo Meridian.

T. 44 N., R. 11 W., Secs. 2, and 3, of the Mt. Diablo Meridian.

T. 44 N., R. 12 W., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, and 12, of the Mt. Diablo Meridian.

T. 15 N., R. 8 E., Unsurveyed Lands, Sec. 3, of the Humboldt Meridian.

Excluding from the above areas any land within the Marble Mountain Wilderness, and any private lands.



Description of C-7 taken solely from Bureau of Land Management Map; Yreka 1979, and Happy Camp 1983, California and Oregon.

Siskiyou County

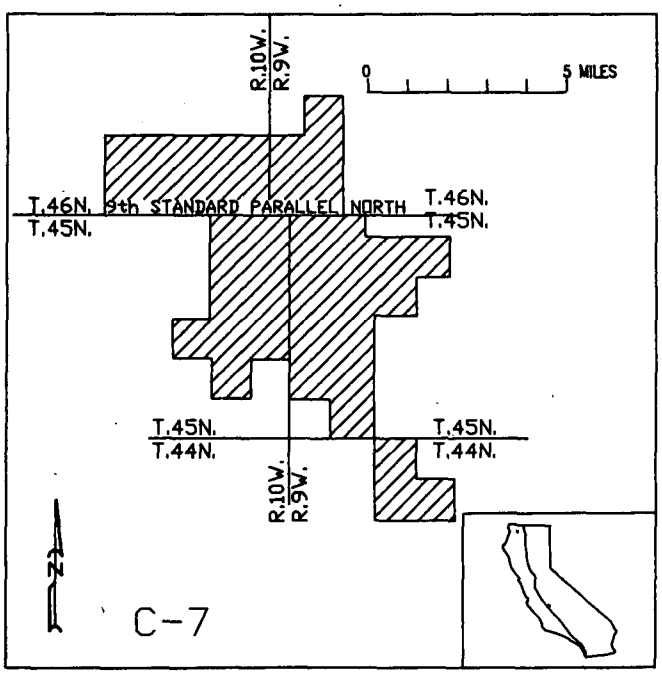
T. 44 N., R. 9 W., Secs. 4, 9, and 10, of the Mt. Diablo Meridian. T. 45 N., R. 9 W., Secs. 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 29, 30, and 32, of the Mt. Diablo Meridian.

T. 45 N., R. 10 W., Secs. 1, 2, 11, 12, 13, 14, 22, 23, 24, and 26., of the Mt. Diablo Meridian.

T. 46 N., R. 9 W., Secs. 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 46 N., R. 10 W., Secs. 25, 26, 27, 28, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of C–8 taken solely from Bureau of Land Management Map; Hoopa 1983, and Happy Camp 1983, California.

Siskiyou County

T. 15 N., R. 7 E., Unsurveyed Lands, Secs. 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 14 N., R. 6 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 14 N., R. 7 E., Unsurveyed Lands, Secs. 2, 3, 4, 5, 8, 9, 12, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 14 N., R. 8 E., Unsurveyed Lands, Secs. 7, 8, and 12, of the Humboldt Meridian.

T. 13 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Humboldt Meridian.

T. 13 N., R. 7 E., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 12 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 12 N., R. 7 E., Unsurveyed Lands, Secs. 3, 4, 5, 6, 7, 8, 17, 18, 19, 32, and 33, of the Humboldt Meridian.

T. 11 N., R. 7 E., Unsurveyed Lands, Sec. 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 22, 23, 24, 26, and 27, of the Humboldt Meridian.

T. 11 N., R. 8 E., Unsurveyed Lands, Secs. 19, 20, 21, 29, and 30, of the Humboldt Meridian.

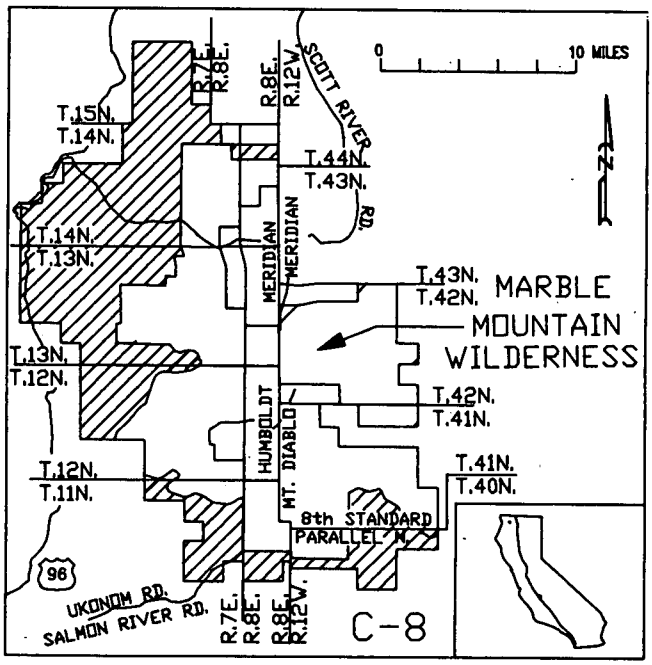
T. 41 N., R. 12 W., Unsurveyed Lands, Secs. 25, 26, 27, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 41 N., R. 11 W., Unsurveyed Lands, Secs. 30, 31, and 32, of the Mt. Diablo Meridian.

T. 40 N., R. 12 W., Unsurveyed Lands, Secs. 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, and 24, of the Mt. Diablo Meridian.

T. 40 N., R. 11 W., Unsurveyed Lands, Secs. 7, and 8, of the Mt. Diablo Meridian.

Excluding from the above areas any lands within the Marble Mountain Wilderness, and any private lands.



Description of C–9 taken solely from Bureau of Land Management Map; Happy Camp 1983, California and Oregon.

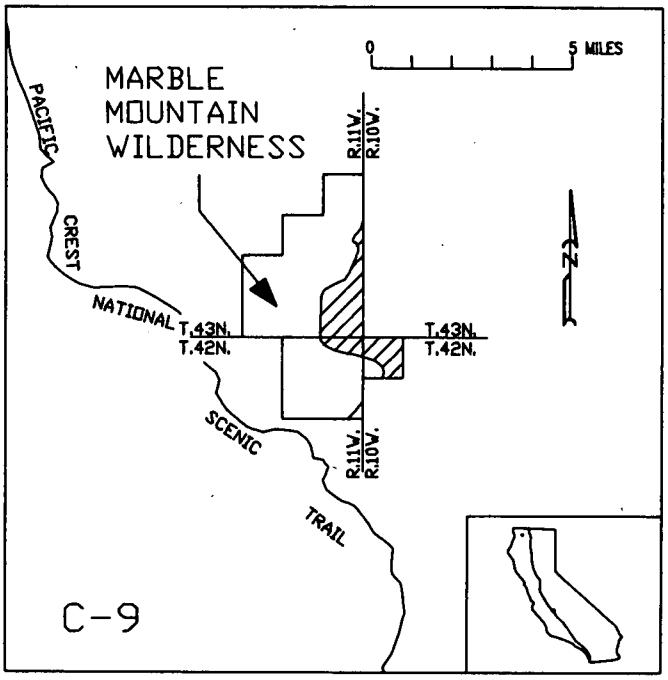
Siskiyou County

T. 43 N., R. 11 W., Unsurveyed Lands, Secs. 24, 25, and 36, of the Mt. Diablo Meridian.

T. 42 N., R. 11 W., Secs. 1, and 12, of the Mt. Diablo Meridian.

T. 42 N., R. 10 W., Sec. 6, of the Mt. Diablo Meridian.

Excluding from the above areas any lands within the Marble Mountain Wilderness, and any private lands.



Description of C-10 taken solely from Bureau of Land Management Map; Hoopa 1983, Mount Shasta 1973, California
Siskiyou County

T. 42 N., R. 10 W., Unsurveyed Lands, Secs. 33, 34, and 35, of the Mt. Diablo Meridian.

T. 41 N., R. 10 W., Unsurveyed Lands, Secs. 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 28, 29, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 40 N., R. 11 W., Unsurveyed Lands, Secs. 13, 25, 26, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 40 N., R. 10 W., Unsurveyed Lands, Secs. 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 39 N., R. 11 W., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 39 N., R. 12 W., Unsurveyed Lands, Secs. 11, 12, 13, 14, 23, 24, 25, and 36, of the Mt. Diablo Meridian.

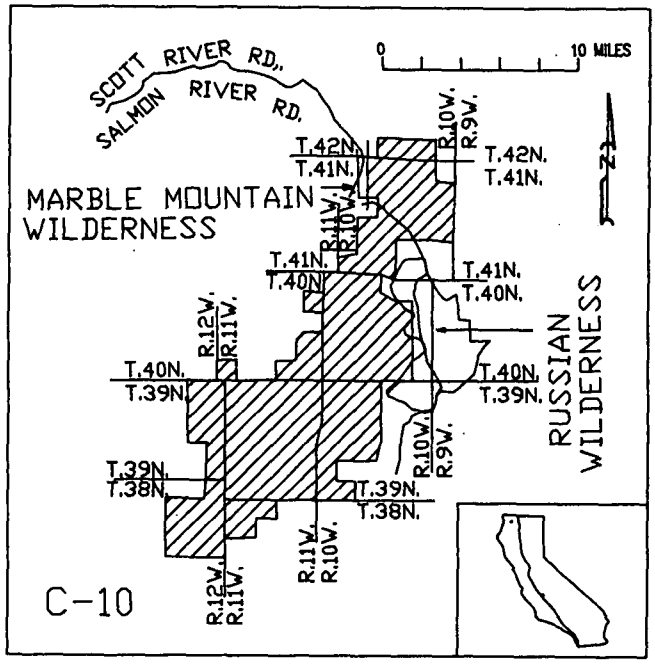
T. 39 N., R. 10 W., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 38 N., R. 12 W., Unsurveyed Lands, Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Mt. Diablo Meridian.

T. 38 N., R. 11 W., Unsurveyed Lands, Secs. 3, 4, 5, 8, 9, 17, and 18, of the Mt. Diablo Meridian.

T. 40 N., R. 12 W., Unsurveyed Lands Sec. 31, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Marble Mountain Wilderness, Russian Wilderness, and any private lands.



Description of C-11 taken solely from Bureau of Land Management Map; Hoopa 1983, and Hayfork 1982, California.

Humboldt and Trinity Counties

T. 9 N., R. 5 E., Unsurveyed Lands, Secs. 1, 11, 12, 13, 14, 23, 24, 25, 26, and 36, of the Humboldt Meridian.

T. 9 N., R. 6 E., Unsurveyed Lands, Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 8 N., R. 5 E., Unsurveyed Lands, Sec. 1, 12, 13, 25, 26, 34, 35, and 36, of the Humboldt Meridian.

T. 8 N., R. 6 E., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Humboldt Meridian.

T. 7 N., R. 5 E., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, and 12, of the Humboldt Meridian.

T. 7 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 7 N., R. 7 E., Unsurveyed Lands, Secs. 6, 7, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 7 N., R. 8 E., Unsurveyed Lands, Secs. 17, 18, 19, 20, 29, and 30, of the Humboldt Meridian.

T. 6 N., R. 6 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 11, 12, 13, 14, 23, and 24, of the Humboldt Meridian.

T. 6 N., R. 7 E., Unsurveyed Lands, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 6 N., R. 8 E., Unsurveyed Lands, Secs. 18, 19, 20, 23, 30, 31, and 32, of the Humboldt Meridian.

T. 5 N., R. 7 E., Secs. 1, 2, 3, 11, and 12, of the Humboldt Meridian.

T. 5 N., R. 8 E., Secs. 5, 6, 9, and 21, of the Humboldt Meridian.

T. 34 N., R. 12 W., Sec. 6, 14, 18, 23, 24, 25, 26, and 27, of the Mt. Diablo Meridian.

T. 36 N., R. 11 W., Unsurveyed Lands, Sec. 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 36 N., R. 12 W., Unsurveyed Lands, Secs. 25, and 36, of the Mt. Diablo Meridian.

T. 35 N., R. 11 W., Unsurveyed Lands, Sec. 6, 7, 17, 18, 19, 20, 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 35 N., R, 12 W., Unsurveyed Lands, Sec. 12, of the Mt. Diablo Meridian.

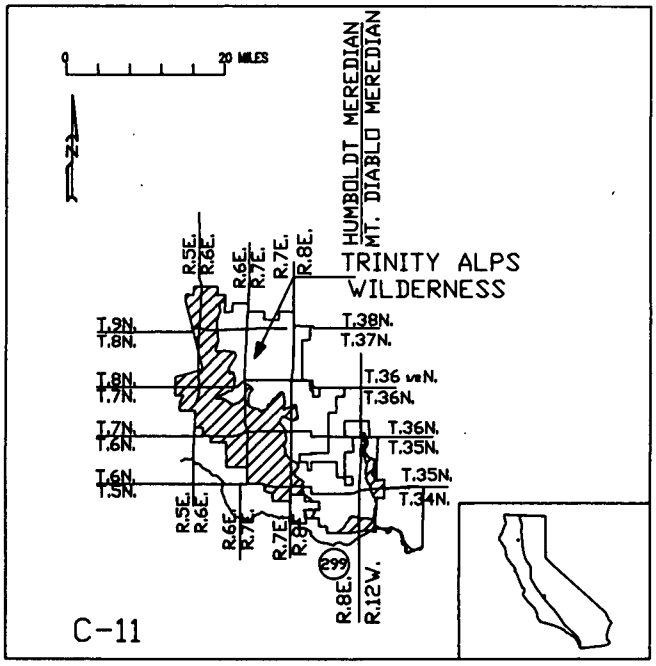
T. 34 N., R. 11 W., Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35 and 36, of the Mt. Diablo Meridian.

T. 34 N., R. 10 W., Sec. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 33 N., R. 11 W., Sec. 1, and 12, of the Mt. Diablo Meridian.

T. 33 N., R. 10 W., Secs. 5, 6, 7, and 8, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.



Description of C–12 taken solely from Bureau of Land Management Map; Hayfork 1982, California.

Trinity County

T. 5 N., R. 7 E., Secs. 27, 28, 29, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 4 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 4 N., R. 6 E., Secs. 12, and 13, of the Humboldt Meridian.

T. 3 N., R. 7 E., Secs. 2, and 3, of the Humboldt Meridian.

T. 4 N., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 3 N., R. 8 E., Secs. 8, 9, 16, and 17, of the Humboldt Meridian.

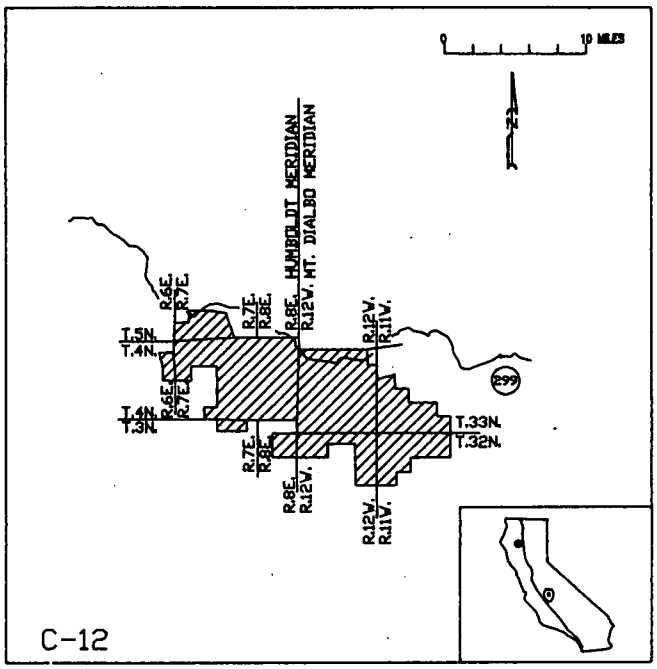
T. 33 N., R. 12 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 32 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 23, and 24, of the Mt. Diablo Meridian.

T. 33 N., R. 11 W., Secs. 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 32 N., R. 11 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, and 19, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of C–14 taken solely from Bureau of Land Management Maps; Garberville 1979, and Red Bluff 1979, California.

Trinity and Shasta Counties

T. 30 N., R. 11 W., Secs. 13, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

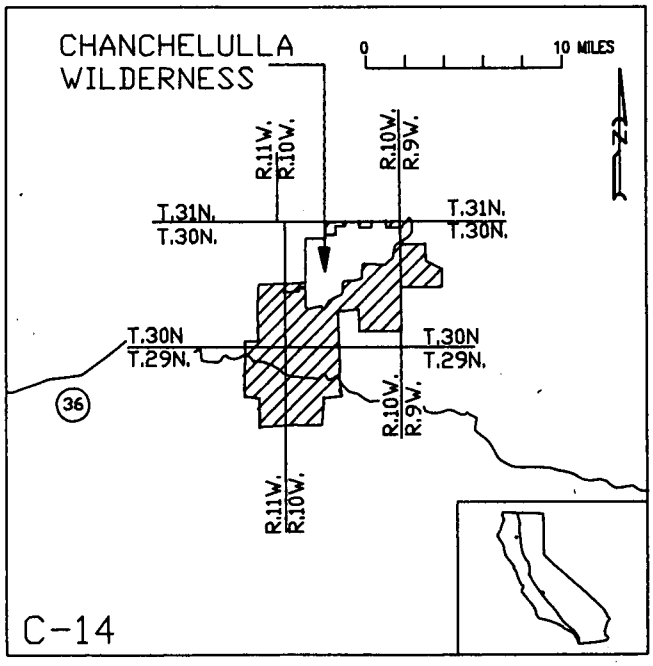
T. 30 N., R. 10 W., Secs. 1, 2, 4, 5, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 29 N., R. 11 W., Secs. 1, 2, 11, 12, 13, and 24, of the Mt. Diablo Meridian.

T. 29 N., R. 10 W., Secs. 4, 5, 6, 7, 8, 9, 17, 18, 19, and 20, of the Mt. Diablo Meridian.

T. 30 N., R. 9 W., Secs. 7, 17, and 18, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Chanchelulla Wilderness, and any private lands.



Description of C–18 taken solely from Bureau of Land Management Maps; Lakeport 1975, and Willows 1975, California.

Lake, Glenn, and Mendocino Counties

T. 19 N., R. 7 W., Secs. 4, 5, 6, 7, 8, 9, 17, 18, and 19, of the Mt. Diablo Meridian.

T. 19 N., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 33, and 34, of the Mt. Diablo Meridian.

T. 19 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, of the Mt. Diablo Meridian.

T. 19 N., R. 10 W., Secs. 1, 2, 3, 11, 12, 13, 14, and 24, of the Mt. Diablo Meridian.

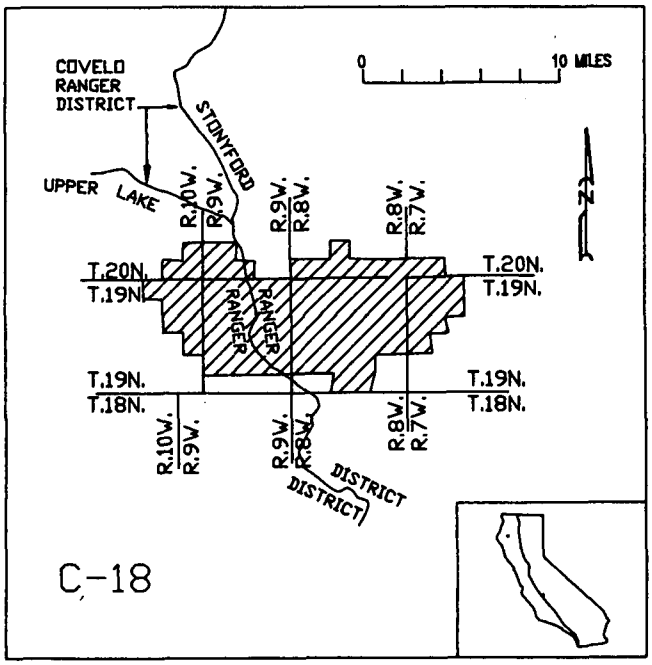
T. 20 N., R. 7 W., Secs. 31, and 32, of the Mt. Diablo Meridian.

T. 20 N., R. 8 W., Secs. 28, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 20 N., R. 9 W., Secs. 28, 29, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 20 N., R. 10 W., Secs. 25, 35, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of C–19 taken solely from Bureau of Land Management Maps; Ukiah 1981, Lakeport 1975, and Covelo 1981, California.

Mendocino and Lake Counties

T. 18 N., R. 10 W., Secs. 4, 5, 8, and 9, of the Mt. Diablo Meridian.

T. 18 N., R. 11 W., Secs. 1, 2, 4, 5, 8, 11, and 12, of the Mt. Diablo Meridian.

T. 19 N., R. 10 W., Secs. 19, 30, and 31, of the Mt. Diablo Meridian.

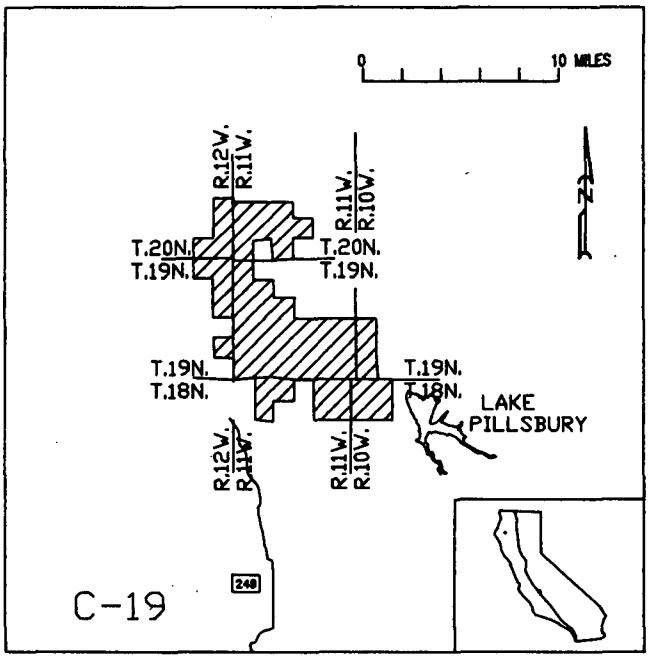
T. 19 N., R. 11 W., Secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 19 N., R. 12 W., Secs. 1, 2, 12, 13, and 25, of the Mt. Diablo Meridian.

T. 20 N., R. 11 W., Secs. 19, 20, 21, 27, 28, 29, 30, 31, and 33, of the Mt. Diablo Meridian.

T. 20 N., R. 12 W., Secs. 24, 25, 35, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of C–20 taken solely from Bureau of Land Managment Maps; Ukiah 1981, and Lakeport 1975, California.

Mendocino and Lake Counties

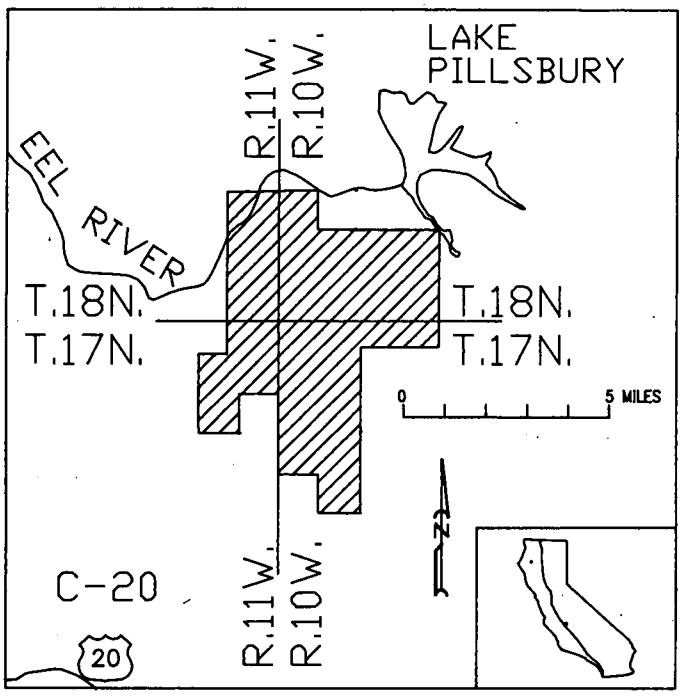
T. 17 N., R. 10 W., Secs. 2, 3, 4, 5, 8, 9, 16, 17, 20, 21, and 28, of the Mt. Diablo Meridian.

T. 17 N., R. 11 W., Secs. 1, 11, 12, and 14, of the Mt. Diablo Meridian.

T. 18 N., R. 10 W., Secs. 20, 26, 27, 28, 29, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 18 N., R. 11 W., Secs. 24, 25, and 36, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



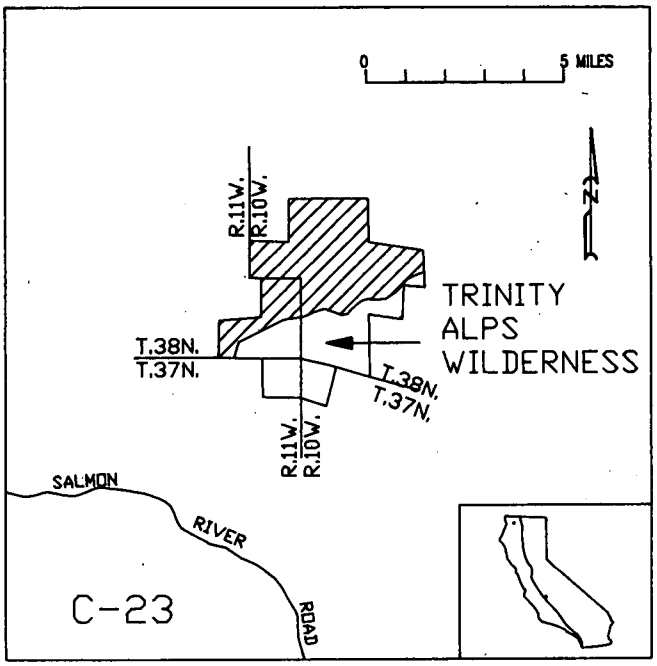
Description of C–23 taken solely from Bureau of Land Management Map; Hoopa 1983, and Mount Shast 1979, California.

Siskiyou County

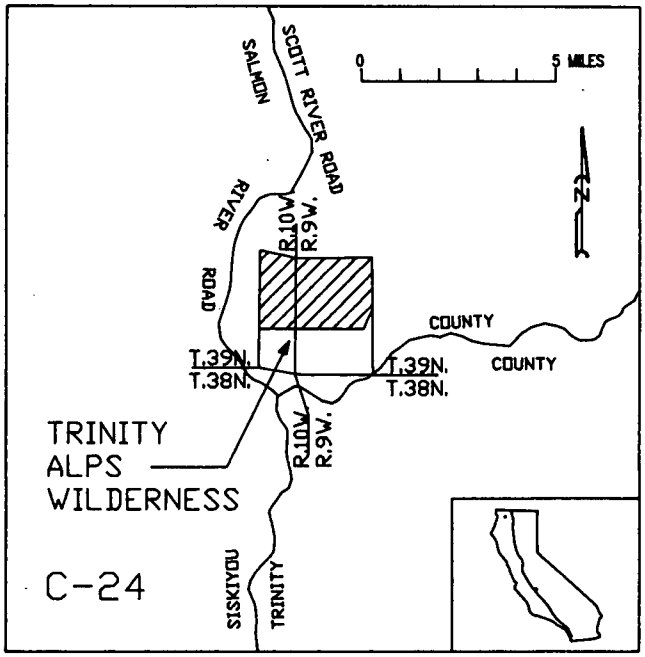
T. 38 N., R. 11 W., Unsurveyed Lands, Secs. 13, and 25, of the Mt. Diablo Meridian.

T. 38 N., R. 10 W., Unsurveyed Lands, Secs. 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 25, and 30, of the Mt. Diablo Meridian.

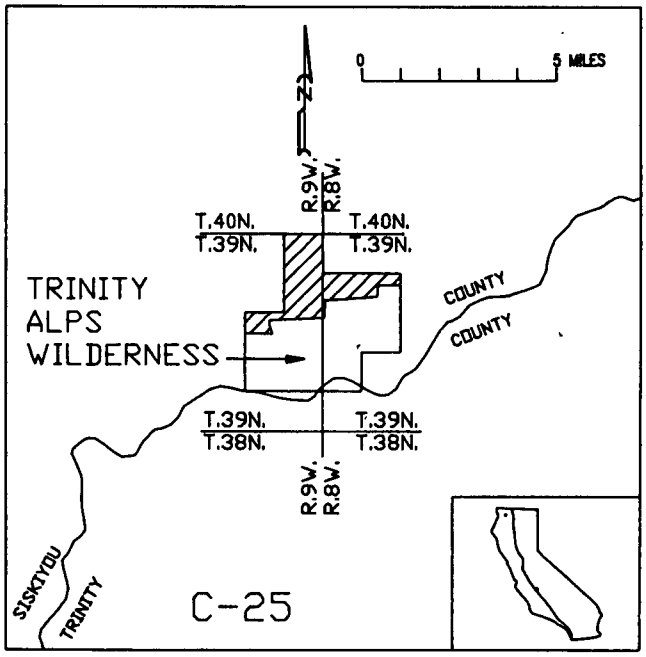
Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.



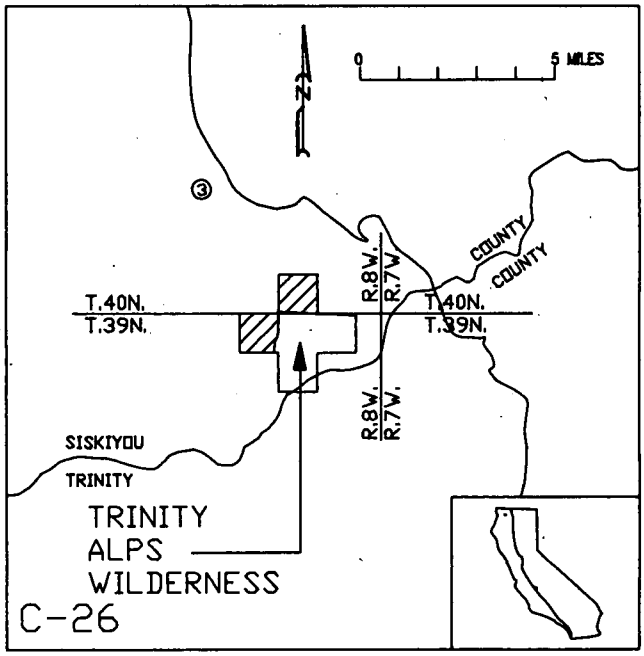
Description of C–24 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou County
T. 39 N., R. 10 W., Secs. 24, and 25, of the Mt. Diablo Meridian.
T. 39 N., R. 9 W., Secs. 19, 20, 29, and 30, of the Mt. Diablo Meridian.
Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.



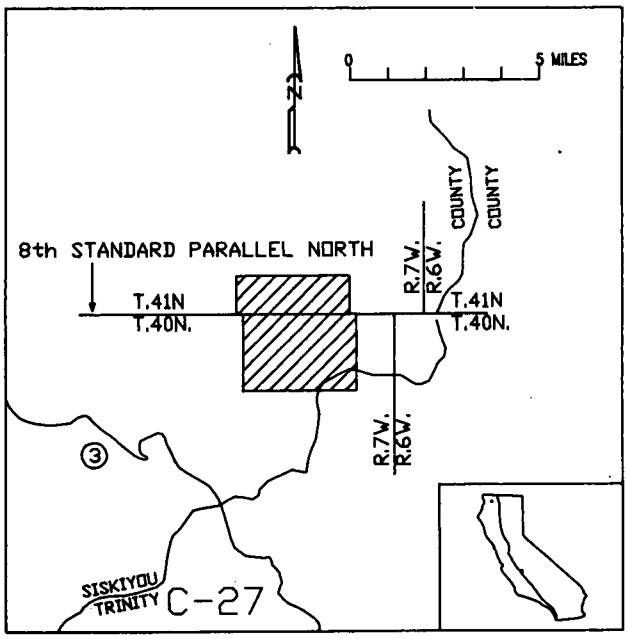
Description of C–25 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou and Trinity Counties
T. 39 N., R. 9 W., Secs. 12, 13, and 23, of the Mt. Diablo Meridian.
T. 39 N., R. 8 W., Secs. 17, and 18, of the Mt. Diablo Meridian.
Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.



Description of C–26 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou County
T. 40 N., R. 8 W., Sec. 34, of the Mt. Diablo Meridian.
T. 39 N., R. 8 W., Sec. 9, of the Mt. Diablo Meridian.
Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.



Description of C–27 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou and Trinity Counties
T. 41 N., R. 7 W., Secs. 32, 33, and 34, of the Mt. Diablo Meridian.
T. 40 N., R. 7 W., Secs. 2, 3, 4, 9, 10, 11, 14, 15, and 16, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



Description of C-28 taken solely from Bureau of Land Management Map; Yreka 1979, California.
Siskiyou County

T. 48 N., R. 3 W., Sec. 32, of the Mt. Diablo Meridian.

T. 47 N., R. 3 W., Secs. 4, 5, 8, 17, 32, and 34, of the Mt. Diablo Meridian.

T. 47 N., R. 4 W., Secs. 13, 23, 24, 25, 26, 33, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 4 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

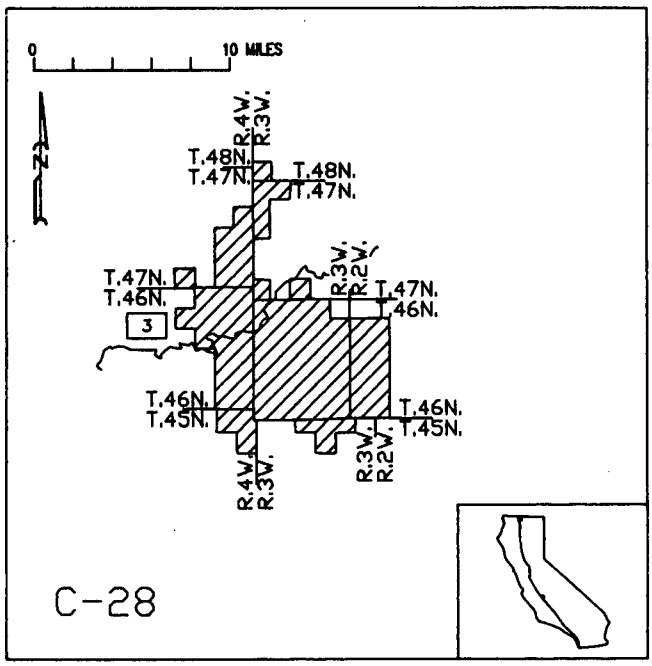
T. 46 N., R. 3 W., Secs. 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 46 N., R. 2 W., Secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 45 N., R. 3 W., Secs. 2, 3, 4, and 10, of the Mt. Diablo Meridian.

T. 45 N., R. 4 W., Secs. 1, 2, and 12, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of C-29 taken solely from Bureau of Land Management Map; Redding 1979, California.
Trinity and Shasta Counties

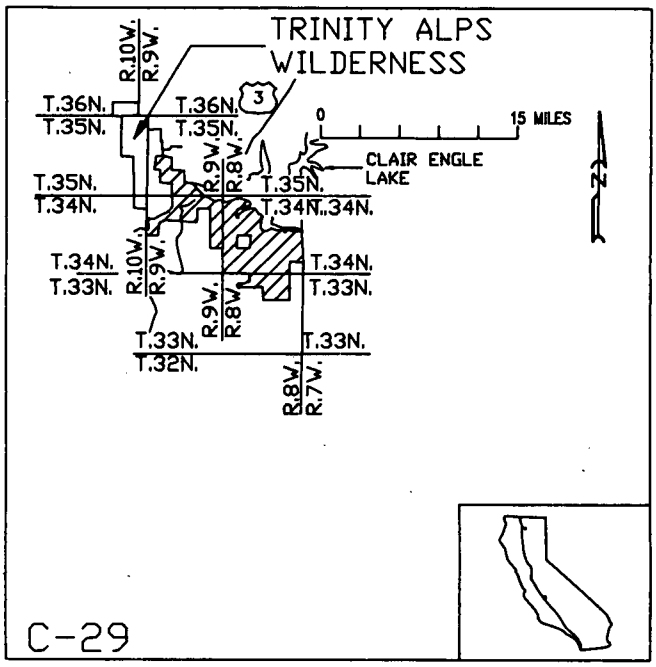
T. 35 N., R. 9 W., Secs. 19, 20, 28, 29, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 34 N., R. 9 W., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 18, and 24, of the Mt. Diablo Meridian.

T. 34 N., R. 8 W., Secs. 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 33 N., R. 8 W., Secs. 2, 3, 4, 5, 10, and 11, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Clair Engle Lake, the Trinity Alps Wilderness, and any private lands.



Description of C–30 taken solely from Bureau of Land Management Map; Redding 1979, California.

Trinity County

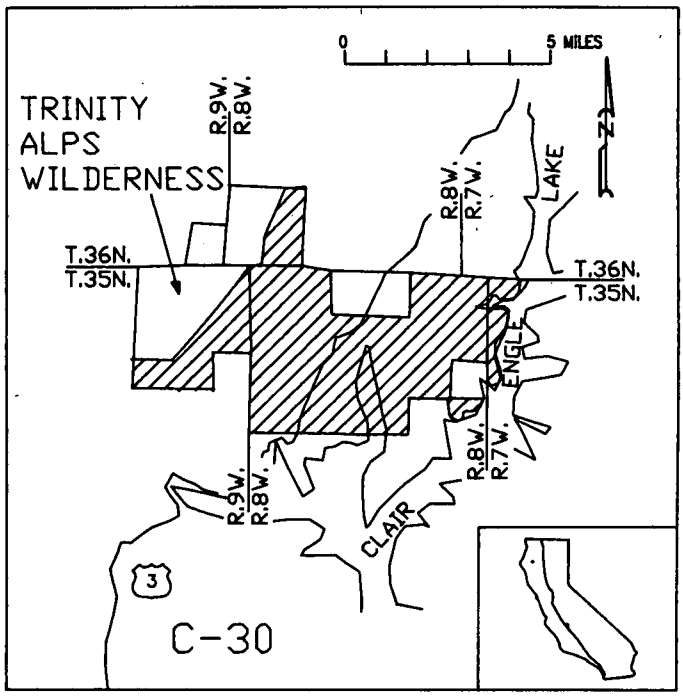
T. 36 N., R. 8 W., Secs. 29, and 32, of the Mt. Diablo Meridian.

T. 35 N., R. 9 W., Secs. 1, 11, 12, 14, and 15, of the Mt. Diablo Meridian.

T. 35 N., R. 8 W., Secs. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 24, of the Mt. Diablo Meridian.

T. 35 N., R. 7 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Trinity Alps Wilderness, Clair Engle Lake, and any private lands.



Description of C–31 taken solely from Bureau of Land Management Map; Redding 1979, and Mount Shasta 1979, California.

Trinity and Shasta Counties

T. 36 N., R. 7 W., Secs. 1, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 36 N., R. 6 W., Secs. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 36 N., R. 5 W., Secs. 5, 6, 7, 8, 17, and 18, of the Mt. Diablo Meridian.

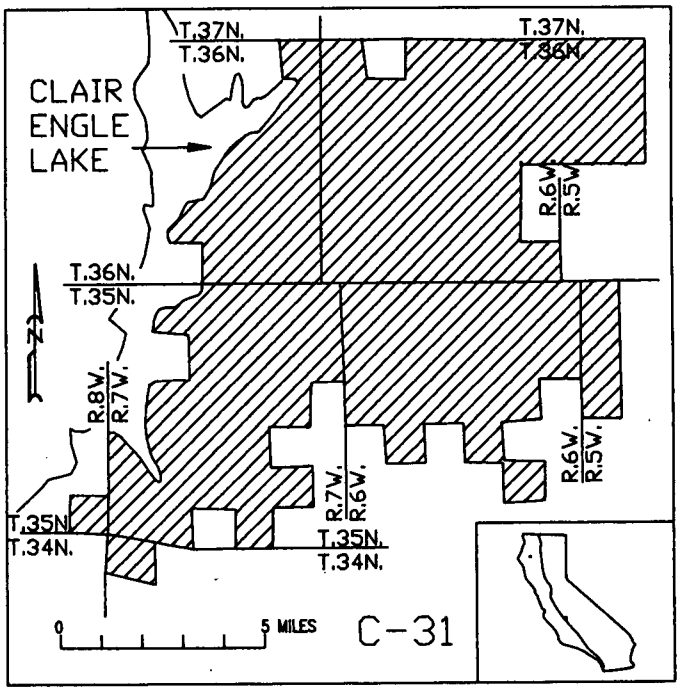
T. 35 N., R. 8 W., Sec. 36, of the Mt. Diablo Meridian.

T. 35 N., R. 7 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, and 34, of the Mt. Diablo Meridian.

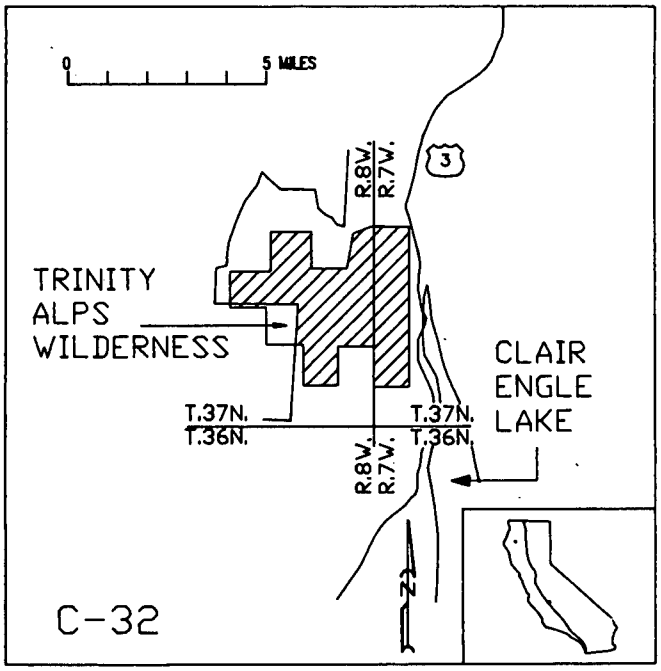
T. 35 N., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20, 22, and 26, of the Mt. Diablo Meridian.T.35 N., R. 5 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

T. 34 N., R. 7 W., Sec. 6, of the Mt. Diablo Meridian.

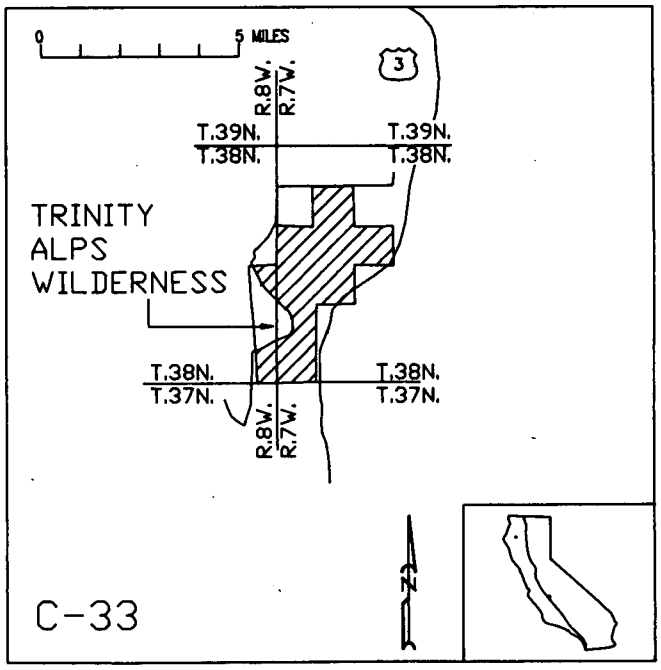
Excluding from the above areas any land within Clair Engle Lake, and any private lands.



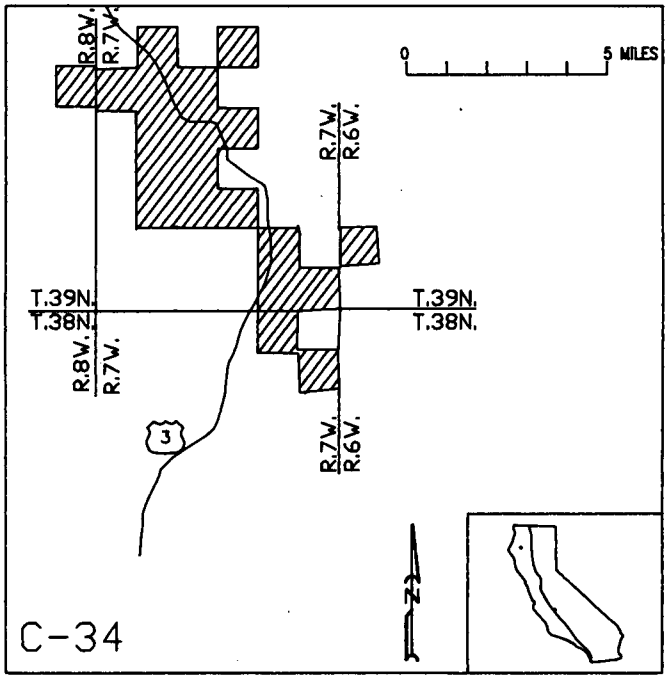
Description of C–32 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Trinity County
T. 37 N., R. 8 W., Secs. 10, 12, 13, 14, 15, 16, 22, 23, 24, and 26, of the Mt. Diablo Meridian.
T. 37 N., R. 7 W., Secs. 7, 18, 19, and 30, of the Mt. Diablo Meridian.
Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.



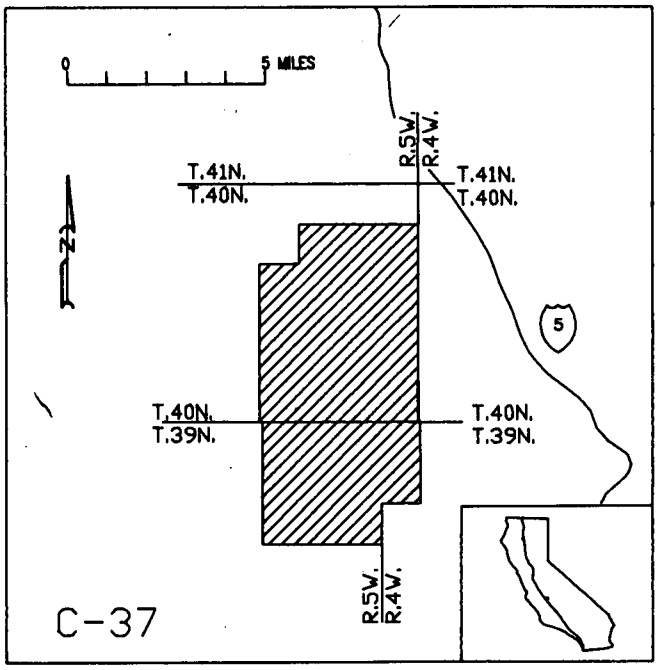
Description of C–33 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Trinity County
T. 38 N., R. 8 W., Secs. 24, and 36, of the Mt. Diablo Meridian.
T. 38 N., R. 7 W., Secs. 8, 16, 17, 18, 19, 20, 30, and 31, of the Mt. Diablo Meridian.
Excluding from the above areas any land within the Trinity Alps Wilderness, and any private lands.



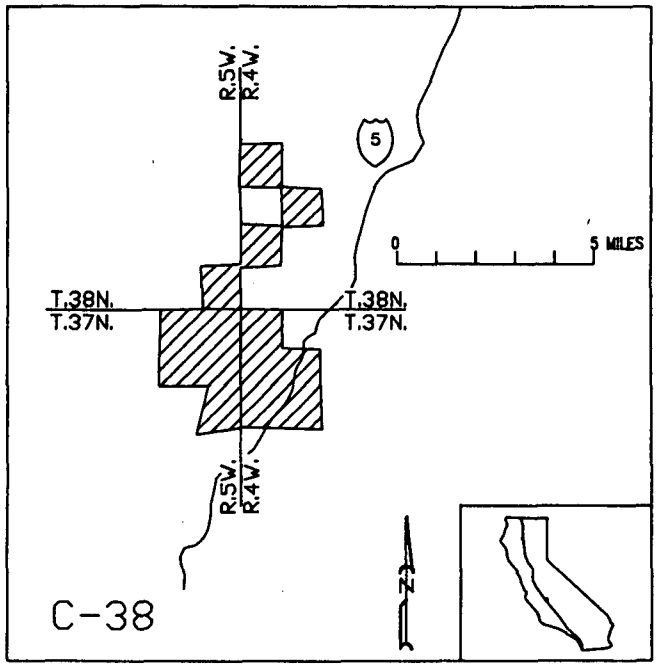
Description of C–34 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Trinity County
T. 40 N., R. 7 W., Secs. 32, and 34, of the Mt. Diablo Meridian.
T. 39 N., R. 7 W., Secs. 4, 5, 6, 8, 9, 10, 16, 17, 20, 21, 22, 26, 35, and 36, of the Mt. Diablo Meridian.
T. 39 N., R. 6 W., Sec. 30, of the Mt. Diablo Meridian.
T. 38 N., R. 7 W., Secs. 2, and 12, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



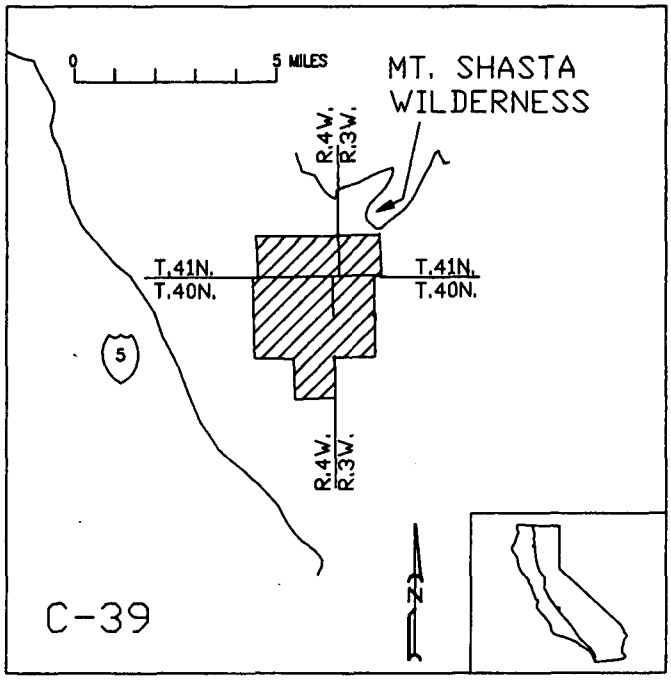
Description of C–37 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou County
T. 40 N., R. 5 W., Secs. 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Mt. Diablo Meridian.
T. 39 N., R. 5 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Mt. Diablo Meridian.
T. 39 N., R. 4 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.
Excluding any private lands within the above areas.



Description of C-38 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Shasta County
T. 38 N., R. 4 W., Secs. 18, 20, and 30, of the Mt. Diablo Meridian.
T. 38 N., R. 5 W., Sec. 36, of the Mt. Diablo Meridian.
T. 37 N., R 5 W., Secs. 1, 2, 11, 12, and 13, of the Mt. Diablo Meridian.
T. 37 N., R., 4 W., Secs. 6, 7, 8, 17, and 18, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



Description of C-39 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.
Siskiyou County
T. 41 N., R. 4 W., Secs. 35, and 36, of the Mt. Diablo Meridian.
T. 41 N., R. 3 W., Sec. 31, of the Mt. Diablo Meridian.
T. 40 N., R. 4 W., Secs. 1, 2, 11, 12, and 13, of the Mt. Diablo Meridian.
T. 40 N., R. 3 W., Sec. 6, and 7, of the Mt. Diablo Meridian.
Excluding from the above areas any land within the Mount Shasta Wilderness, and any private lands.



Description of C–42 taken solely from Bureau of Land Management Maps; Mount Shasta 1979, and McArthur 1978, California.

Shasta County

T. 38 N. R. 3 W., Secs. 4, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 38 N., R. 2 W., Secs. 18, 19, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 38 N., R. 1 W., Secs. 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 38 N., R. 1 E., Secs. 30, and 31, of the Mt. Diablo Meridian.

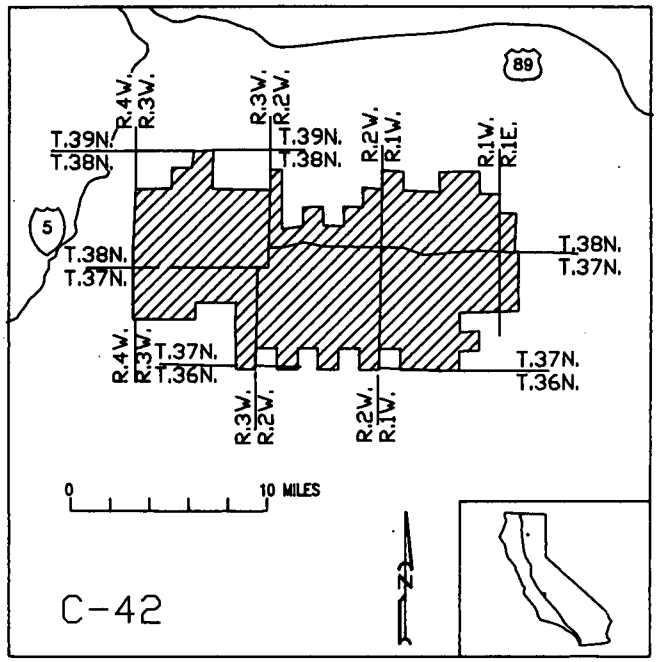
T. 37 N., R. 3 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, and 36, of the Mt. Diablo Meridian.

T. 37 N., R. 2 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, and 36, of the Mt. Diablo Meridian.

T. 37 N., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 37 N., R. 1 E., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of C–45 taken solely from Bureau of Land Management Map; McArthur 1978, and Burney 1976, California.

Shasta County

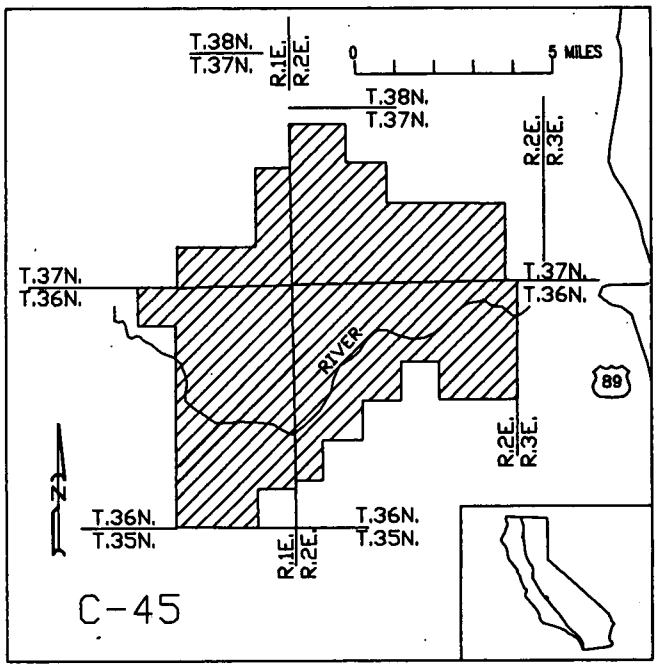
T. 37 N., R. 1E., Secs. 24, 25, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 37 N., R. 2 E., Secs. 18, 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

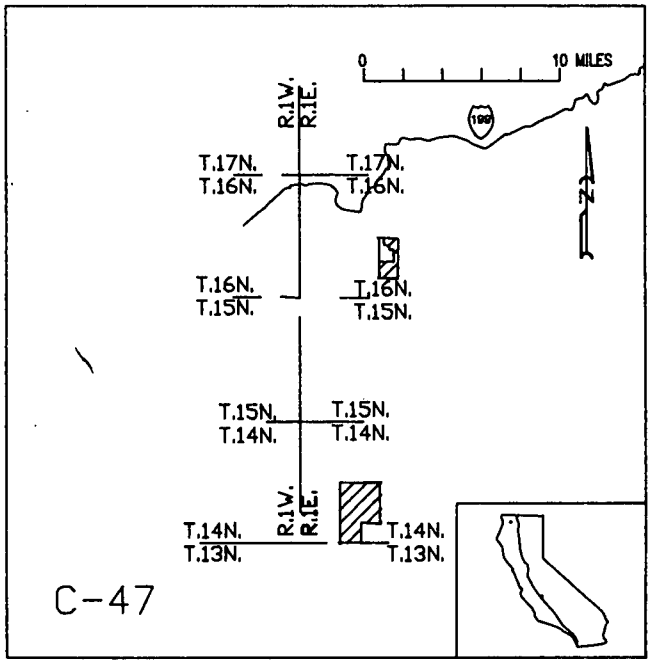
T. 36 N., R. 1 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, and 35, of the Mt. Diablo Meridian.

T. 36 N., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, and 30, of the Mt. Diablo Meridian.

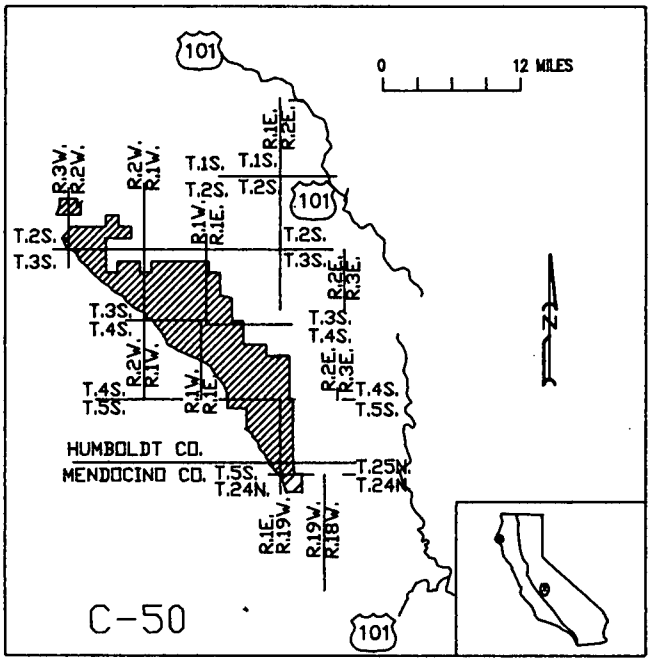
Excluding any private lands within the above area.



Description of C–47 taken solely from Bureau of Land Management Surface–Mineral Management Status Map; Crescent City 1983, California.
Del Norte County
T. 14 N., R. 1 E., Secs. 21, 22, 27, 28, and 33, of the Humboldt Meridian.
T. 16 N., R. 1 E., Secs. 23, and 26, of the Humboldt Meridian.
Excluding from the above areas any land within the Redwood National Park, and any private lands.



Description of C–50 taken solely from Bureau of Land Management Maps; Garberville 1979, Cape Mendocino 1979, and Covelo 1981, California.
Humboldt and Mendocino Counties
T. 2 S., R. 3 W., Sec. 13, and 36, of the Humboldt Meridian.
T. 2 S., R. 2 W., Secs. 18, 22, 26, 27, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.
T. 3 S., R. 2 W., Secs. 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, and 26, of the Humboldt Meridian.
T. 3 S., R. 1 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian.
T. 3 S., R. 1 E., Secs. 18, 19, 29, 30, 31, and 32, of the Humboldt Meridian.
T. 4 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, and 15, of the Humboldt Meridian.
T. 4 S., R. 1 E., Secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Humboldt Meridian.
T. 4 S., R. 2 E., Secs. 30, and 31, of the Humboldt Meridian.
T. 5 S., R. 1 E., Secs. 1, 2, 3, 4, 11, 12, 13, 14, 23, 24, and 25, of the Humboldt Meridian.
T. 5 S., R. 2 E., Secs. 6, 7, 19, 30, and 31, of the Humboldt Meridian.
T. 24 N., R. 19 W., Secs. 3, 4, 5, 9, and 10, of the Mt. Diabalo Meridian.
Excluding any private lands within the above area.



Description of C-51 taken solely from Bureau of Land Management Map; Ukiah 1981, California.

Mendocino County

T. 18 N., R. 18 W., Secs. 25, and 36, of the Mt. Diablo Meridian.

T. 18 N., R. 17 W., Secs. 13, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 18 N., R. 16 W., Secs. 8, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 18 N., R. 15 W., Secs. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

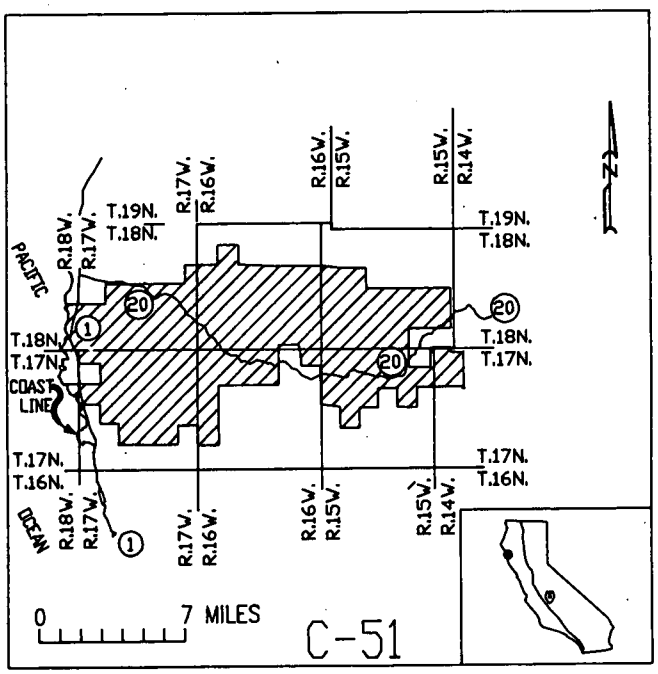
T. 17 N., R. 17 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 26, 27, and 28, of the Mt. Diablo Meridian.

T. 17 N., R. 16 W., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 18, 19, and 30, of the Mt. Diablo Meridian.

T. 17 N., R. 15 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, and 20, of the Mt. Diablo Meridian.

T. 17 N., R. 14 W., Secs. 6, and 7, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of C-53 taken solely from Bureau of Land Management Maps; Hoopa 1983, and Hayfork 1982, California.

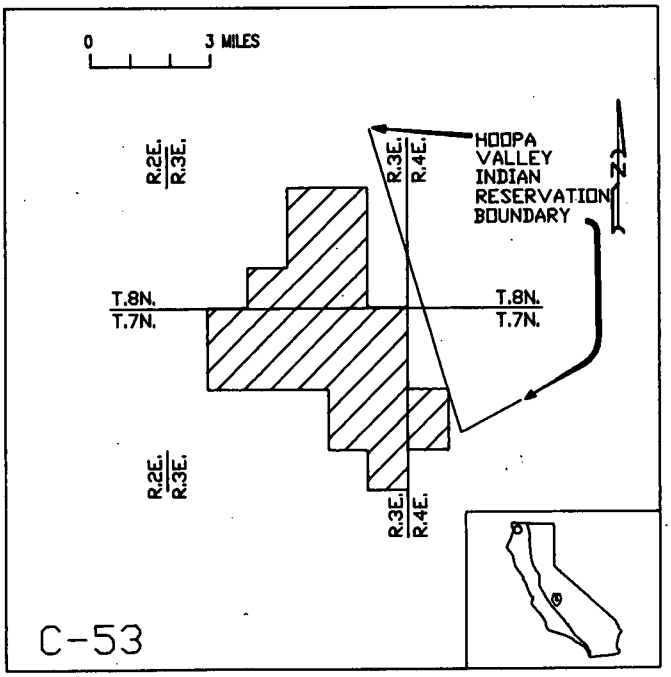
Humboldt County

T. 8 N., R. 3 E., Secs. 22, 23, 26, 27, 33, 34, and 35, of the Humboldt Meridian.

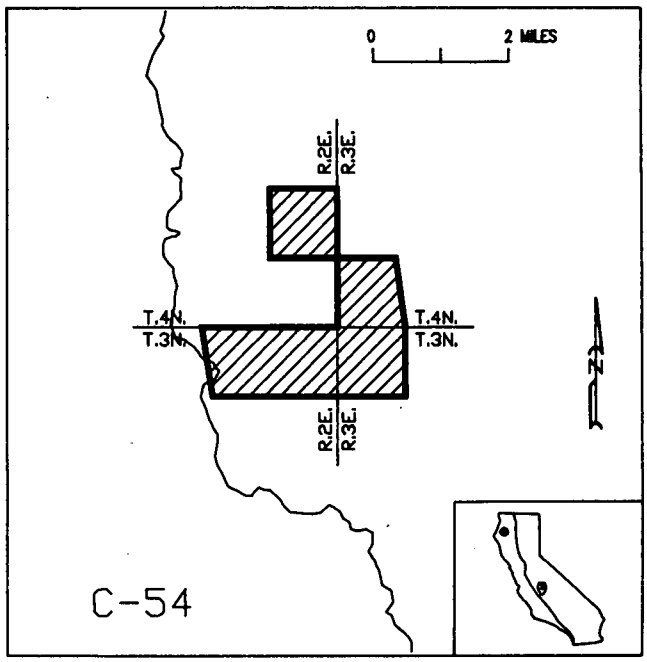
T. 7 N., R. 3 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, and 24, of the Humboldt Meridian.

T. 7 N., R. 2 E., Sec. 18, of the Humboldt Meridian.

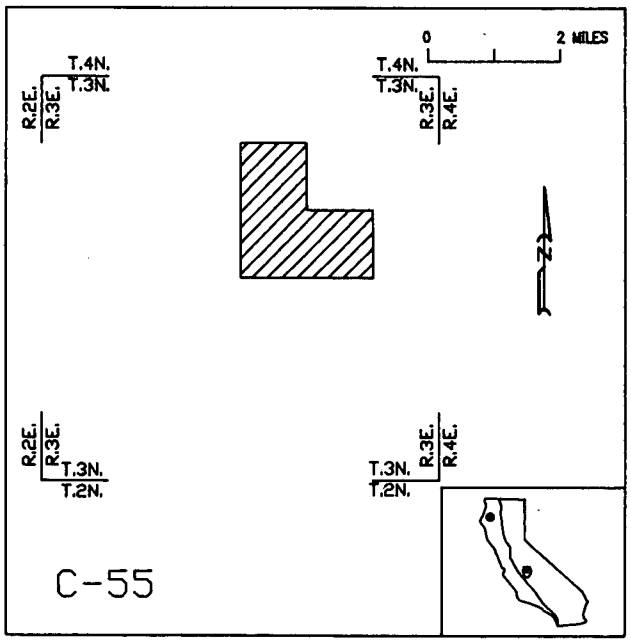
Excluding any private lands within the above area.



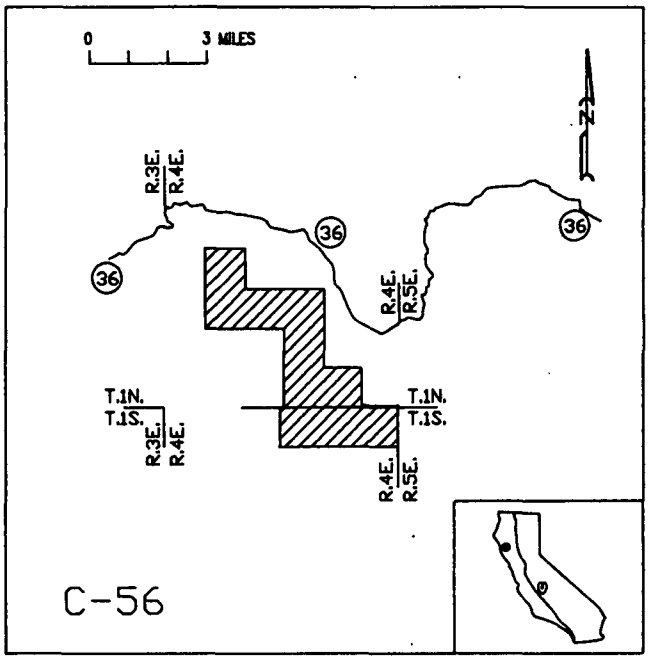
Description of C–54 taken solely from Bureau of Land Management Map; Hayfork 1982, California.
Humboldt County
T. 4 N., R. 2 E., Sec. 25, of the Humboldt Meridian.
T. 3 N., R. 2 E., Secs. 1, and 2, of the Humboldt Meridian.
T. 4 N., R. 3 E., Sec. 31, of the Humboldt Meridian.
T. 3 N., R. 3 E., Sec. 6, of the Humboldt Meridian.
Excluding any private lands within the above area.



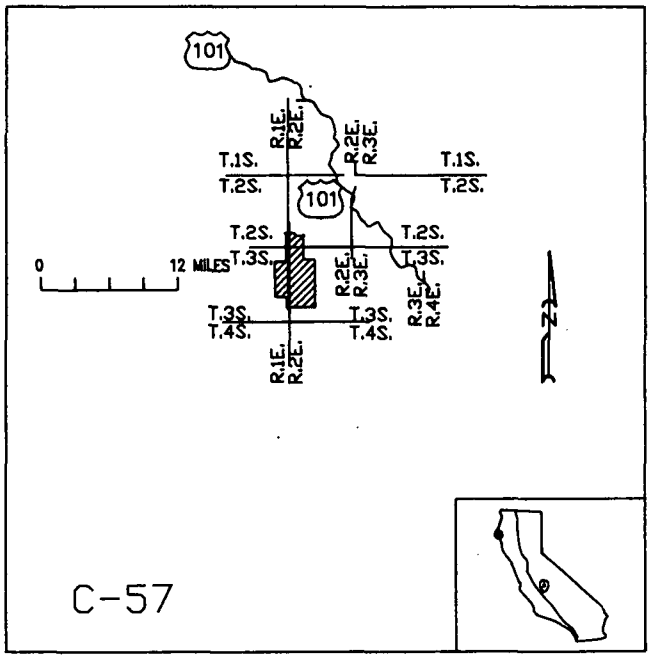
Description of C–55 taken solely from Bureau of Land Management Map; Hayfork 1982, California.
Humboldt County
T. 3 N., R. 3 E., Secs. 10, 14, and 15, of the Humboldt Meridian.
Excluding any private lands within the above area.



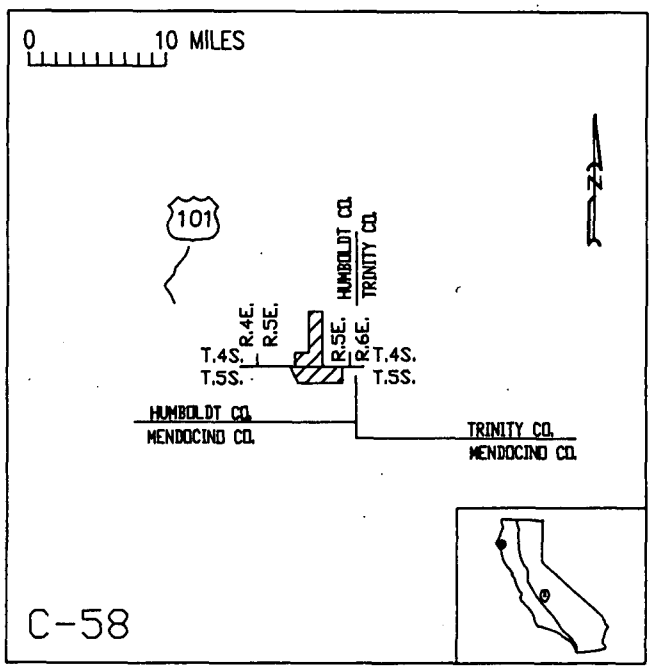
Description of C–56 taken solely from Bureau of Land Management Maps; Garberville 1979, California.
Humboldt County
T. 1 N., R. 4 E., Secs. 17, 20, 21, 22, 27, 34, and 35, of the Humboldt Meridian.
T. 1 S., R. 4 E., Secs. 1, 2, and 3, of the Humboldt Meridian.
Excluding any private lands within the above area.



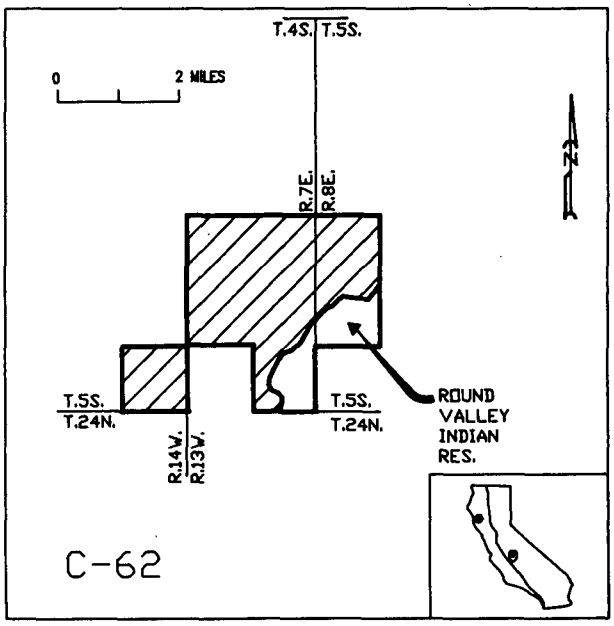
Description of C–57 taken solely from Bureau of Land Management Maps; Cape Mendocino 1979, and Garberville 1979, California.
Humboldt County
T. 2 S., R. 2 E., Secs. 31, and 32, of the Humboldt Meridian.
T. 2 S., R. 1 E., Secs. 12, 13, and 24, Humboldt Meridian.
T. 3 S., R. 2 E., Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, and 30, of the Humboldt Meridian.
Excluding any private lands within the above area.



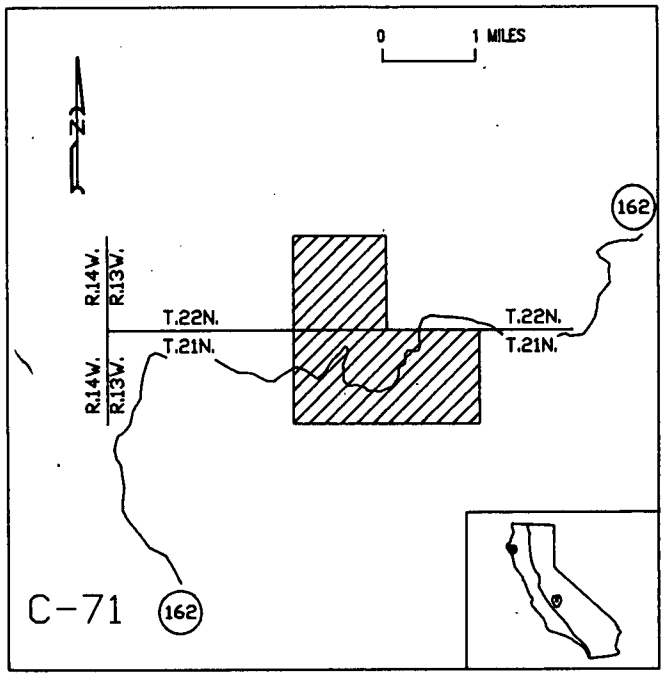
Description of C–58 taken solely from Bureau of Land Management Map; Garberville 1979, California.
Humboldt County
T. 4 S., R. 5 E., Secs. 15, 22, 27, 33, and 34, of the Humboldt Meridian.
T. 5 S., R. 6 E., Secs. 2, 3, and 4, of the Humboldt Meridian.
Excluding any private lands within the above area.



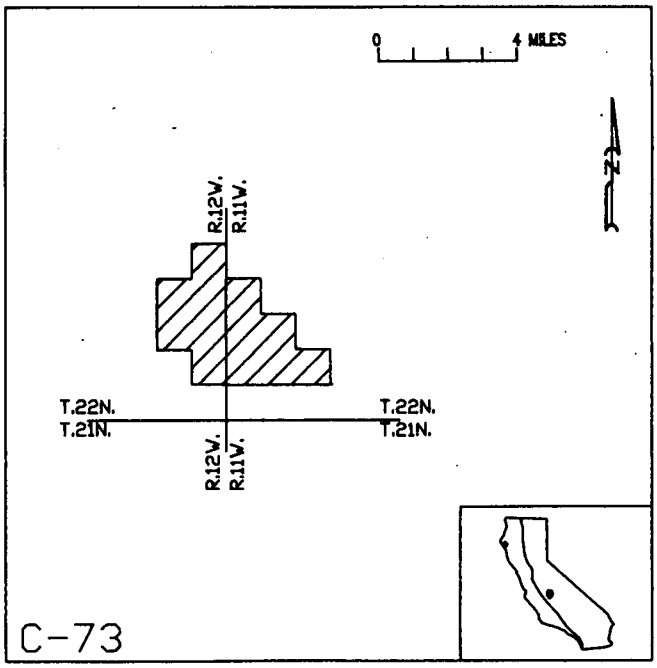
Description of C–62 taken solely from Bureau of Land Management Maps; Covelo 1981, and Garberville 1979, California.
Trinity County
T. 5 S., R. 7 E., Secs. 23, 24, 25, 26, 34, and 36, of the Humboldt Meridian.
T. 5 S., R. 8 E., Secs. 19, and 30, of the Humboldt Meridian.
Excluding from the above areas any land within the Round Valley Indian Reservation, and any private lands.



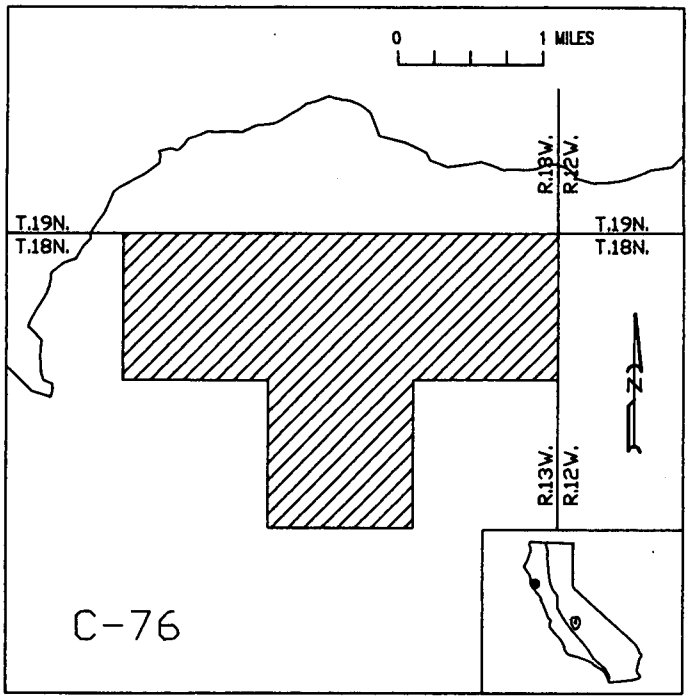
Description of C–71 taken solely from Bureau of Land Management Map; Covelo 1981, California.
Mendocino County
T. 22 N., R. 13 W., Sec. 33, of the Mt. Diablo Meridian.
T. 21 S., R. 13 W., Secs. 3, and 4, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



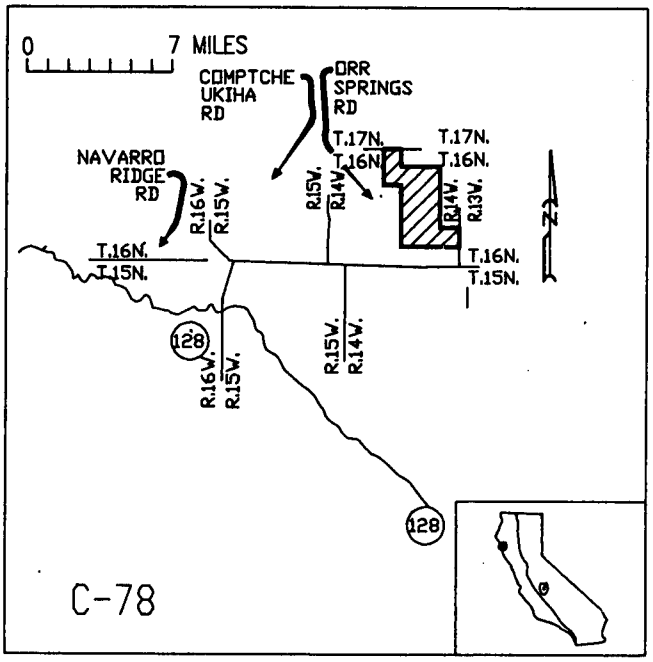
Description of C–73 taken solely from Bureau of Land Management Map; Covelo 1981, California.
Mendocino County
T. 22 N., R. 11 W., Secs. 18, 19, 20, 28, 29, and 30, of the Mt. Diablo Meridian.
T. 22 N., R. 12 W., Secs. 12, 13, 14, 23, 24, and 25, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



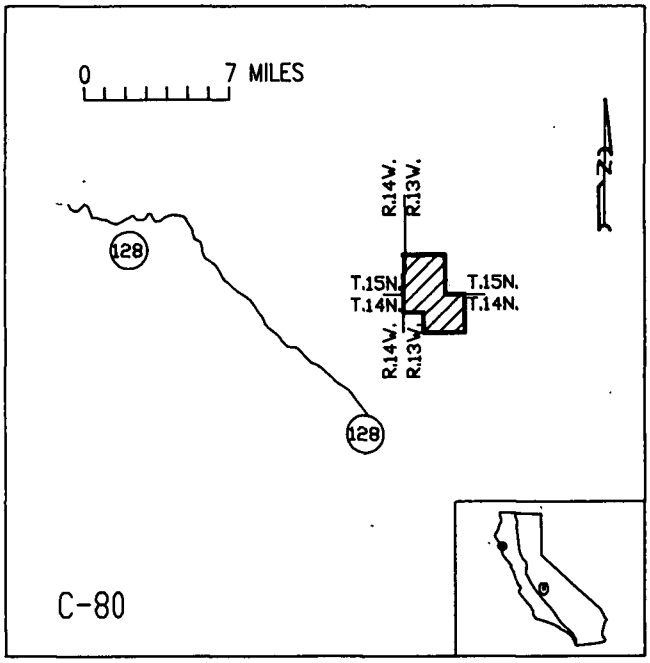
Description of C–76 taken solely from Bureau of Land Management Map; Ukiah 1981, California.
Mendocino County
T. 18 N., R. 13 W., Secs. 1, 2, 3, and 11, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



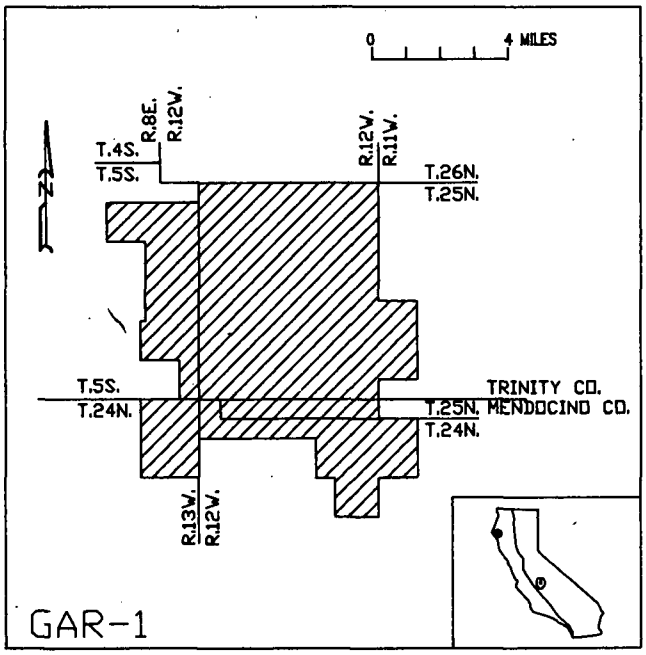
Description of C–78 taken solely from Bureau of Land Management Map; Ukiah 1981, California.
Mendocino County
T. 16 N., R. 14 W., Secs. 4, 9, 10, 11, 14, 15, 22, 23, 25, 26, and 27, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



Description of C-80 taken solely from Bureau of Land Management Map; Ukiah 1981, California.
Mendocino County
T. 15 N., R. 13 W., Secs. 29, 30, 31, and 32, of the Mt. Diablo Meridian.
T. 14 N., R. 13 W., Secs. 4, 5, 6, 8, and 9, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



Description of GAR-1 taken solely from Bureau of Land Management Map; Garberville 1979, and Covelo 1981, California.
Mendocino and Trinity Counties
T. 5 S., R. 8 E., Secs. 9, 10, 11, 14, 15, 22, 23, 26, and 27, of the Humboldt Meridian.
T. 25 N., R. 12 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.
T. 24 N., R. 13 E., Secs. 1, 2, 11, and 12, of the Mt. Diablo Meridian.
T. 24 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 10, 11, 12, and 14, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



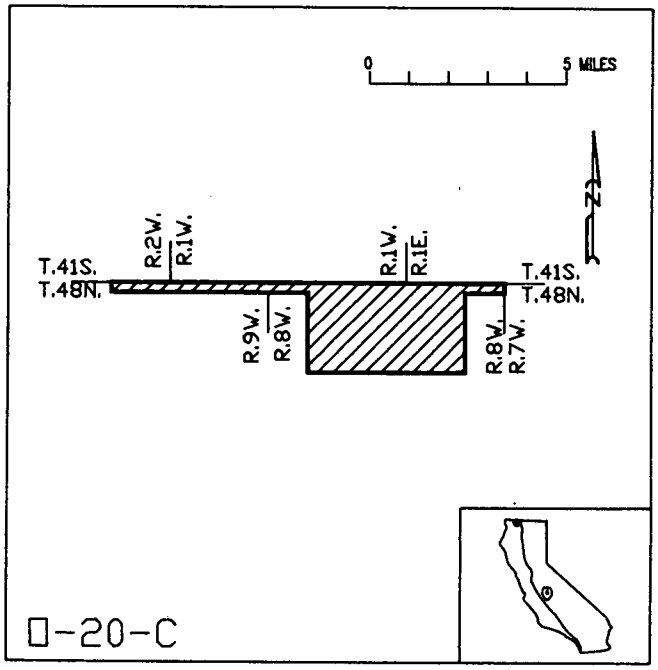
Description of O–20–C taken solely from Bureau of Land Management Map; Yreka 1979, and Medford 1978, Oregon and California.

Siskiyou County

T. 48 N., R. 9 W., Secs. 13, 14, 15, and 16, of the Mount Diablo Meridian

T. 48 N., R. 8 W., Secs. 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 26, 27, 28, and 29, of the Mount Diablo Meridian.

Excluding any private lands within the above area.



Description of O–22–C taken solely from Bureau of Land Management Maps; Happy Camp 1983, and Cresent City 1983, California.

Del Norte County

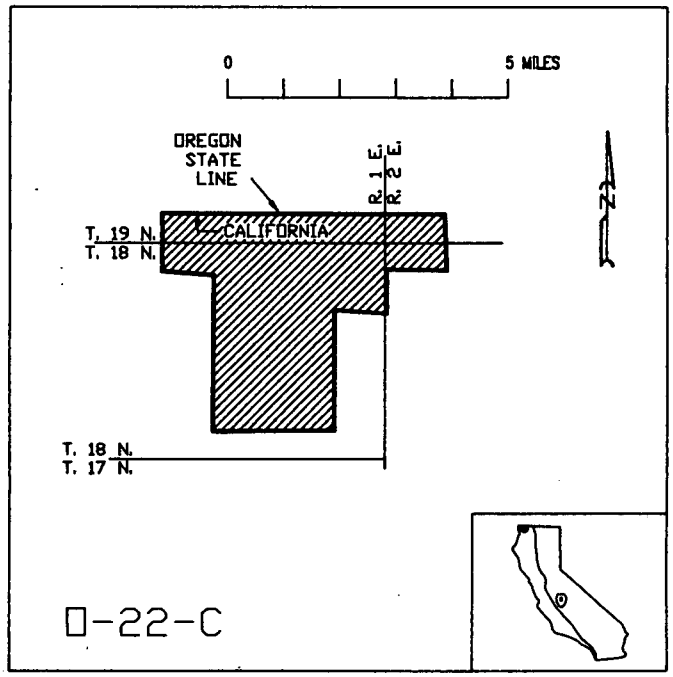
T. 19 N., R. 1 E., Secs. 33, 34, 35, and 36, of the Humboldt Meridian.

T. 19 N., R. 2 E., Sec. 31, of the Humboldt Meridian.

T. 18 N., R. 1 E., Secs. 1, 2, 3, 4, 10, 11, 12, 14, 15, 22, 23, 26, and 27, of the Humboldt Meridian.

T. 18 N., R. 2 E., Sec. 6, of the Humboldt Meridian.

Excluding any private lands within the above area.



Description of ME–1 taken solely from Bureau of Land Management Maps; Willows 1975, and Covelo 1981, California.

Mendocino, Glenn, and Tehema Counties

T. 20 N., R. 9 W., Secs. 4, and 5, of the Mt. Diablo Meridian.

T. 20 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 10, and 11, of the Mt. Diablo Meridian.

T. 21 N., R. 9 W., Secs. 29, 32, and 33, of the Mt. Diablo Meridian.

T. 21 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 22 N., R. 8 W., Secs. 7, 18, 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 22 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, and 33, of the Mt. Diablo Meridian.

T. 22 N., R. 10 W., Secs. 1, 2, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 22 N., R. 11 W., Secs. 13, 23, 24, and 25, of the Mt. Diablo Meridian.

T. 23 N., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, of the Mt. Diablo Meridian.

T. 23 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 23 N., R. 10 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

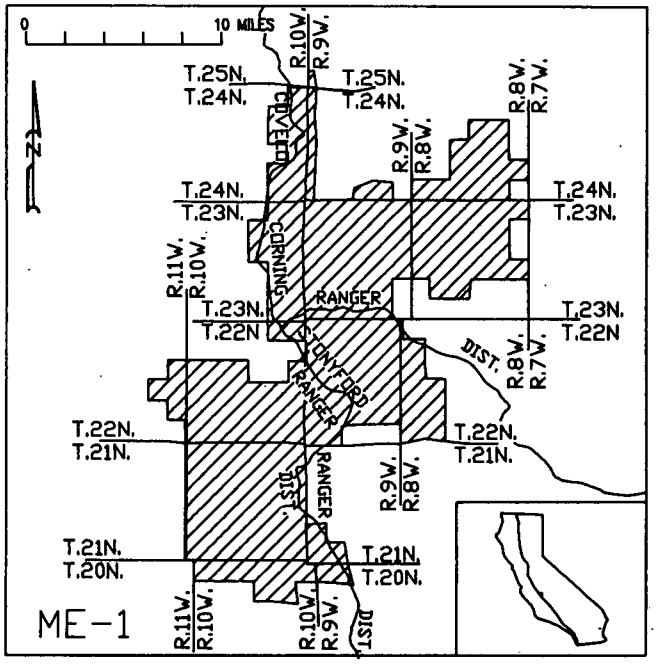
T. 24 N., R. 8 W., Secs. 14, 15, 21, 22, 23, 25, 26, 27, 28, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 24 N., R. 9 W., Secs. 6, 7, 18, 19, 30, 31, 34, and 35, of the Mt. Diablo Meridian.

T. 24 N., R. 10 W., Secs. 1, 11, 12, 13, 14, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 25 N., R. 9 W., Sec. 31, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of ME–2 taken solely from Bureau of Land Management Map; Lakeport 1975, California.

Colusa and Lake Counties

T. 16 N., R. 7 W., Sec. 6, of the Mt. Diablo Meridian.

T. 16 N., R. 8 W., Secs. 1, 2, 4, 5, and 6, of the Mt. Diablo Meridian.

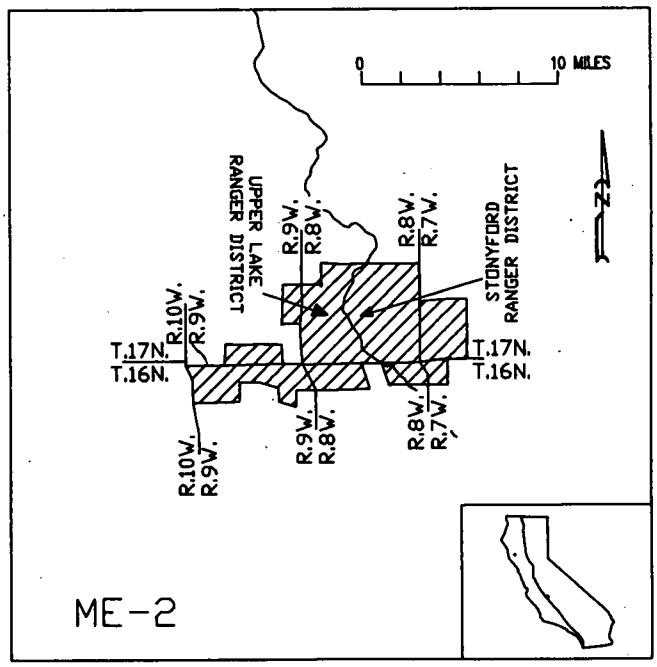
T. 16 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, and 11, of the Mt. Diablo Meridian.

T. 17 N., R. 7 W., Secs. 19, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

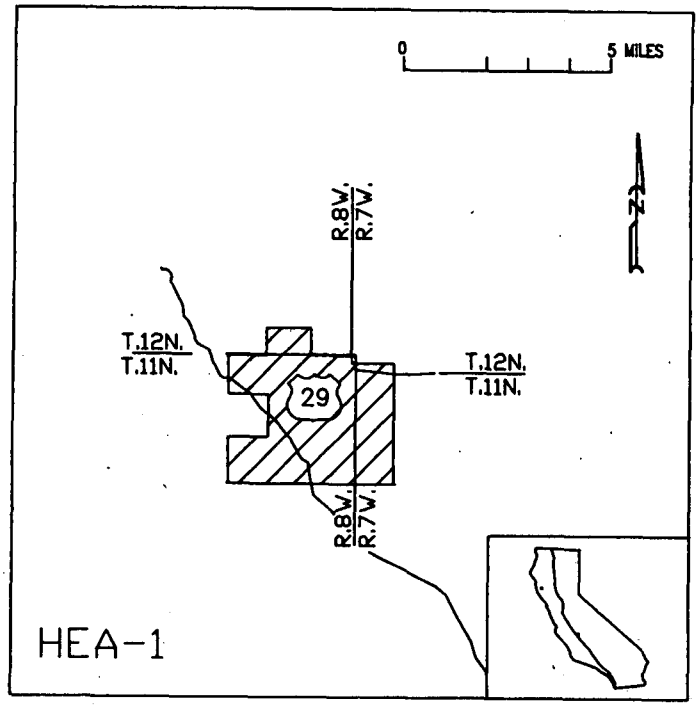
T. 17 N., R. 8 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 17 N., R. 9 W., Secs. 13, 24, 33, 34, and 35, of the Mt. Diablo Meridian.

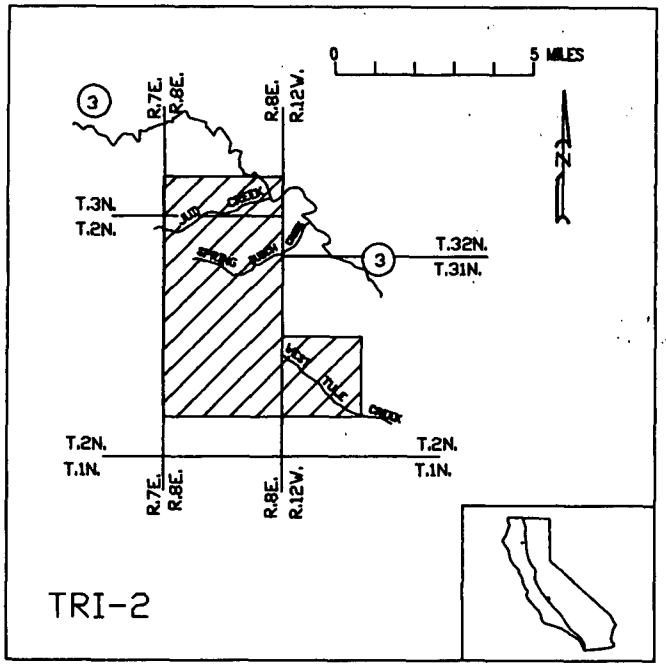
Excluding any private lands within the above area.



Description of HEA-1 taken solely from Bureau of Land Management Map; Healdsburg 1972, California.
Lake County
T. 11 N., R. 7 W., Secs. 6, 7, and 18, of the Mt. Diablo Meridian.
T. 11 N., R. 8 W., Secs. 1, 2, 3, 11, 12, 13, 14, and 15, of the Mt. Diablo Meridian.
T. 12 N., R. 8 W., Sec. 35, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



Description of TRI-2 taken solely from Bureau of Land Management Map; Hayfork 1982, California.
Trinity County
T. 3 N., R. 8 E., Secs. 31, 32, and 33, of the Humboldt Meridian. T. 2 N., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, and 30, of the Humboldt Meridian.
T. 31 N., R. 12 W., Secs. 17, 18, 19, and 20, of the Mt. Diablo Meridian.
Excluding any private lands within the above area.



Description of TRI-3 taken solely from Bureau of Land Management Maps; Garberville 1979, California.

Trinity and Mendocino Counties

T. 1 N., R. 6 E., Secs. 12, 13, 14, 23, 24, 25, and, 36, of the Humboldt Meridian.

T. 1 N., R. 7 E., Secs. 7, 8, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, and 32, of the Humboldt Meridian.

T. 1 S., R. 6 E., Sec. 1, of the Humboldt Meridian.

T. 1 S., R. 7 E., Secs. 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Humboldt Meridian.

T. 1 S., R. 8 E., Secs. 19, 20, 28, 29, 30, 31, 32, and 33, of the Humboldt Meridian.

T. 2 S., R. 7 E., Sec. 1, of the Humboldt Meridian.

T. 2 S., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, and 21, of the Humboldt Meridian.

T. 29 N., R. 12 W., Secs. 30, 31, 34 and 35, of the Mt. Diablo Meridian.

T. 28 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 28 N., R. 11 W., Secs. 7, 18, 19, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 28 N., R. 10 W., Sec. 31, of the Mt. Diablo Meridian.

T. 27 N., R. 12 W., Secs. 1, and 2, of the Mt. Diablo Meridian.

T. 27 N., R. 11 W., Secs. 1, 2, 3, 4, 5, and 6, of the Mt. Diablo Meridian.

T. 27 N., R. 10 W., Secs. 6, 7, 8, 13, 14, 15, 22, 23, 24, 25, 26, 27, 31, 32, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 27 N., R. 9 W., Secs. 19, 20, 21, 28 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 26 N., R. 12 W., Secs. 15, 21, 22, 23, 25, 26, 27, 28, 34, and 35, of the Mt. Diablo Meridian.

T. 26 N., R. 11 W., Secs. 5, 7, 20, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 26 N., R. 10 W., Secs. 1, 2, 3, 6, 10, 11, 12, 13, 14, 15, 22, 23, 23, 24, 26, 27, 35, and 36, of the Mt. Diablo Meridian.

T. 26 N., R. 9 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

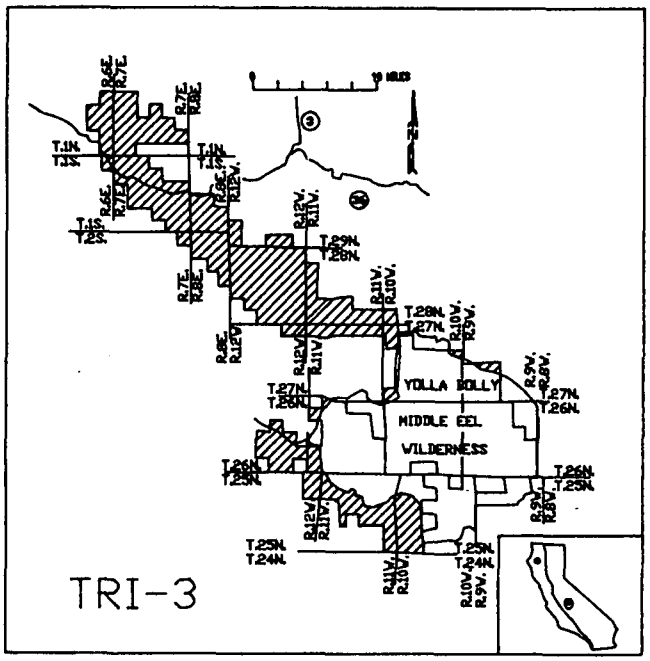
T. 25 N., R. 12 W., Secs. 1, and 12, of the Mt. Diablo Meridian.

T. 25 N., R. 11 W., Secs. 6, 7, 8, 9, 10, 13, 14, 15, 16, 21, 23, 24, 25, and 36, of the Mt. Diablo Meridian.

T. 25 N., R. 10 W., Secs. 2, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 29, 30, 31, and 32, of the Mt. Diablo Meridian.

T. 25 N., R. 9 W., Secs. 4, 5, and 6, of the Mt. Diablo Meridian.

Excluding from the above areas any land within the Yolla Bolly Wilderness, and Middle Eel Wilderness, and any private lands.



Description of SHA–1 taken solely from Bureau of Land Management Map; Mount Shasta 1979, and McArthur 1978, California.

Siskiyou and Shasta Counties

T. 41 N. R. 1 W., Secs. 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 41 N., R. 2 E., Sec. 31, of the Mt. Diablo Meridian.

T. 40 N., R. 3 W., Secs. 12, 13, 14, and 24, of the Mt. Diablo Meridian.

T. 40 N., R. 2 W., Secs. 8, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 40 N., R. 1 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Mt. Diablo Meridian.

T. 40 N., R. 1 E., Secs. 1, 2, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, and 36, of the Mt. Diablo Meridian.T. 40 N., R. 2 E., Secs. 6, 7, 18, 19, 30, and 31, of the Mt. Diablo Meridian.

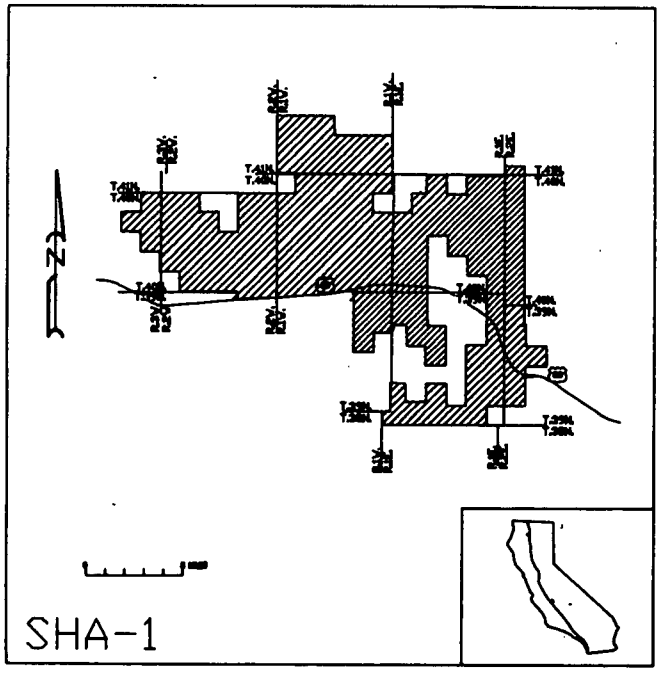
T. 39 N., R. 2 W., Secs. 1, and 2, north of Highway 89, of the Mt. Diablo Meridian.

T. 39 N., R 1 W., that part of Sections 3, 4, 5, and 6, north of Highway 89; Secs. 1, 2, 11, 12, and 14 of the Mt. Diablo Meridian.

T. 39 N., R. 1 E., Secs. 1, 5, 6, 8, 9, 12, 13, 14, 16, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

T. 39 N., R. 2 E., Secs. 6, 7, 17, 18, 19, and 30, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of ST–1 taken solely from Bureau of Land Management Map; Mount Shasta 1979, California.

Siskiyou and Trinity Counties

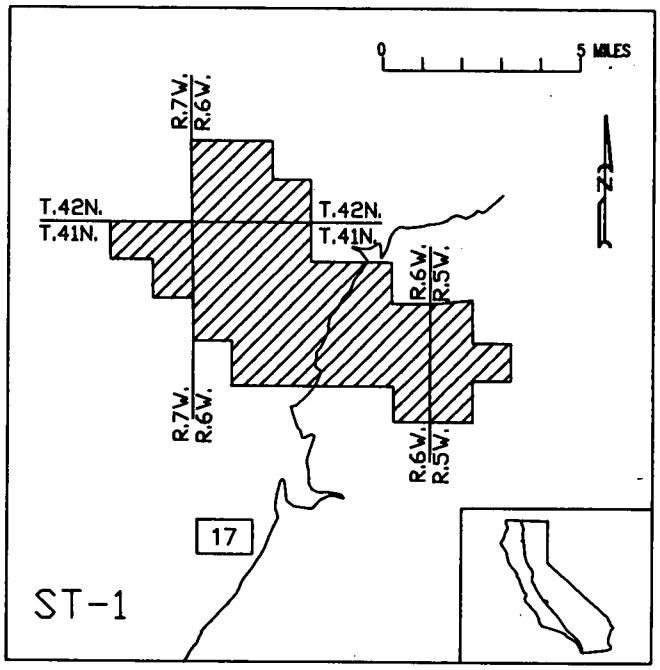
T. 42 N., R. 6 W., Secs. 29, 30, 31, 32, and 33, of the Mt. Diablo Meridian.

T. 41 N., R. 7 W., Secs. 1, 2, and 12, of the Mt. Diablo Meridian.

T. 41 N., R. 6 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, and 25, of the Mt. Diablo Meridian.

T. 41 N., R. 5 W., Secs. 18, 19, 20, and 30, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of COV-1 taken solely from Bureau of Land Management Maps; Covelo 1981, and Garberville 1979, California.

Mendocino, Humboldt, and Trinity Counties

T. 21 N., R. 15 W., Secs. 5, 6, 7, 8, 17, and 18, of the Mt. Diablo Meridian.

T. 21 N., R. 16 W., Secs. 1, 2, 11, 12, and 13, of the Mt. Diablo Meridian.

T. 22 N., R. 15 W., Secs. 19, 30, and 31, of the Mt. Diablo Meridian.

T. 22 N., R. 16 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 34, and 35, of the Mt. Diablo Meridian.

T. 22 N., R. 17 W., Secs. 1, 12, 13, and 24, of the Mt. Diablo Meridian.

T. 23 N., R. 16 W., Secs. 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 23 N., R. 17 W., Secs. 1, 2, and 12, of the Mt. Diablo Meridian.

T. 24 N., R. 15 W., Secs. 3, 4, 5, 6, 9, 10, 11, and 12, of the Mt. Diablo Meridian.

T. 24 N., R. 16 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Mt. Diablo Meridian.

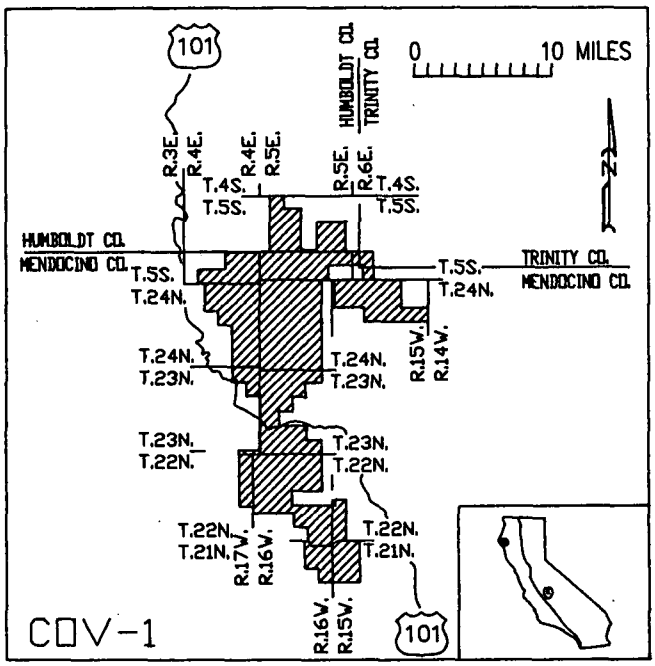
T. 24 N., R. 17 W., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Mt. Diablo Meridian.

T. 5 S., R. 4 E., Secs. 25, 26, 27, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

T. 5 S., R. 5 E., Secs. 6, 7, 8, 14, 15, 17, 18, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Humboldt Meridian.

T. 5 S., R. 6 E., Secs. 30, and 31, of the Humboldt Meridian.

Excluding any private lands within the above area.



Description of COV-2 taken solely from Bureau of Land Management Map; Covelo 1981, California.

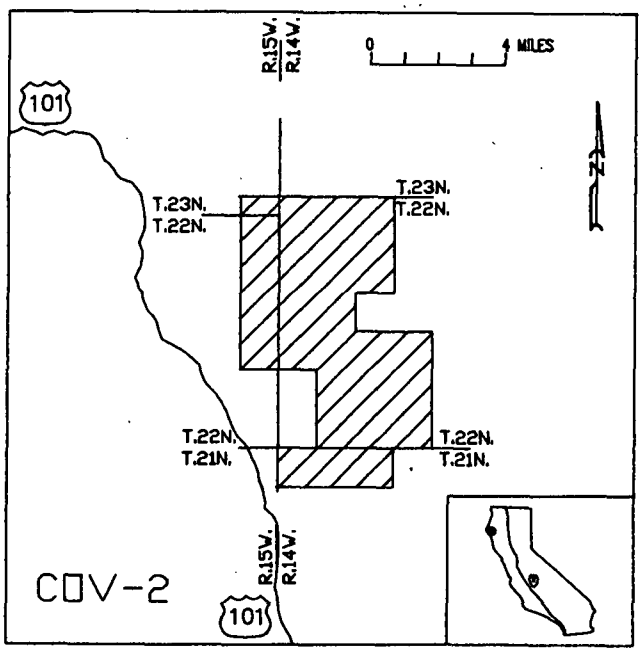
Mendocino County

T. 21 N., R. 14 W., Secs. 4, 5, and 6, of the Mt. Diablo Meridian.

T. 22 N., R. 14 W., Secs. 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 22, 27, 28, 29, 32, 33, and 34, of the Mt. Diablo Meridian.

T. 22 N., R. 15 W., Secs. 1, 12, 13, and 24, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Description of COV-3 taken solely from Bureau of Land Management Map; Covelo 1981, and Ukiah 1981, California.
Mendocino County

T. 20 N., R. 12 W., Secs. 18, 19, 30, and 31, of the Mt. Diablo Meridian.

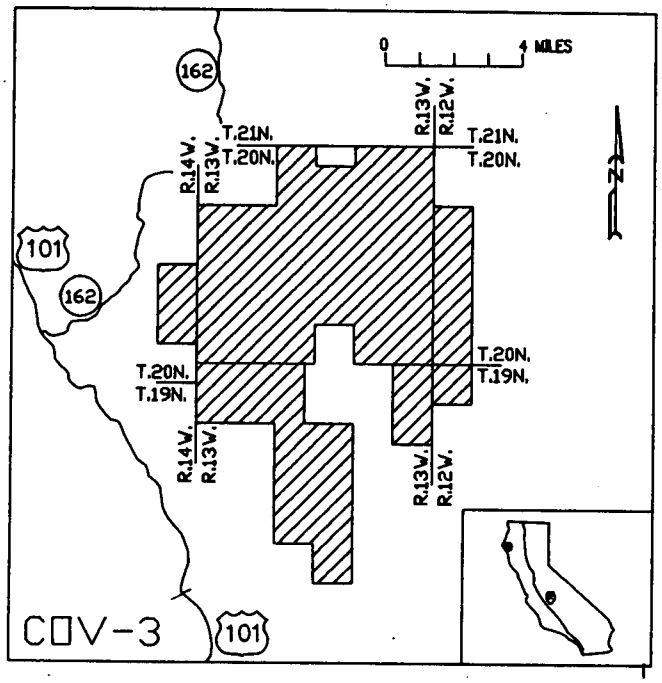
T. 20 N., R. 13 W., Secs. 1, 2, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Mt. Diablo Meridian.

T. 20 N., R. 14 W., Secs. 24, and 25, of the Mt. Diablo Meridian.

T. 19 N., R. 12 W., Sec. 6, of the Mt. Diablo Meridian.

T. 19 N., R. 13 W., Secs. 1, 4, 5, 6, 9, 10, 15, 16, and 22, of the Mt. Diablo Meridian.

Excluding any private lands within the above area.



Oregon. Areas of land and water as follows:

Description of C-5-O taken solely from Bureau of Land Management Map; Grants Pass 1978, Oregon and California, and Forest Vistor Map; Siskiyou National Forest 1984.
Josephine County

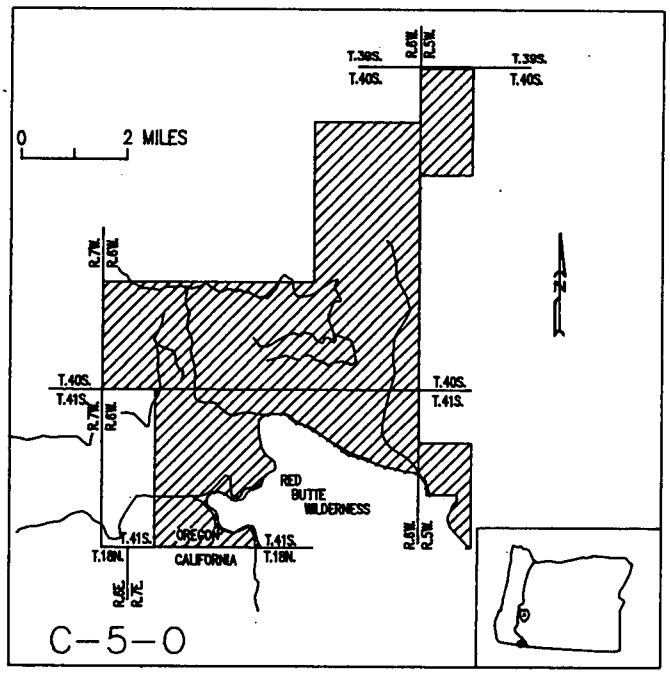
T. 40 S., R. 6 W., Secs. 11, 12, 13, 14, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 5 W., Secs. 6, and 7, of the Willamette Meridian.

T. 41 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 16, and 17, of the Willamette Meridian.

T. 41 S., R. 5 W., Secs. 7, and 8, of the Willamette Meridian.

Excluding from the above areas any land within the Red Butte Wilderness, and any private lands.



Description of CG–1 taken solely from Bureau of LandManagement Maps; Eugene 1980, and Cottage Grove 1979, Oregon.

Douglas and Lane County

T. 17 S., R. 8 W., Secs. 25, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 8 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 7 W., Secs. 7, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

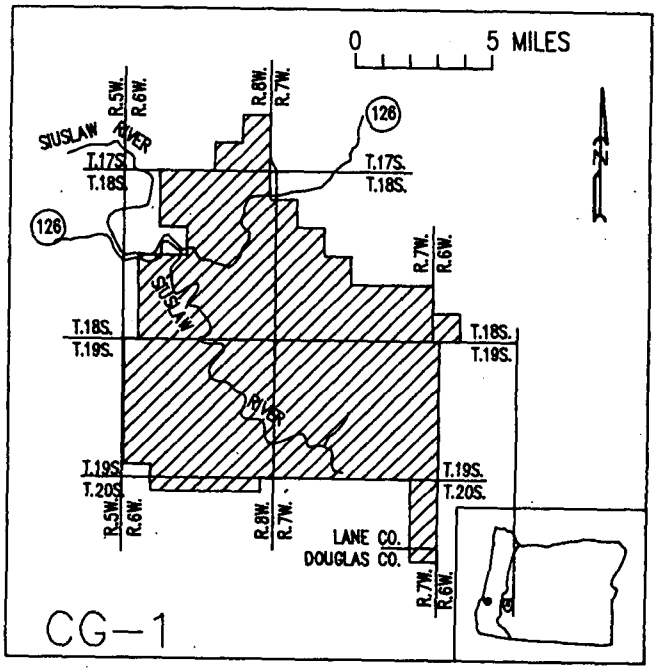
T. 18 S., R. 6 W., Sec. 31, of the Willamette Meridian.

T. 19 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 7 W., Secs. 1, 12, and 13, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of CG–2 taken solely from Bureau of Land Management Map; Cottage Grove 1979, and Surface–Mineral Management Map; Roseburg 1979, Oregon.

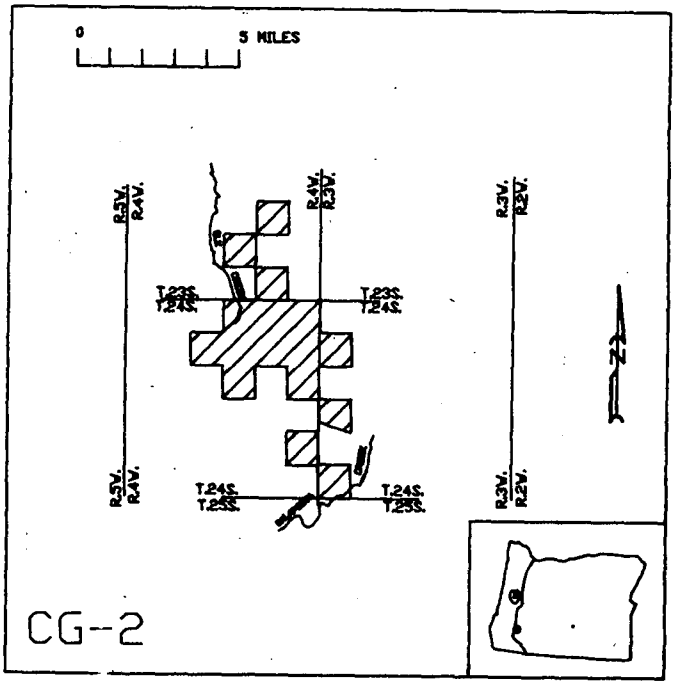
Douglas County

T. 23 S., R. 4 W., Secs. 23, 27, and 35, of the Willamette Meridian.

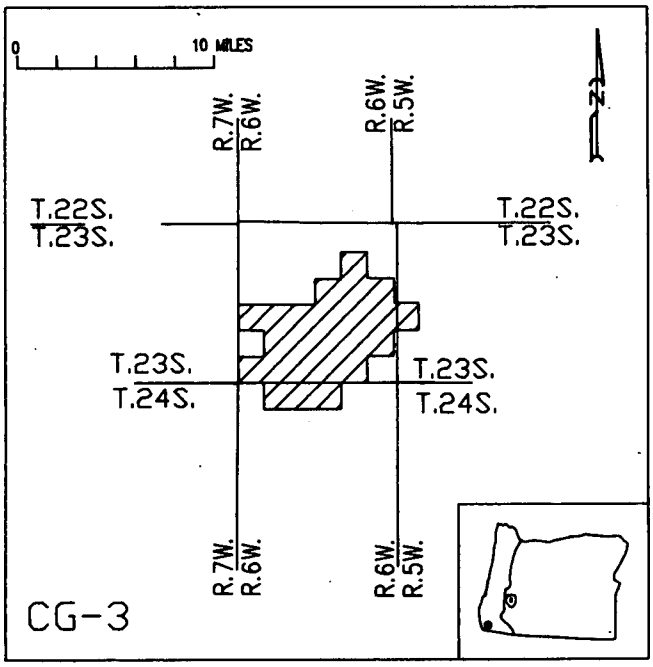
T. 24 S., R. 3 W., Secs. 7, 19, and 31, of the Willamette Meridian.

T. 24 S., R. 4 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 15, and 25, of the Willamette Meridian.

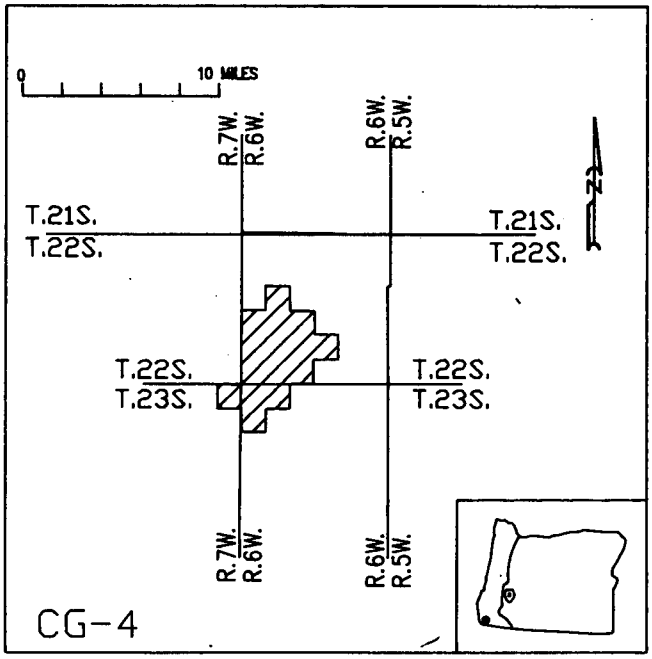
Excluding any private lands within the above area.



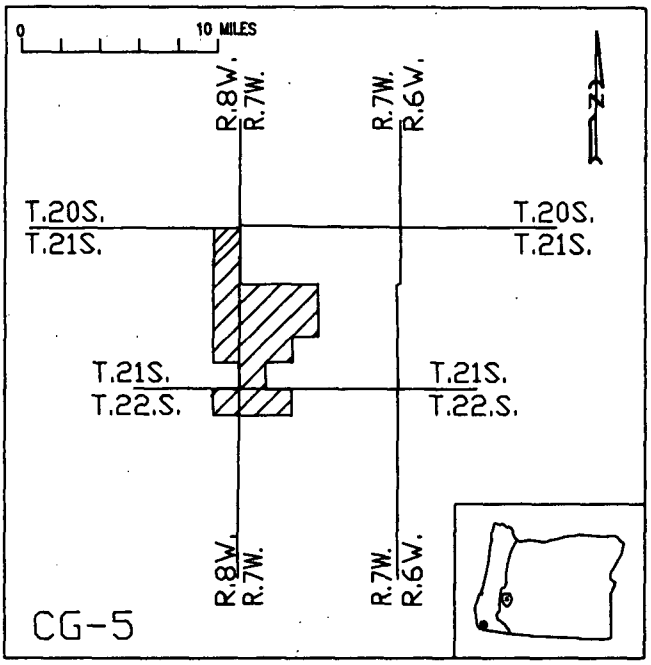
Description of CG–3 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.
Douglas County
T. 23 S., R. 6 W., Secs. 11, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35, of the Willamette Meridian.
T. 23. S., R. 5 W., Sec. 19, of the Willamette Meridian.
T. 24 S., R. 6 W., Secs. 3, 4, and 5, of the Willamette Meridian.
Excluding any private lands within the above area.



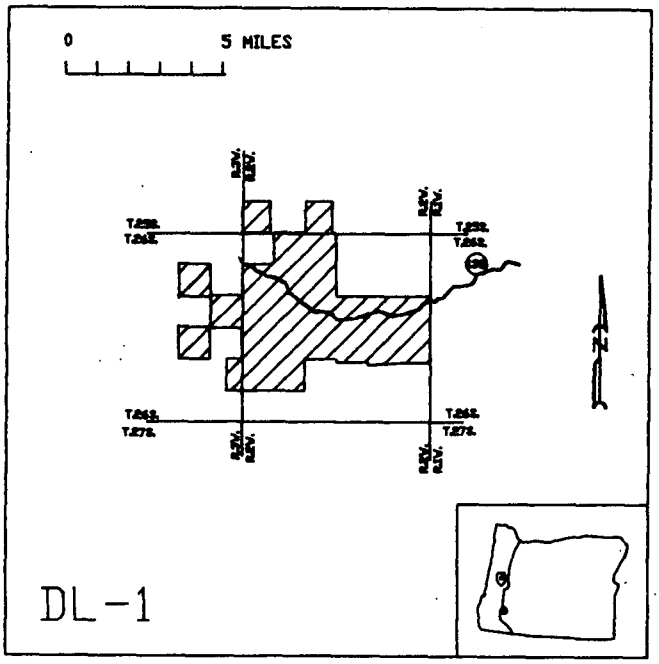
Description of CG–4 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.
Douglas County
T. 23 S., R. 7 W., Sec. 1, of the Willamette Meridian.
T. 22 S., R. 6 W., Secs. 17, 19, 20, 21, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.
T. 23 S., R. 6 W., Secs. 5, 6, and 7, of the Willamette Meridian.
Excluding any private lands within the above area.



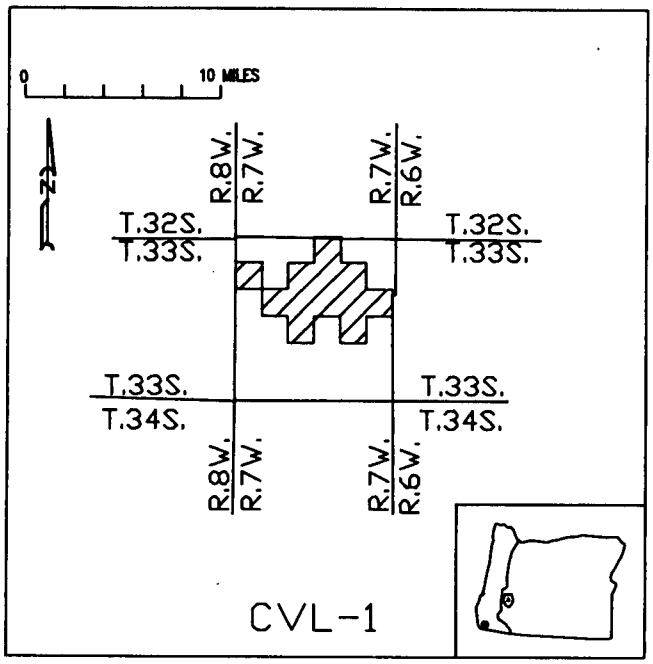
Description of CG–5 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.
Douglas County
T. 21 S., R. 8 W., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.
T. 21 S., R. 7 W., Secs. 16, 17, 18, 19, 20, 21, 29, 30, and 31, of the Willamette Meridian.
T. 22 S., R. 8 W., Sec. 1, of the Willamette Meridian.
T. 22 S., R. 7 W., Secs. 5, and 6, of the Willamette Meridian.
Excluding any private lands within the above area.



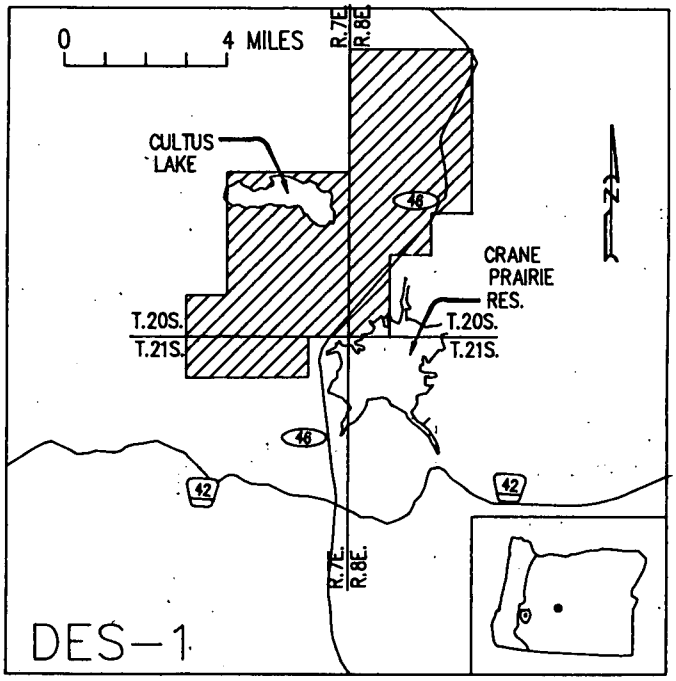
Description of DL–1 taken solely from Bureau of Land Management Map; Diamond Lake 1978, and Roseburg 1979, Oregon.
Douglas County
T. 25 S., R. 2 W., Secs. 31, and 33, of the Willamette Meridian.
T. 26 S., R. 2 W., Secs. 4, 5, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, and 30, of the Willamette Meridian.
T. 26 S., R. 3 W., Secs. 11, 13, 23, and 25, of the Willamette Meridian.
Excluding any private lands within the above area.



Description of CVL-1 taken solely from Bureau of Land Management Map; Canyonville 1979, Oregon.
Josephine County
T. 33, S., R. 7 W., Secs. 3, 7, 9, 10, 11, 13, 14, 15, 16, 17, 21, and 23, of the Willamette Meridian.
Excluding any private lands within the above area.



Description of DES-1 taken solely from Bureau of Land Management Map, LaPine 1976, Oregon.
Deschutes County
T. 19 S., R. 8 E., Secs. 31, 32, and 33, of the Willamette Meridian.
T. 20 S., R. 7 E., Secs. 13, 14, 15, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.
T. 20 S., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 30, and 31, of the Willamette Meridian.
T. 21 S., R. 7 E., Secs. 2, 3, and 4, of the Willamette Meridian.
Excluding from the above areas any land within Cultus Lake, Crane Prairie Reservoir, and any private lands.



Description of DES–2 taken solely from Bureau of Land Management, LaPine 1976, Oregon.

Deschutes and Klamath Counties

T. 22 S., R. 7 E., Secs. 20, 21, 28, 29, 31, 32, 33, and 36, of the Willamette Meridian.

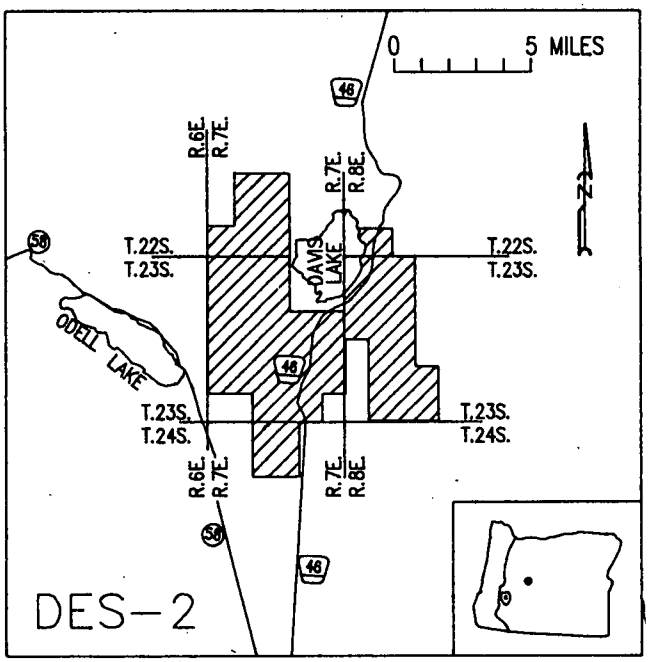
T. 22 S., R. 8 E., Secs. 31, and 32, of the Willamette Meridian.

T. 23 S., R. 7 E., Secs. 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, and 35, of the Willamette Meridian.

T. 23 S., R. 8 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 24 S., R. 7 E., Secs. 3, 4, 9, 10, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of GPQ–1 taken solely from Bureau of Land Management Map; Grants Pass 1978, Oregon and California.

Josephine and Jackson Counties

T. 38 S., R. 4 W., Secs. 33, 34, and 35, of the Willamette Meridian.

T. 38 S., R. 3 W., Secs. 31, and 32, of the Willamette Meridian.

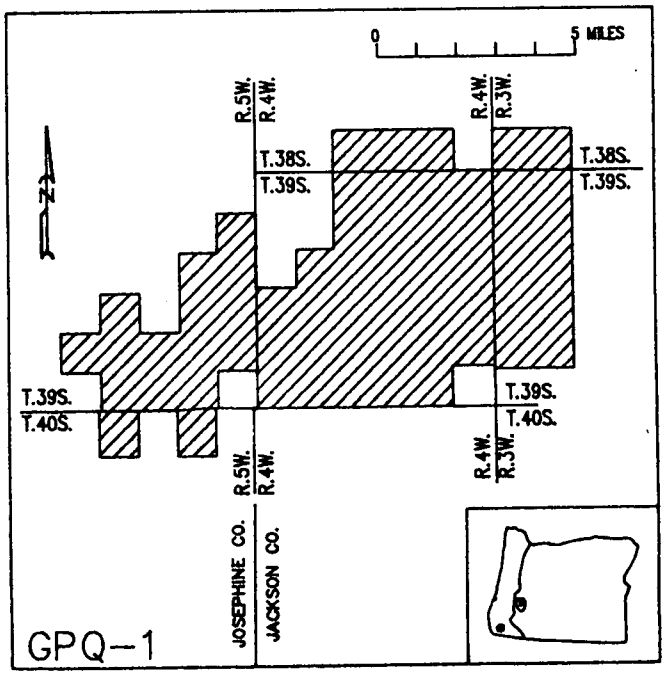
T. 39 S., R. 5 W., Secs. 12, 13, 14, 21, 23, 24, 25, 26, 27, 28, 29, 33, 34, and 35, of the Willamette Meridian.

T. 39 S., R. 4 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 39 S., R. 3 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30, of the Willamette Meridian.

T. 40 S., R. 5 W., Secs. 2, and 4, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of MDF-1 taken solely from Bureau of Land Management Map; Grants Pass 1978, and Medford 1978, Oregon and California.

Jackson County

T. 38 S., R. 2 W., Secs. 34, and 35, of the Willamette Meridian.

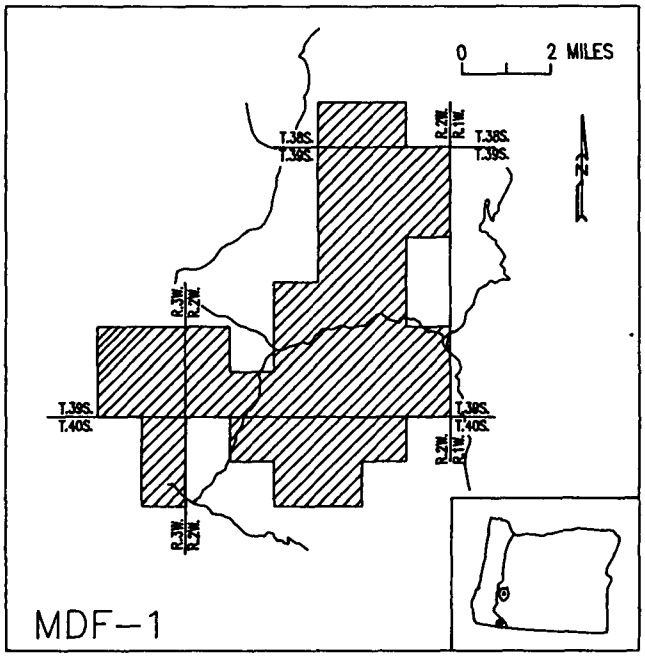
T. 39 S., R. 2 W., Secs. 1, 2, 3, 10, 11, 12, 14, 15, 21, 22, 23, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 2 W., Secs. 2, 3, 4, 5, 9, and 10, of the Willamette Meridian.

T. 39 S., R. 3 W., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 3 W., Secs. 1, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of MH-1 taken solely from Bureau of Land Management Map; Mt. Hood 1979, Oregon.

Wasco County

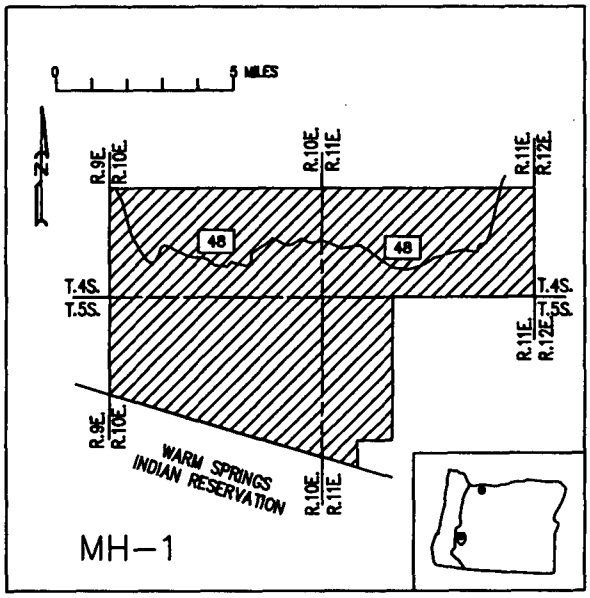
T. 4 S., R. 10 E., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 S., R. 11 E., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 S., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, of the Willamette Meridian.

T. 5 S., R. 11 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and any private lands.



Description of MH-2 taken solely from Bureau of Land Management Maps; Mt. Hood 1979, and Madras 1978, Oregon. Clackamas and Wasco Counties

T. 6 S., R. 7 E., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 6 S., R. 8 E., Secs. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 6 S., R. 8 ½ E., Secs. 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 7 E., Secs. 1, 2, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 7 S., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

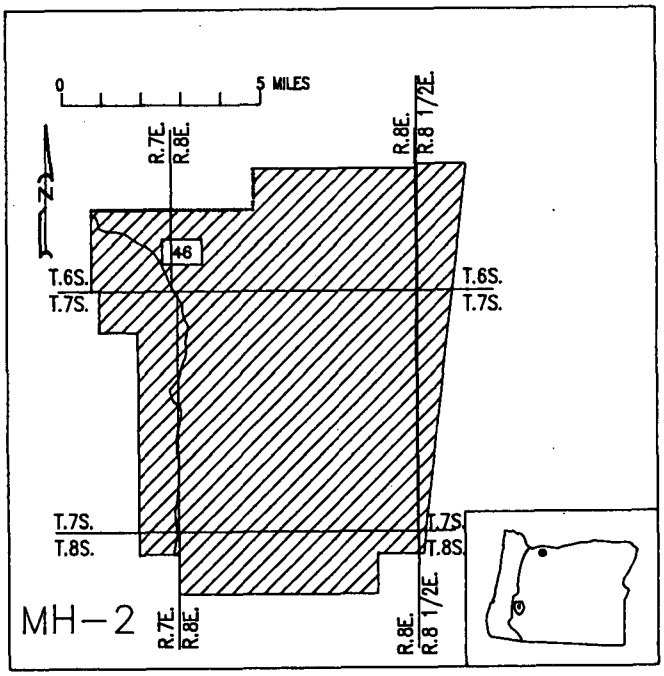
T. 7 S., R. 8 ½ E., Secs. 2, 11, 14, 23, 26, and 35, of the Willamette Meridian.

T. 8 S., R. 7 E., Sec. 1, of the Willamette Meridian.

T. 8 S., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, of the Willamette Meridian.

T. 8 S., R. 8 ½ E., Sec. 2, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and any private lands.



Description of O–1 taken solely from Bureau of Land Management Maps; Vancouver 1979, Hood River 1979, Oregon-Washington, and Oregon City 1974, Mt. Hood 1979, Oregon.

Multnomah, Hood River, and Clackamas Counties

T. 1 N., R. 6 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 N., R. 7 E., Secs 1, 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 N., R. 8 E., Secs. 1, 2, 6, 7, 10, 11, 14, 15, 21, 22, 29, 31, and 32, of the Willamette Meridian.

T. 2 N., R. 7 E., Secs. 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 36, of the Willamette Meridian.

T. 2 N., R. 8 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 24, 25, 30, 31, and 36, of the Willamette Meridian.

T. 2 N., R. 9 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20, of the Willamette Meridian.

T. 3 N., R. 8 E., Secs. 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 N., R. 9 E., Secs. 31, 34, and 35, of the Willamette Meridian.

T. 1 S., R. 5 E., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 1 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 1 S., R. 8 E., Secs. 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

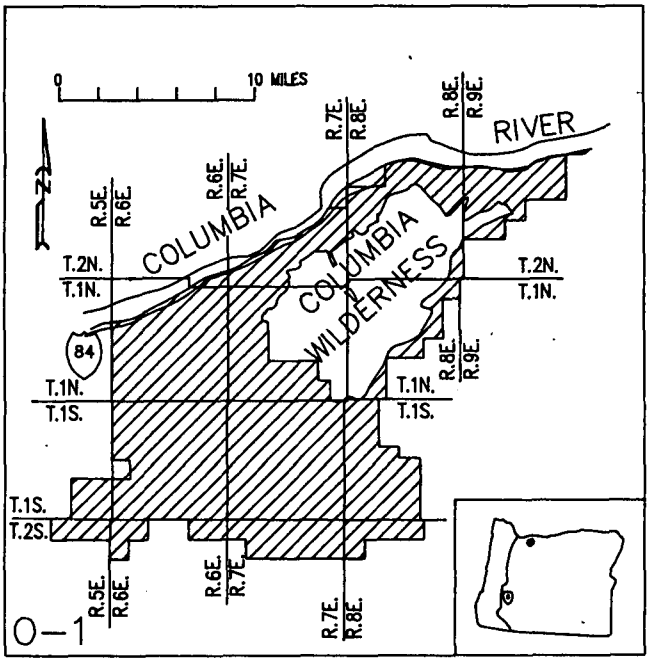
T. 2 S., R. 5 E., Secs. 1, 2, and 3, of the Willamette Meridian.

T. 2 S., R. 6 E., Secs. 1, 2, 5, 6, and 7, of the Willamette Meridian.

T. 2 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12, of the Willamette Meridian.

T. 2 S., R. 8 E., Secs. 3, 4, 5, 6, and 7, of the Willamette Meridian.

Excluding from the above areas any land north of the southern shore of the Columbia River, lands within the Columbia Wilderness, and any private lands.



Description of O-2 taken solely from Bureau of Land Management Map; Mt. Hood 1979, Oregon.

Clackamas, Hood River, and Wasco Counties

T. 2 S., R. 9 E., Secs. 12, and 13, of the Willamette Meridian.

T. 2 S., R. 10 E., Secs. 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 2 S., R. 11 E., Secs. 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

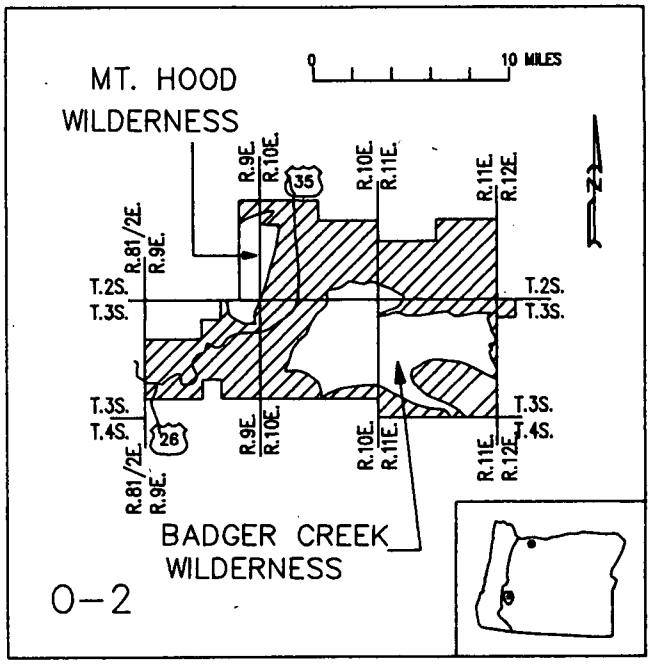
T. 3 S., R. 9 E., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 16, 17,18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, and 30, of the Willamette Meridian.

T. 3 S., R. 10 E., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 12, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, and 34, of the Willamette Meridian.

T. 3 S., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R., 12 E., Sec. 6, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Hood Wilderness, Badger Creek Wilderness, and any private lands.



Description of O-3 taken solely from Bureau of Land Managment Maps; Oregon City 1974, and Mt. Hood 1979, Oregon.

Clackamas County

T. 2 ½ S., R. 6 E., Secs. 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 6 E., Secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 28, 29, 33, and 34, of the Willamette Meridian.

T. 3 S., R. 7 E., Secs. 3, 6, 8, 10, 11, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 8 E., Secs. 19, 30, and 31, of the Willamette Meridian.

T. 4 S., R. 6 E., Secs. 3, 4, 10, 11, 12, 13, 14, 23, 24, 25, 26, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 S., R. 7 E., Secs. 2, 3, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.T. 4 S., R. 8 E., Secs. 2, 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

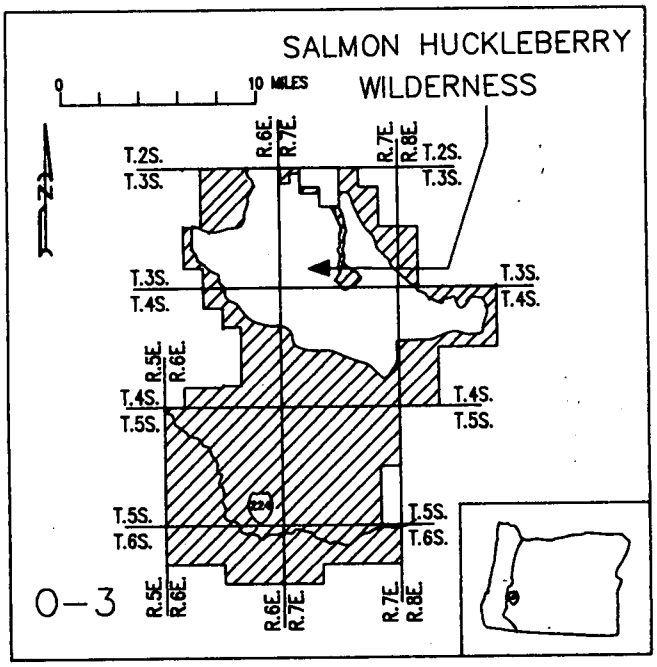
T. 5 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 6 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, and 15, of the Willamette Meridian.

T. 6 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Salmon-Huckleberry Wilderness, and any private lands.



Description of O–4 taken solely from Bureau of Land Management Maps; Oregon City 1974, Madras 1978, and North Santiam River 1978, Oregon. Clackamas and Marion Counties

T. 6 S., R. 4 E., Secs. 33, and 34, of the Willamette Meridian.

T. 6 S., R. 5 E., Secs. 31, and 32, of the Willamette Meridian.

T. 7 S., R. 3 E., Secs. 12, 13, 14, 15, 21, 22, 23, 24, 25, 27, and 28, of the Willamette Meridian.

T. 7 S., R. 4 E., Secs. 4, 5, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 S., R. 6 E., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.T. 7 S., R. 7 E., Secs. 30 and 31, of the Willamette Meridian.

T. 8 S., R. 4 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 8 S., R. 5 E., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

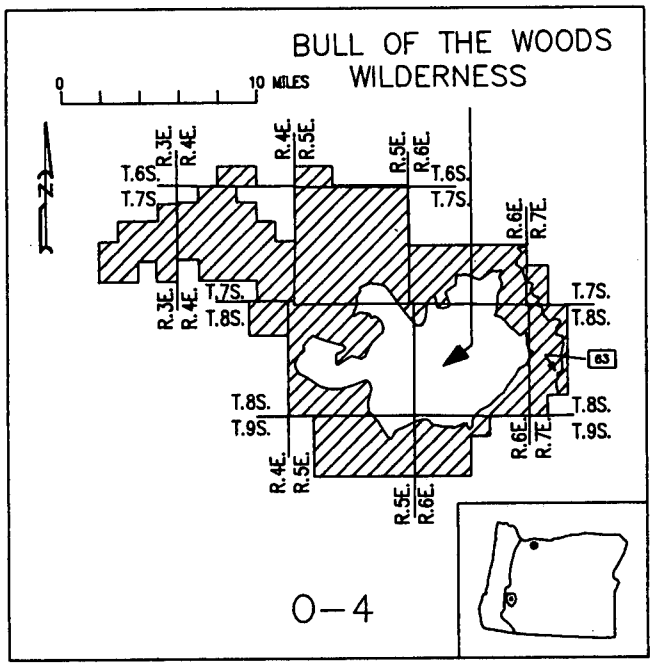
T. 8 S., R. 6 E., Secs. 1, 2, 4, 5, 6, 7, 11, 12, 13, 24, 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 8 S., R. 7 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 31, of the Willamette Meridian.

T. 9 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, of the Willamette Meridian.

T. 9 S., R. 6 E., Secs. 3, 4, 5, 6, 7, 8, 9, 16, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within Bull of the Woods Wilderness, and any private lands.



Description of O-5 taken solely from Bureau of Land Managment Maps; North Santiam River 1978, and Madras 1978, Oregon.

Marion, Linn, and Jefferson Counties

T. 8 S., R. 7 E., Sec. 36, of the Willamette Meridian.

T. 8 S., R. 8 E., Secs. 25, 26, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 S., R. 6 E., Secs. 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 S., R. 7 E., Secs. 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 S., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 30, and 31, of the Willamette Meridian.

T. 10 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, 25, and 36, of the Willamette Meridian.T. 10 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

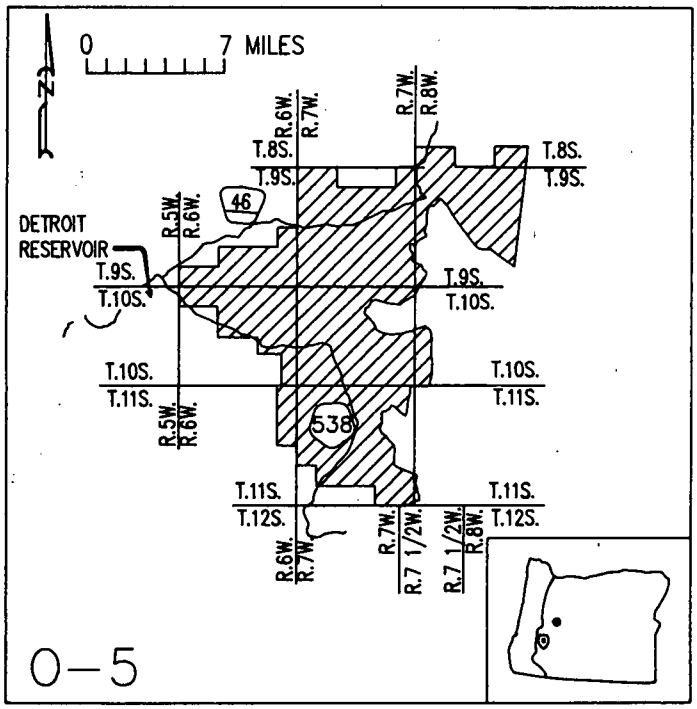
T. 10 S., R 8 E., Secs. 6, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 11 S., R. 6 E., Secs. 1, 12, and 13, of the Willamette Meridian.

T. 11 S., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 7 ½ E., Secs. 3, 22, 23, 26, 27, 34, and 35, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and Mt. Jefferson Wilderness, and any private lands.



Description of O–6 taken solely from Bureau of Land Management Maps; North Santiam River 1978, and McKenzie River 1973, Oregon.

Linn County

T. 10 S., R. 5 E., Secs. 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 10 S., R. 6 E., Secs. 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 11 S., R. 2 E., Secs. 12, 13, and 24, of the Willamette Meridian.

T. 11 S., R. 3 E., Secs. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 11 S., R. 6 E., Secs. 4, 5, and 6, of the Willamette Meridian.

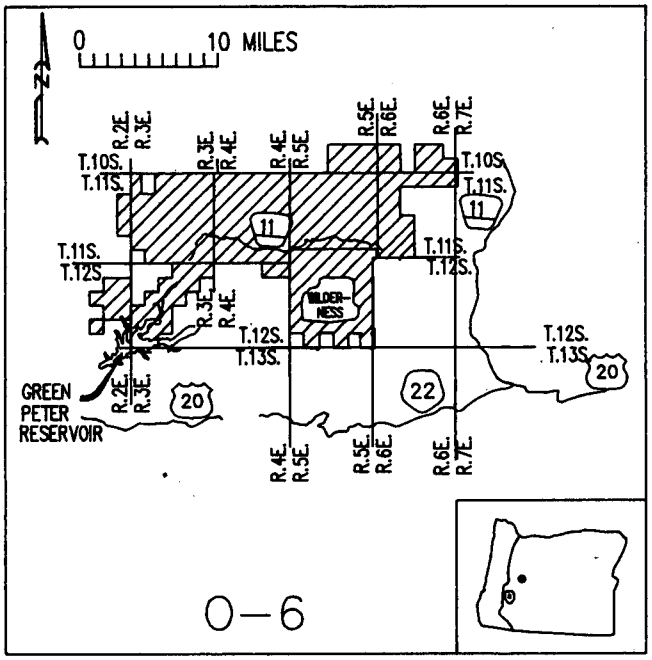
T. 12 S., R. 2 E., Secs. 11, 12, 13, 14, 15, 23, 24, and 27, of the Willamette Meridian.

T. 12 S., R. 3 E., Secs. 1, 2, 3, 9, 10, 11, 15, 16, 17, 19, 20, 21, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 12 S., R. 4 E., Secs. 1, and 2, of the Willamette Meridian.

T. 12 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within Middle Santiam Wilderness, and any private lands.



Description of O–7 taken solely from Bureau of Land Management Map; McKenzie River 1973, Oregon.
Linn and Lane Counties

T. 13 S., R. 5 E., Secs. 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 14 S., R. 4 E., Secs. 11, 12, 13, 14, 31, and 32, of the Willamette Meridian.

T. 14 S., R. 5 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 S., R. 6 E., Secs. 30, and 31, of the Willamette Meridian.

T. 15 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the Willamette Meridian.

T. 15 S., R. 6 E., Secs. 6, 7, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 16 S., R. 2 E., Sec. 25, of the Willamette Meridian.

T. 16 S., R. 3 E., Secs. 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 16 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, and 30, of the Willamette Meridian.

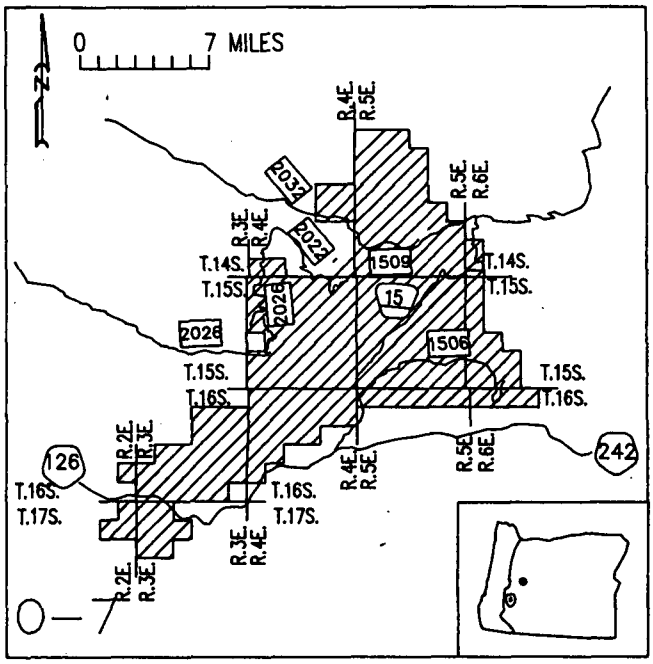
T. 16 S., R. 5 E., Secs. 1, 2, 3, 4, 5, and 6, of the Willamette Meridian.

T. 16 S., R. 6 E., Secs. 4, 5, and 6, of the Willamette Meridian.

T. 17 S., R. 2 E., Secs. 1, 11, and 12, of the Willamette Meridian.

T. 17 S., R. 3 E., Secs. 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–8 taken solely from Bureau of Land Management Maps; Bend 1980, McKenzie River 1973, and Oakridge 1974, Oregon.

Lane County

T. 16 S., R. 5 E., Secs. 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 16 S., R. 6 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 16 S., R. 7 E., Secs. 13, 14, 15, 16, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 17 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, 22, 28, and 33, of the Willamette Meridian.

T. 17 S., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 33, of the Willamette Meridian.

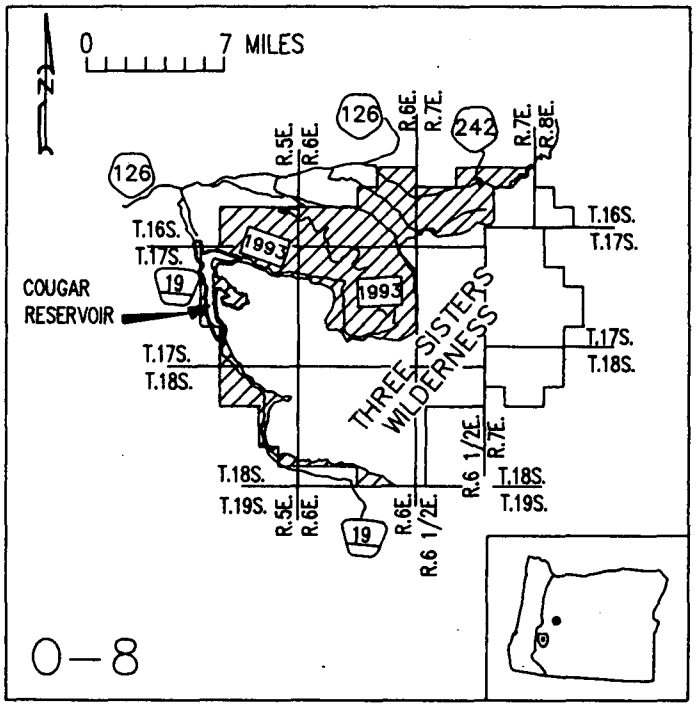
T. 17 S., R. 7 E., Secs. 9, 16, 21, and 28, of the Willamette Meridian.

T. 18 S., R. 5 E., Secs. 3, 4, 10, 11, 12, 14, 15, 22, 23, 25, 26, and 27, of the Willamette Meridian.

T. 18 S., R. 6 E., Secs. 28, 29, 30, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R 6 ½ E., Sec. 33, of the Willamette Meridian.

Excluding from the above areas any lands within Three Sisters Wilderness, and any private lands.



Description of O–9 taken solely from Bureau of Land Management Maps; McKenzie River 1973, and Oakridge 1974, Oregon.

Lane County

T. 18 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 3 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

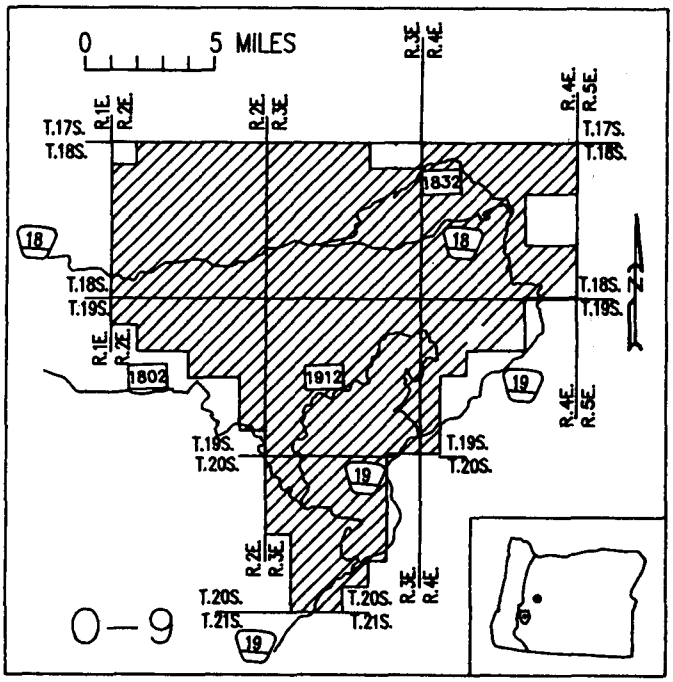
T. 19 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 24, and 25, of the Willamette Meridian.

T. 19 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 4 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 30, and 31, of the Willamette Meridian.

T. 20 S., R. 3 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 20, 21, 22, 23, 27, 28, 29, 32, and 33, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O-10 taken solely from Bureau of Land Management Map; Oakridge 1974, Oregon.

Lane County

T. 19 S., R. 4 E., Secs. 25, and 36, of the Willamette Meridian.

T. 19 S., R. 5 E., Secs. 1, 12, 13, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 5 ½ E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 6 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, and 31, of the Willamette Meridian.

T. 20 S., R. 4 E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 20 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 5 ½ E., Secs. 3, 4, 5, 8, 9, 10, 15, 16, 17, 20, 21, 22, 26, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 20 S., R. 6 E., Secs. 6, 7, 8, and 9, of the Willamette Meridian.

T. 21 S., R. 4 E., Secs. 1, 2, 11, 12, 13, 14, 22, 23, 24, 25, 26, 26, 27, and 36, of the Willamette Meridian.

T. 21 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 5 ½ E., Secs. 3, 4, 5, 8, 9, 10, 16, 17, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 22 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

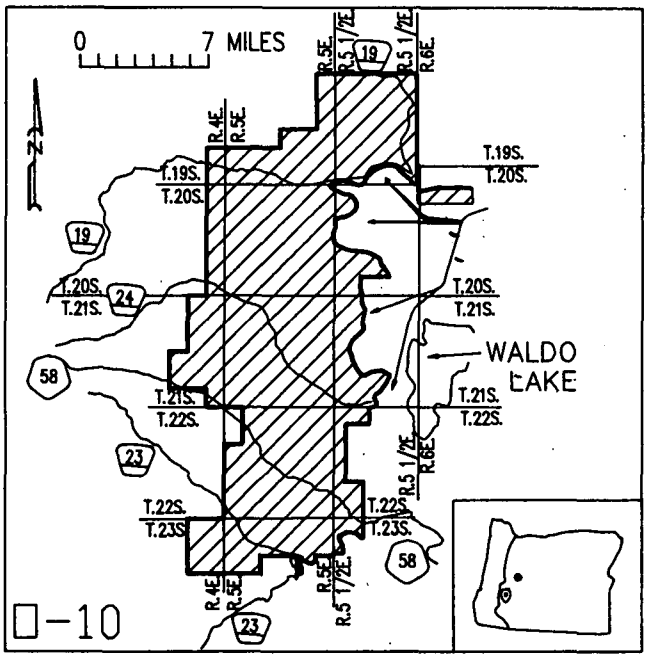
T. 22 S., R. 5 ½ E., Secs. 3, 4, 5, 20, 28, 29, 32, and 33, of the Willamette Meridian.

T. 23 S., R. 4 E., Secs. 1, 2, 11, 12, 13, and 14, of the Willamette Meridian.

T. 23 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 17, and 18, of the Willamette Meridian.

T. 23 S., R. 5 ½ E., Secs. 4, 5, 8, and 9, of the Willamette Meridian.

Excluding from the above areas any land within the Diamond Peak Wilderness, Waldo Lake Wilderness, and the Three Sisters Wilderness, and any private lands.



Description of O–11 taken solely from Bureau of Land Managment Map; Oakridge 1974, Oregon.

Lane County

T. 19 S., R. 1 W., Sec. 35, of the Willamette Meridian.

T. 20 S,. R. 1 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, and 27, of the Willamette Meridian.

T. 20 S., R. 1 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 2 E., Secs. 18, 19, 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 21 S., R 1 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, and 24, of the Willamette Meridian.

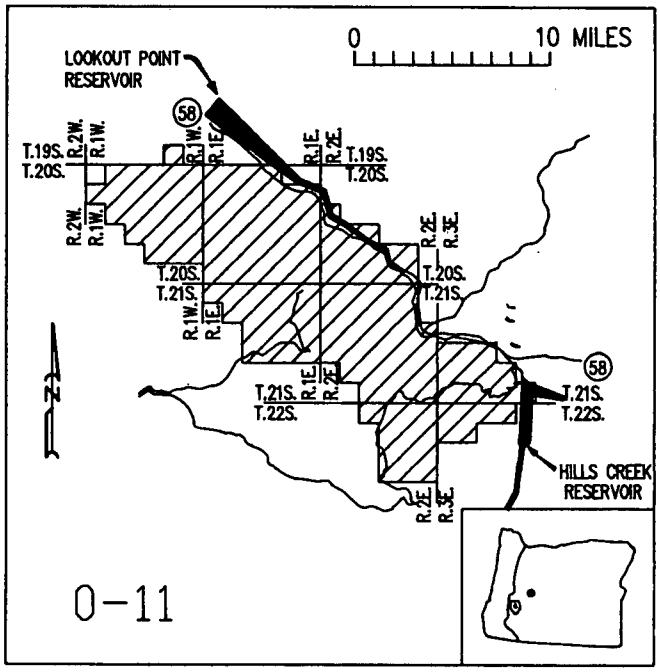
T. 21 S., R. 2 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 3 E., Secs. 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 22 S., R. 2 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 22 S., R. 3 E., Secs. 3, 4, 5, 6, 7, and 8, of the Willamette Meridian.

Excluding from the above areas any land within the Lookout Point, and Hills Creek Reservoir, and any private land.



Description of O–12 taken solely from Bureau of Land Management Maps; Oakridge 1974, Diamond Lake 1978, and Roseburg 1979, Oregon.

Lane and Douglas Counties

T. 21 S., R. 1 W., Sec. 31, of the Willamette Meridian.

T. 22 S., R. 1 W., Secs. 5, 9, 15, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 22 S., R. 2 W., Secs. 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 S., R. 2 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

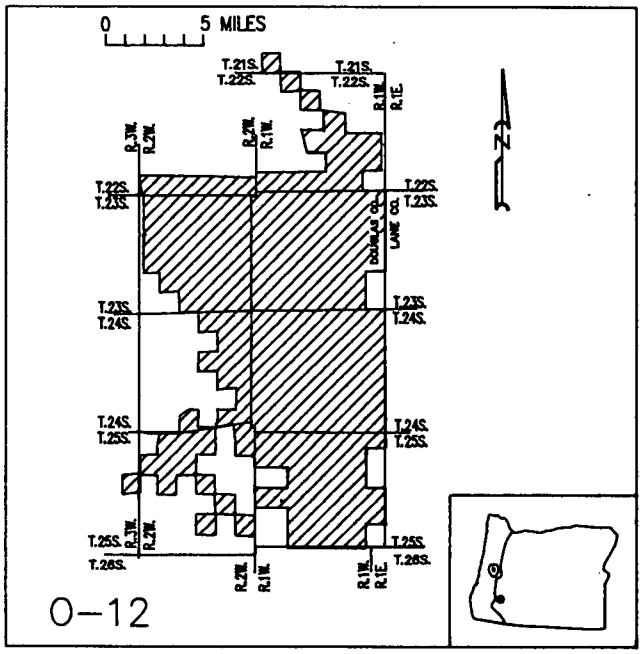
T. 24 S., R. 2 W., Secs. 1, 2, 3, 11, 12, 13, 14, 15, 23, 24, 25, 33, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, and 35, of the Willamette Meridian.

T. 25 S., R. 2 W., Secs. 1, 3, 4, 5, 7, 8, 9, 15, 17, 23, 25, and 27, of the Willamette Meridian.

T. 25 S., R. 3 W., Sec. 13, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–13 taken solely from Bureau of Land Management Map; Diamond Lake 1978, Oregon.
Douglas and Lane Counties

T. 24 S., R. 3 E., Secs. 22, 23, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 24 S., R. 4 E., Secs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 S., R. 5 E., Secs. 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 25 S., R. 2 E., Secs. 12, 24, 25, 26, and 35, of the Willamette Meridian.

T. 25 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 5 E., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 25 ½ S., R. 2 E., Secs. 32, 33, 34, and 35, of the Willamette Meridian.

T. 25 ½ S., R. 3 E., Secs. 35, and 36, of the Willamette Meridian.

T. 25 ½ S., R. 4 E., Secs. 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 S., R 1 E., Sec. 36, of the Willamette Meridian.

T. 26 S., R. 2 E., Secs. 2, 3, 4, 5, 8, 9, 10, 13, 15, 16, 17, 24, 25, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 S., R. 3 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

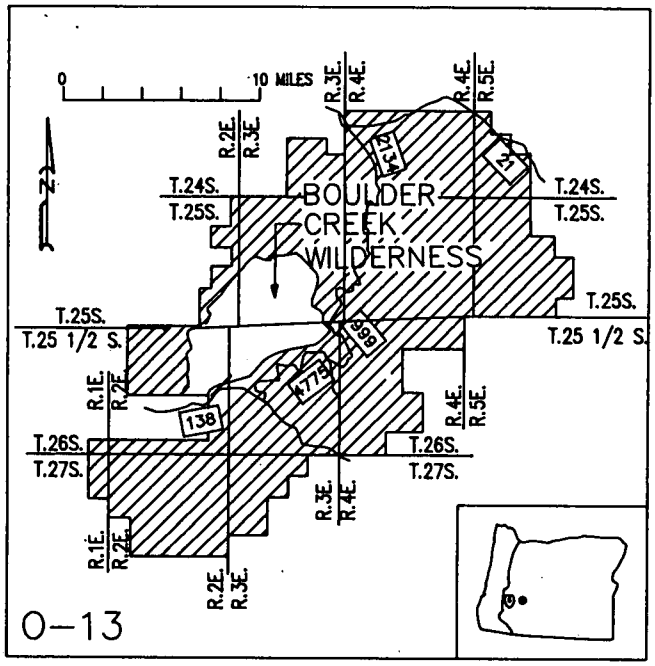
T. 26 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 27 S., R. 1 E., Secs. 1, and 12, of the Willamette Meridian.

T. 27 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, of the Willamette Meridian.

T. 27 S., R. 3 E., Secs. 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, and 20, of the Willamette Meridian.

Excluding from the above areas any lands within Boulder Creek Wilderness, and any private land.



Description of O–14 taken solely from Bureau of Land Management Surface and/or Mineral Management Maps; Diamond Lake 1978, and Roseburg 1979, Oregon.

Douglas County

T. 26 S., R. 1 W., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 27 S., R. 1 E., Secs. 31, 32, 33, and 34, of the Willamette Meridian.

T. 27 S., R. 1 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 S., R. 2 W., Sec. 36, of the Willamette Meridian.

T. 28 S., R. 1 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 28 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 2 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 3 W., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 S., R. 1 E., Secs. 5, 6, 7, and 8, of the Willamette Meridian.

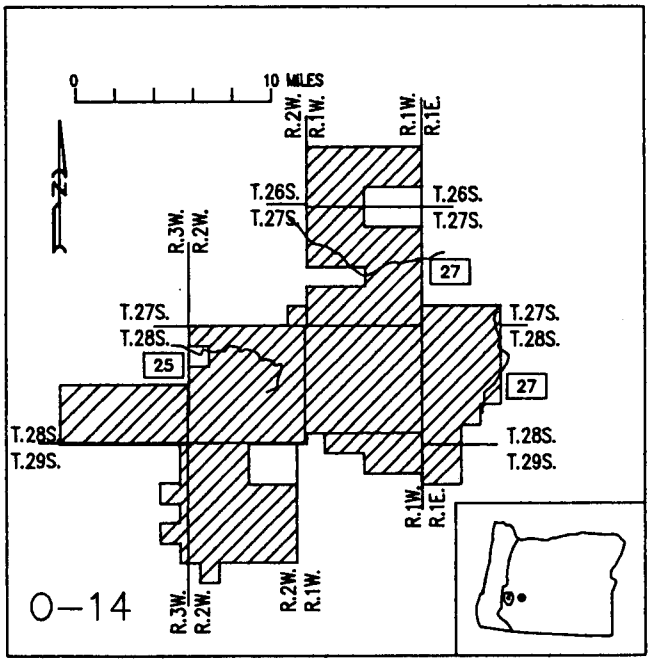
T. 29 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 10, 11, and 12, of the Willamette Meridian.

T. 29 S., R. 2 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 S., R. 3 W., Secs 13, and 25, of the Willamette Meridian.

T. 30 S., R. 2 W., Sec. 5, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–15 taken solely from Bureau of Land Management Map; Diamond Lake 1978, and Crater Lake 1978, Oregon.

Douglas and Jackson Counties

T. 28 S., R. 2 E., Secs., 25, 26, 27, 28, 33, 34, 35, and 36 of the Willamette Meridian.

T. 28 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 24, 25, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 4 E., Secs. 6, 7, 17, 18, 19, 20, 29, 30, 31, and 33, of the Willamette Meridian.

T. 29 S., R. 1 E., Secs. 23, 25, and 36, of the Willamette Meridian.

T. 29 S., R. 2 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 S., R. 3 E., Secs. 2, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 30, 33, 34, and 35, of the Willamette Meridian.

T. 29 S., R. 4 E., Secs. 4, 5, 7, 8, 9, and 18, of the Willamette Meridian.

T. 30 S., R. 1 E., Secs. 1, 12, 13, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 30 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

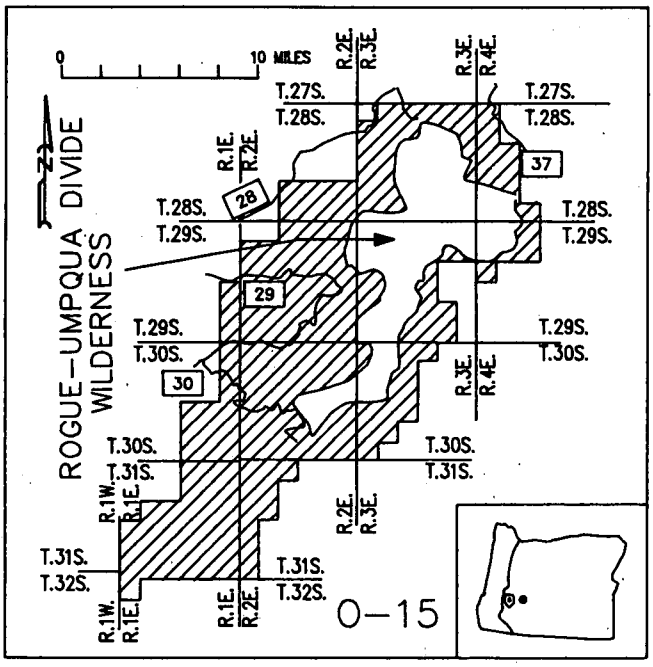
T. 30 S., R. 3 E., Secs. 3, 4, 6, 7, 8, 9, 16, 17, 19, 20, 21, 29, 30, and 31, of the Willamette Meridian.

T. 31 S., R. 1 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 2 E., Secs. 4, 5, 6, 7, 8, 17, 18, 19, 30, and 31, of the Willamette Meridian.

T. 32 S., R. 1 E., Sec. 6, of the Willamette Meridian.

Excluding from the above areas any land within the Rogue-Umpqua Divide Wilderness, and any private land.



Description of O–16 taken solely from Bureau of Land Management Map; Canyonville 1979, and Crater Lake 1978, Oregon.

Douglas, Jackson, and Josephine Counties

T. 30 S., R. 2 W., Sec. 31, of the Willamette Meridian.

T. 31 S., R. 2 W., Sec. 6, of the Willamette Meridian.

T. 30 S., R. 3 W., Secs. 1, 11, 12, 13, 14, 15, 20, 21, 22, 24, 26, 27, 31, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 3 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, of the Willamette Meridian.

T. 32 S., R. 3 W., Secs. 19, 30, and 31, of the Willamette Meridian.

T. 30 S., R. 4 W., Secs. 25, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 32 S., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 4 W., Secs. 5, 6, 7, 17, 18, and 19, of the

Willamette Meridian.

T. 30 S., R. 5 W., Sec. 35, of the Willamette Meridian.

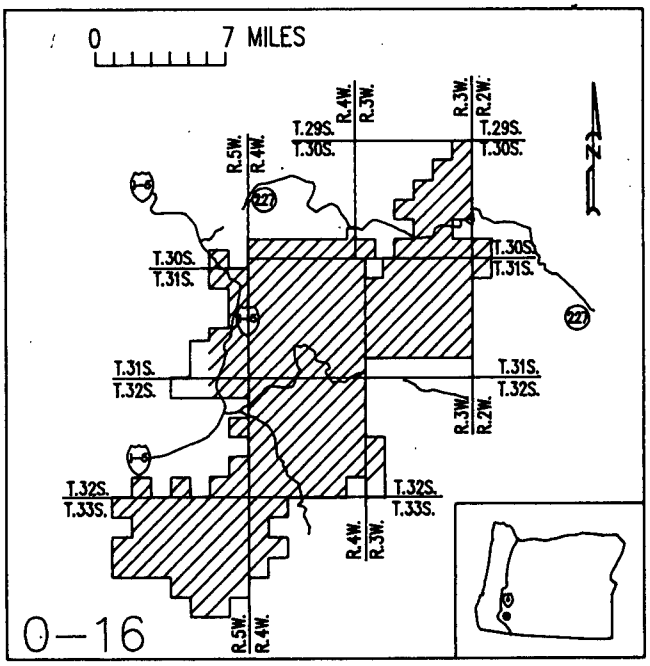
T. 31 S., R. 5 W., Secs. 1, 2, 12, 13, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 32 S., R. 5 W., Secs. 1, 2, 3, 4, 13, 25, 31, 33, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 5 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 6 W., Secs. 1, 13, and 24, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–17–A taken solely from Bureau of Land Management Map; Crater Lake 1978, Oregon.
Douglas and Jackson Counties

T. 32 S., R. 1 W., Secs. 1, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 1 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

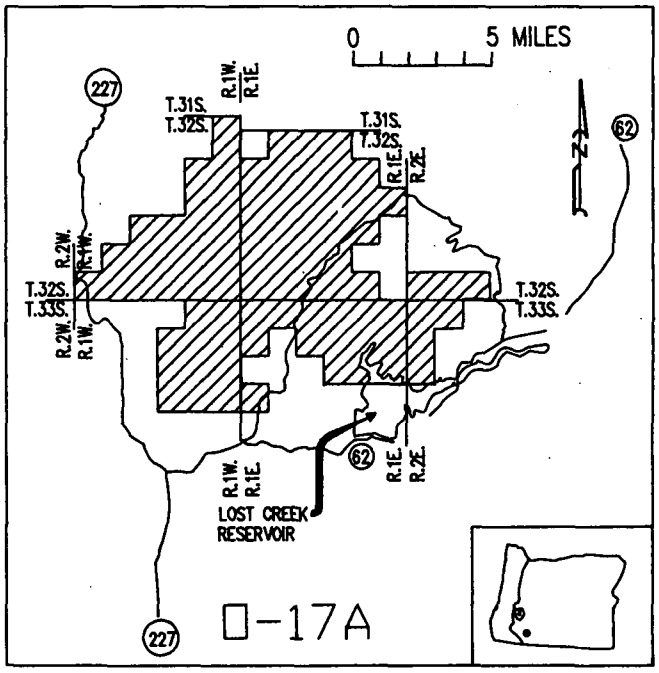
T. 32 S., R. 1 E., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 1 E., Secs. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, and 19, of the Willamette Meridian.

T. 32 S., R. 2 E., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 33 S., R. 2 E., Secs. 5, 6, 7, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–17–B taken solely from Bureau of Land Management Map; Crater Lake, Oregon 1978.
Jackson County

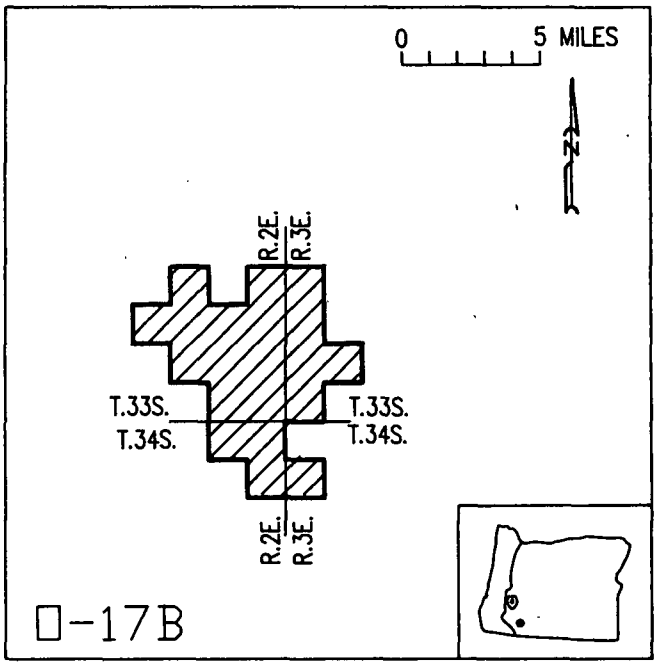
T. 33 S., R. 2 E., Secs. 13, 15, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 3 E., Secs. 18, 19, 29, 30, and 31, of the Willamette Meridian.

T. 34 S., R. 2 E., Secs. 1, 2, and 12, of the Willamette Meridian.

T. 34 S., R. 3 E., Sec. 7, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–18 taken from Bureau of Land Management Map; Crater Lake, Oregon 1978.

Jackson and Klamath Counties

T. 31 S., R. 3 E., Secs. 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 4 E., Secs. 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 32 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Willamette Meridian.

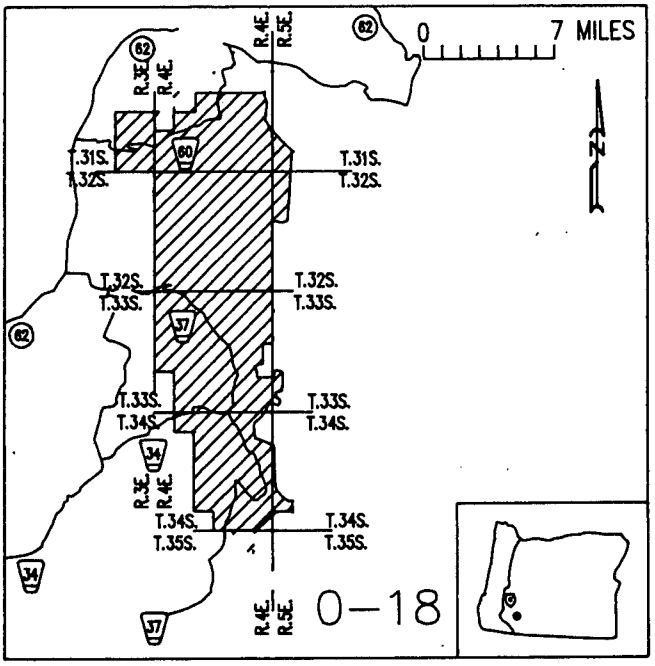
T. 31 S., R. 5 E., Secs. 30, and 31, of the Willamette Meridian.

T. 32 S., R. 5 E., Secs. 6, 7, and 18, of the Willamette Meridian.

T. 33 S., R. 5 E., Secs. 30, and 31, of the Willamette Meridian.

T. 34 S., R. 5 E., Sec. 30, of the Willamette Meridian.

Excluding from the above areas any land within Sky Lakes Wilderness, Crater Lake National Park, and any private lands.



Description of O–19 taken solely from Bureau of Land Management Map; Medford 1978, Oregon.

Jackson and Klamath Counties

T. 37 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 4 E., Secs. 27, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 4 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 36 S., R. 5 E., Secs. 20, 21, 28, 29 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 37 S., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

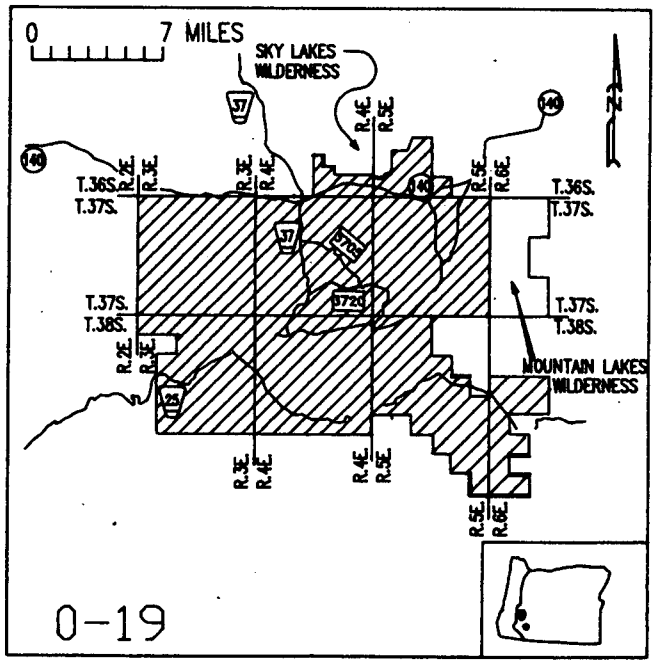
T. 38 S., R. 5 E., Secs. 4, 5, 6, 7, 8, 9 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36, of the Willamette Meridian.

T. 39 S., R. 5 E., Secs. 1, 2, 3, 11, 12, and 13, of the Willamette Meridian.

T. 38 S., R. 6 E., Secs. 19, 20, 21, 28, 29, 30, and 31, of the Willamette Meridian.

T. 39 S. R. 6 E., Secs. 5, 6, 7, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Sky Lakes Wilderness, and any private lands.



Description of O–20–O taken soley from Bureau of Land Management Map; Medford 1978, Oregon.

Jackson County

T. 41 S., R. 2 W., Secs. 12, 13, and 14, of the Willamette Meridian.

T. 39 S., R. 1 W., Secs. 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 1 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

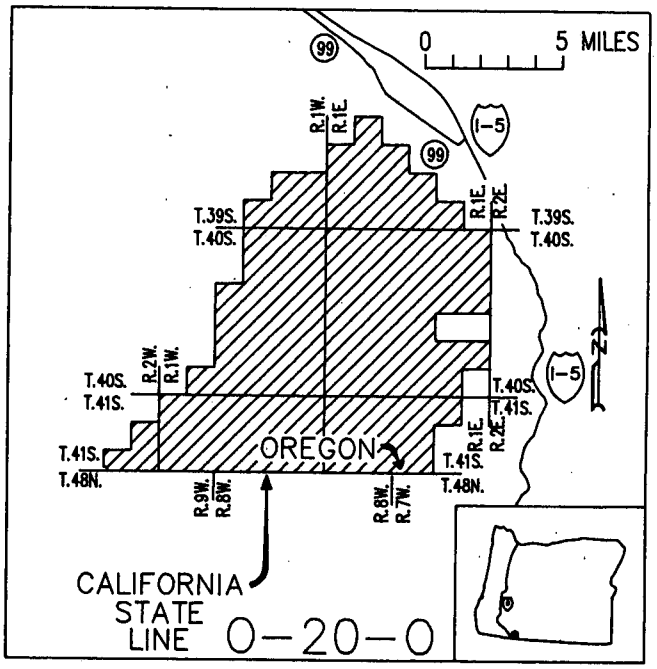
T. 41 S., R. 1 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 39 S., R. 1 E., Secs. 17, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 40 S., R. 1 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 41 S., R. 1 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–21 taken solely from Bureau of Land Management Map; Grants Pass 1978, Oregon and California.

Josephine County

T. 37 S., R. 7 W., Secs. 21, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 6 W., Secs. 21, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 5 W., Sec. 31, of the Willamette Meridian.

T. 38 S., R. 7 W., Secs. 1, 2, 3, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

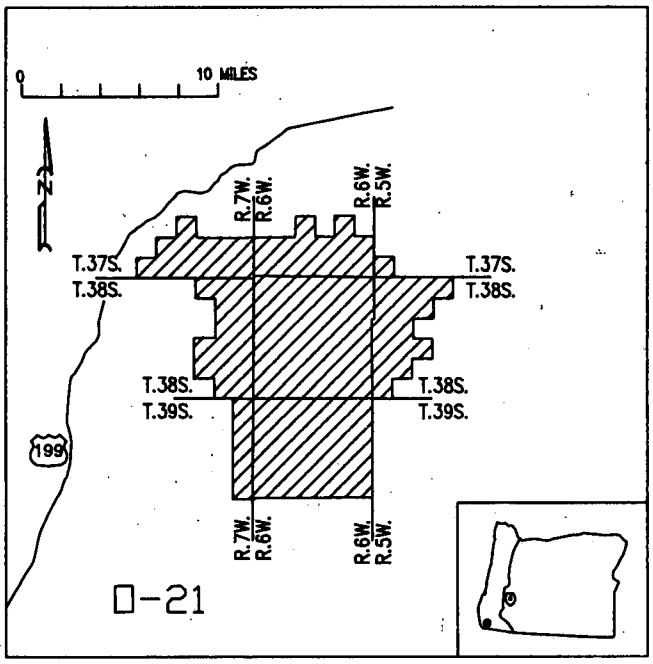
T. 38 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 S., R. 5 W., Secs. 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 29, 30, and 31, of the Willamette Meridian.

T. 39 S., R. 7 W., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.

T. 39 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O-22-O taken solely from Bureau of Land Management Maps; Gold Beach 1978, and Grants Pass 1978, Oregon and California, and Forest Vistor Map; Siskiyou National Forest 1984.

Curry County

T. 39 S., R. 12 W., Secs. 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 39 S., R. 11 W., Secs. 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

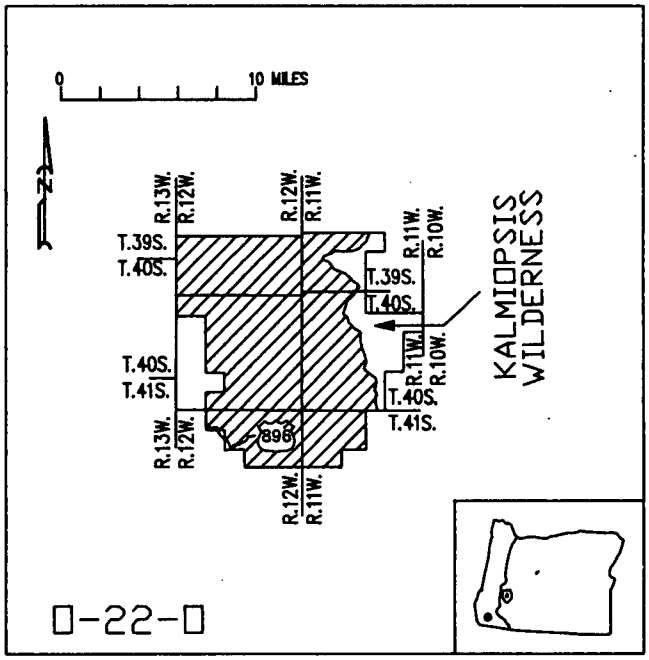
T. 40 S., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 S., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 41 S., R. 12 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, and 15, of the Willamette Meridian.

T. 41 S., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Kalmiopsis Wilderness, and any private lands.



Description of O-23 taken solely from Bureau of Land Management Maps; Port Orford 1978, Gold Beach 1978, Canyonville 1979, and Grants Pass 1978, Oregon and California.

Josephine and Curry Counties

T. 35 S., R. 12 W., Sec. 36, of the Willamette Meridian.

T. 35 S., R. 11 W., Secs. 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 12 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, and 27, of the Willamette Meridian.

T. 36 S., R. 10 W., Secs. 5, 6, 7, 8, 17, 18, 20, 21, 22, 23, 25, and 36, of the Willamette Meridian.

T. 36 S., R. 9 W., Secs. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 36 S., R. 8 W., Secs. 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 37 S., R. 12 W., Secs. 1, 2, 3, 9, 10, 13, 17, 20, 21, 24, 26, 27, 28, 34, and 35, of the Willamette Meridian.

T. 37 S., R. 11 W., Sec. 29, of the Willamette Meridian.

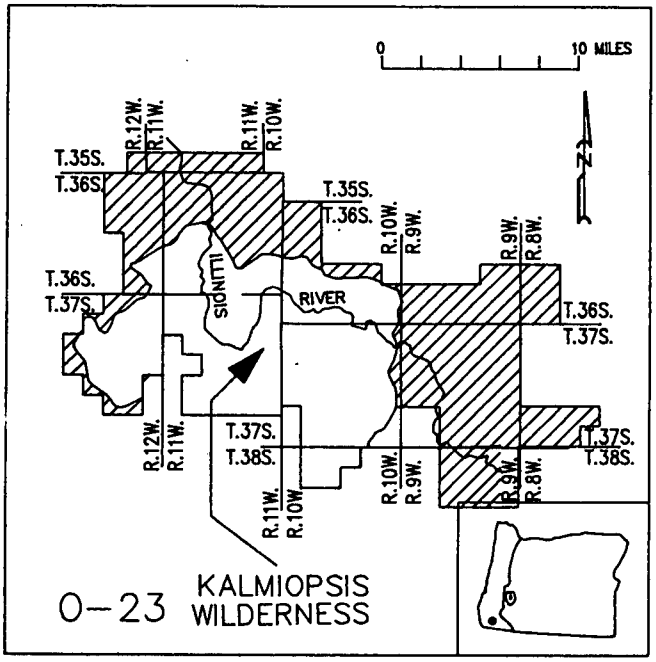
T. 37 S., R. 10 W., Secs. 1, 12, 13, and 24, of the Willamette Meridian.

T. 37 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 S., R. 8 W., Secs. 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 38 S., R. 9 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, and 16, of the Willamette Meridian.

Excluding from the above areas any lands within the Kalmiopsis Wilderness, and any private lands.



Description of O–24 taken solely from Bureau of Land Management Map; Canyonville 1979, Oregon.

Curry and Josephine Counties

T. 34 S., R. 7 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 35 S., R. 7 W., Secs. 5, and 6, of the Willamette Meridian.

T. 33 S., R. 8 W., Secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 8 W., Secs., 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 35 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, and 7, of the Willamette Meridian.

T. 33 S., R. 9 W., Secs. 1, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

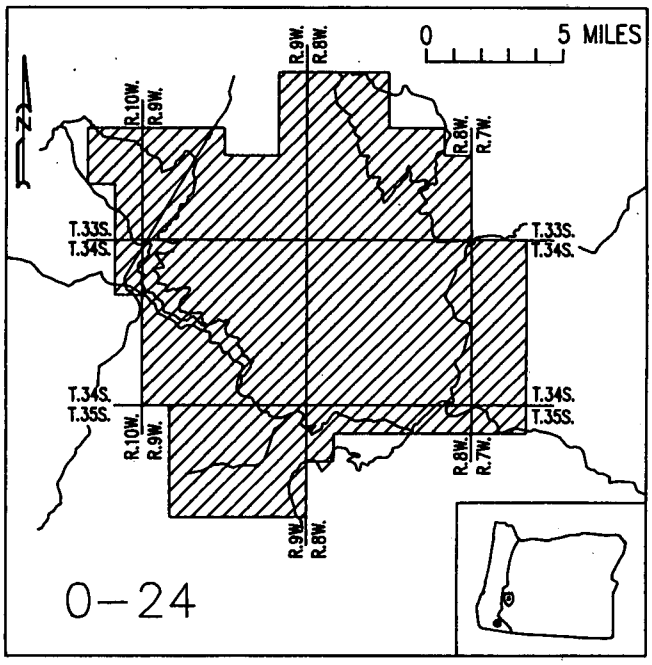
T. 34 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 35 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 33 S., R. 10 W., Secs. 13, 14, 23, 24, 25, and 36, of the Willamette Meridian.

T. 34 S. R. 10 W., Secs. 1, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–25 taken solely from Bureau of Land Management Maps; Port Orford 1978, and Canyonville 1979, Oregon.

Coos, Curry, and Douglas Counties

T. 31 S., R. 9 W., Secs. 31, and 33, of the Willamette Meridian.

T. 32 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, and 21, of the Willamette Meridian.

T. 32 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 S., R. 10 W., Secs. 2, 3, 4, 9, 10, 15, 16, 21, 22, 26, 27 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 34 S., R. 10 W., Secs. 3, 4, 5, and 6, of the Willamette Meridian.

T. 34 S., R. 10 ½ W., Secs. 6, 7, and 18, of the Willamette Meridian.

T. 32 S., R. 11 W., Secs. 8, 9, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 S., R. 11 W., Secs. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 11 W., Secs. 1, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 27, 28, 30, 31, and 32, of the Willamette Meridian.

T. 32 S., R. 12 W., Secs. 25, 26, 32, 33, 34, 35, and 36, of the Willamette Meridian.

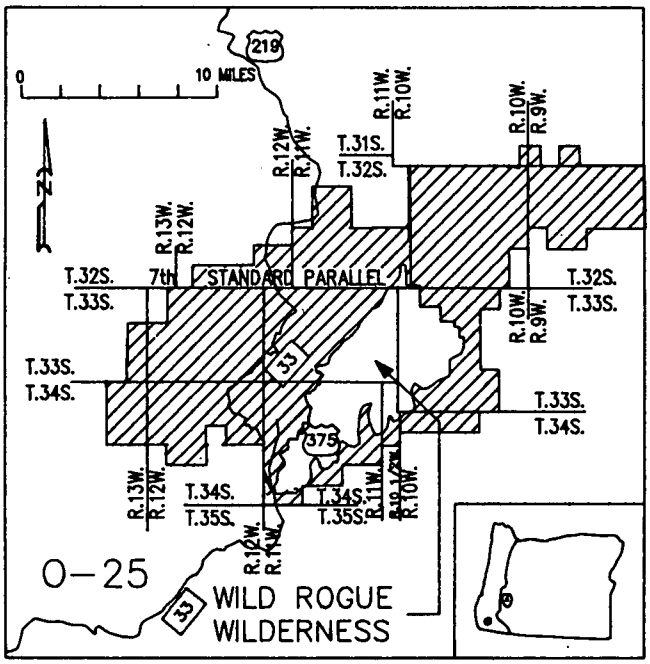
T. 33 S., R. 12 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, and 21, of the Willamette Meridian.

T. 33 S., R. 13 W., Secs. 24, 25, and 36, of the Willamette Meridian.

T. 34 S., R. 13 W., Secs. 1, 2, 11, 12, 13, and 14, of the Willamette Meridian.

Excluding from the above areas any land within the Wild Rogue Wilderness, and any private lands.



Description of O-26 taken solely from Bureau of Land Management Map; Roseburg 1979, and Canyonville 1979, Oregon.

Douglas, Jackson, and Josephine Counties

T. 29 S., R. 7 W., Secs. 15, 19, 21, 22, 23, 27, and 33, of the Willamette Meridian.

T. 29 S., R. 8 W., Secs. 11, 13, 14, 15, 23, 24, 25, 26, 27, 33, 34, and 35, of the Willamette Meridian.

T. 29 ½ S., R. 7 W., Secs. 33, and 34, of the Willamette Meridian.

T. 30 S., R. 7 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 30 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 30 S., R. 9 W., Secs. 25, and 36, of the Willamette Meridian.

T. 31 S., R. 5 W., Secs. 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, and 18, of the Willamette Meridian.

T. 31 S., R. 6 W., Secs. 1, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, and 23, of the Willamette Meridian.

T. 31 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

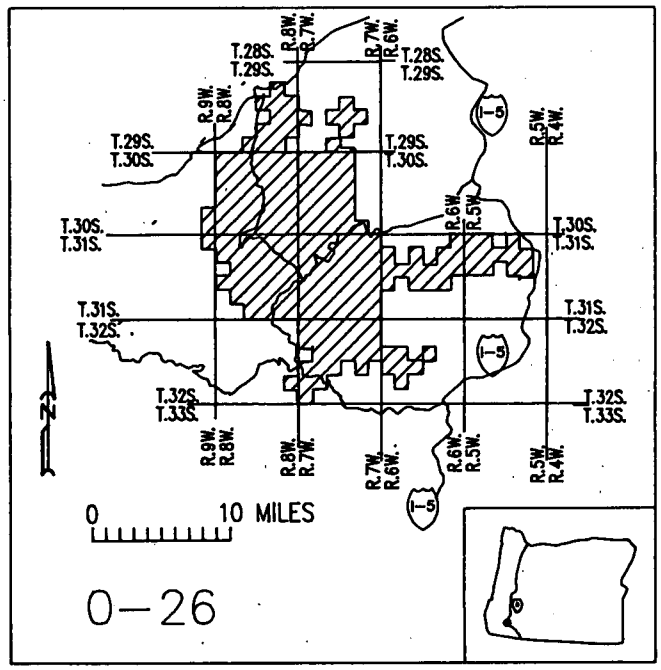
T. 31 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 31 S., R. 9 W., Sec. 1, of the Willamette Meridian.

T. 32 S., R. 6 W., Secs. 15, 17, 18, 19, 20, 21, and 29, of the Willamette Meridian.

T. 32 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 23, 29, 30, and 31, of the Willamette Meridian.T. 32 S., R. 8 W., Sec. 25, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–27 taken solely from Bureau of Land Management Surface–Mineral Management Map; Roseburg 1983, Oregon.

Coos County

T. 25 S., R. 10 W., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 26 S., R. 9 W., Secs. 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 26 S., R. 10 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 S., R. 9 W., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 27 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 9 W., Secs. 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

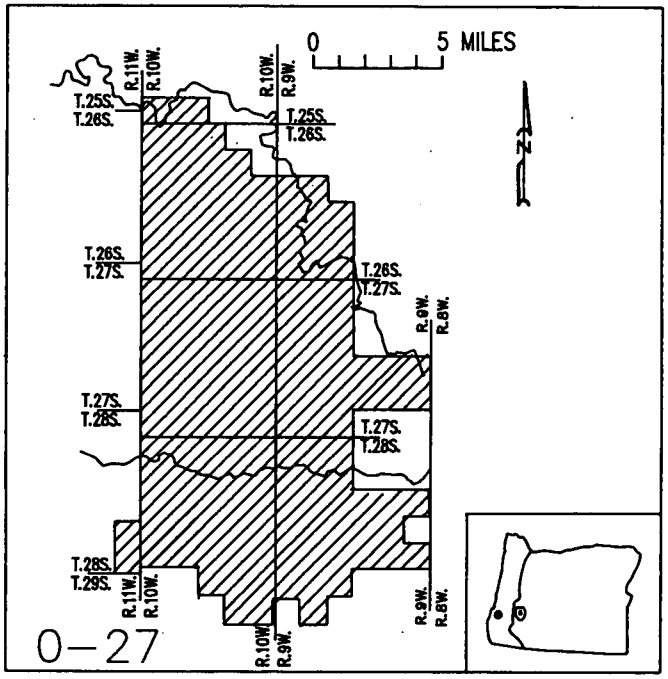
T. 28 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 S., R. 11 W., Secs. 25, and 36, of the Willamette Meridian.

T. 29 S., R. 9 W., Sec. 5, of the Willamette Meridian.

T. 29 S., R. 10 W., Secs. 1, 2, and 3, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–28 taken solely from Bureau of Land Management Map; Cottage Grove 1979, and Roseburg 1979, Oregon.

Douglas County

T. 23 S., R. 8 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 S., R. 9 W., Secs. 6, 7, 8, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, of the Willamette Meridian.

T. 23 S., R. 10 W., Sec. 1, of the Willamette Meridian.

T. 24 S., R. 7 W., Secs. 6, 7, 18, and 19, of the Willamette Meridian.

T. 24 S., R. 8 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

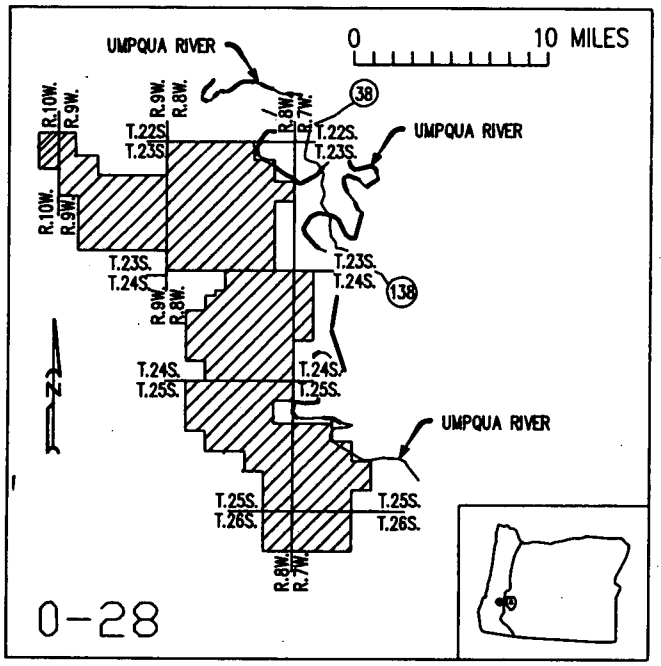
T. 25 S., R. 7 W., Secs. 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 25 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 13, 14, 15, 16, 23, 24, 25, and 36, of the Willamette Meridian.

T. 26 S., R. 7 W., Secs. 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

T. 26 S., R. 8 W., Secs. 1, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–29 taken solely from Bureau of Land Management Maps; Cottage Grove 1979, and Reedsport 1980, Oregon.

Douglas County

T. 20 S., R. 10 W., Secs. 35, and 36, of the Willamette Meridian.

T. 20 S., R. 9 W., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 21 S., R. 11 W., Secs. 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

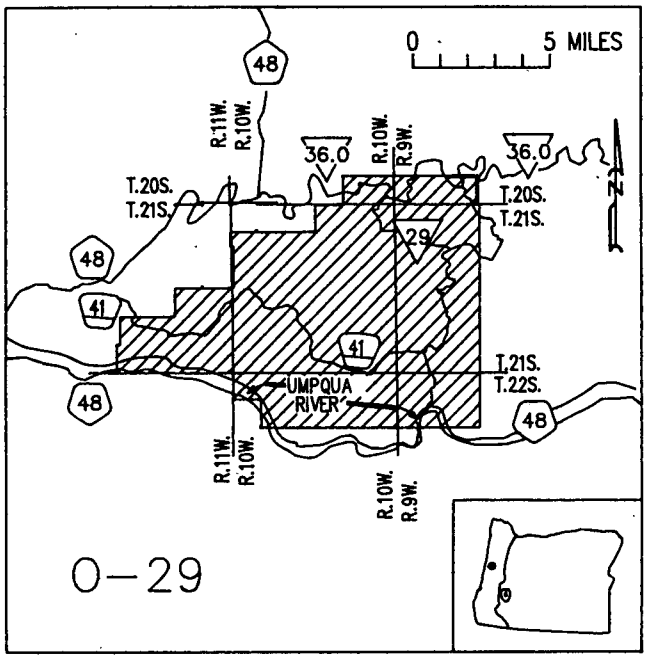
T. 21 S., R. 10 W., Secs. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19. 20. 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 S., R. 9 W., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21,, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 22 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12, of the Willamette Meridian.

T. 22 S., R. 9 W., Secs. 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–30 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.

Douglas and Lane Counties

T. 19 S., R. 6. W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 5 W., Secs. 7, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 20 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 S., R. 5 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 21 S., R. 7 W., Secs. 1, 13, 25, 35, and 36, of the Willamette Meridian.

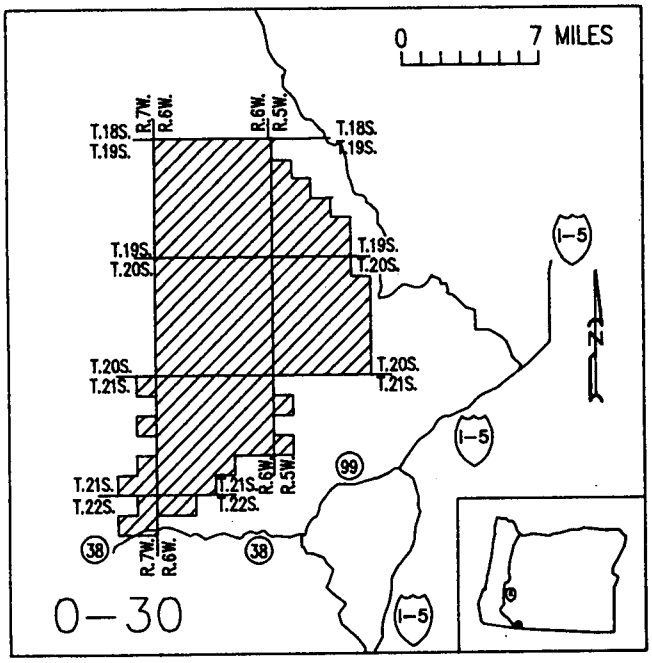
T. 21 S., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 21. S., R. 5 W., Secs. 7, and 19, of the Willamette Meridian.

T. 22 S., R. 7 W., Secs. 1, 11, and 12, of the Willamette Meridian.

T. 22 S., R. 6 W., Secs. 5, and 6, of the Willamette Meridian.

Excluding any private lands in the above area.



Description of O–31 taken solely from Bureau of Land Management Maps; Cottage Grove 1979, and Reedsport 1980, and Eugene 1980, Oregon.

Lane and Douglas Counties

T. 18 S., R. 11 W., Secs. 13, 24, 25, 26, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 10 W., Secs. 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 18 S., R. 9 W., Secs. 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 S., R. 8 W., Secs. 19, 29, 30, 31, and 32, of the Willamette Meridian.

T. 19 S., R. 11 W., Secs. 1, 2, 3, 4, 12, 13, 24, and 25, of the Willamette Meridian.

T. 19 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

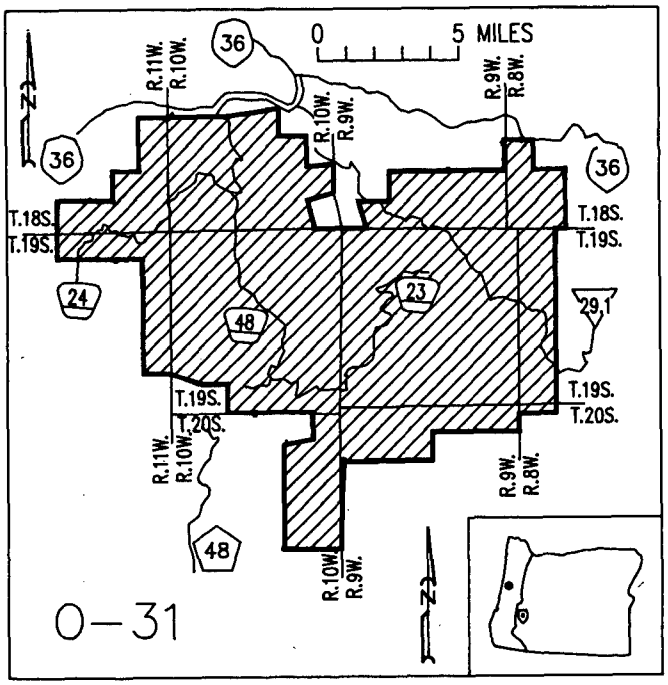
T. 19 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 S., R. 8 W., Secs. 6, 7, 18, 19, 30, and 31, of the Willamette Meridian.

T. 20 S., R. 10 W., Secs. 1, 11, 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 20 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–32 taken solely from Bureau of Land Management Map; Eugene 1980, Oregon.
Lincoln, Benton, and Lane Counties

T. 14 S., R. 9 W., Sec. 25, of the Willamette Meridian.

T. 14 S., R. 8 W., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 14 S., R. 7 W., Secs. 13, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 9 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 7 W., Secs. 3, 4, 5, and 6, of the Willamette Meridian.

T. 16 S., R. 9 W., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13,14,15,16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

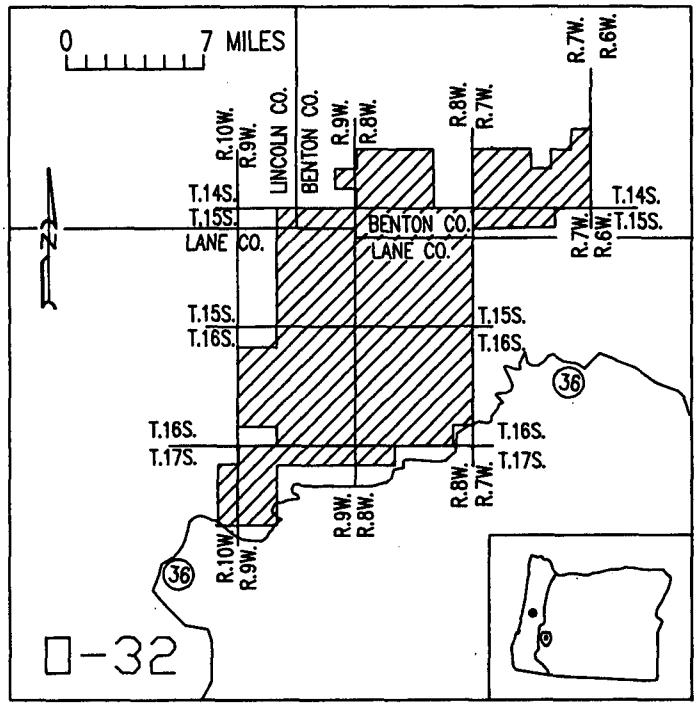
T. 16 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 17 S., R. 10 W., Secs. 12, 13, and 24, of the Willamette Meridian.

T. 17 S., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 17, 18, 19, and 20, of the Willamette Meridian.

T. 17 S., R. 8 W., Secs. 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–33 taken solely from Bureau of Land Management Maps; Corvallis 1980, and Eugene 1980, Oregon.
Lincoln and Benton Counties

T. 12 S., R. 8 W., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

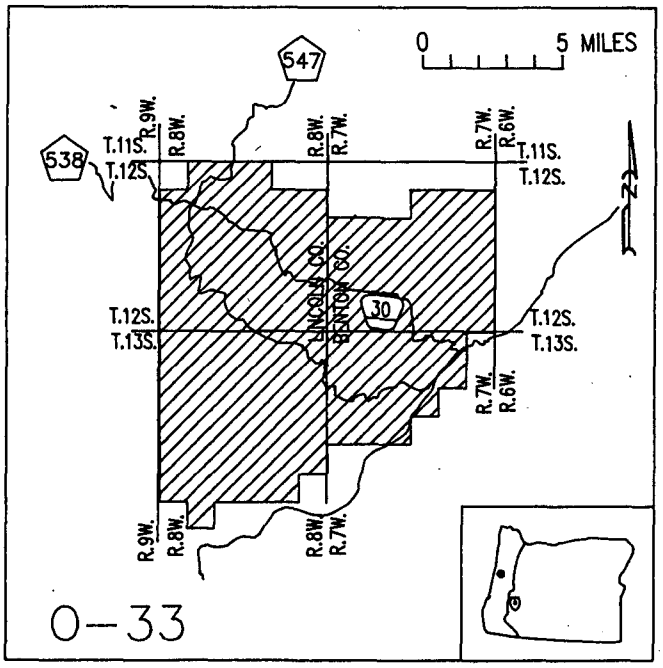
T. 12 S., R. 7 W., Secs. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 13 S., R. 7 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, of the Willamette Meridian.

T. 14 S., R. 8 W., Sec. 5, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–34 taken solely from U.S. Geological Survey Map; Waldport 1980, Bureau of Land Management Map; Eugene 1980, and Corvallis 1980, Oregon.
Lincoln and Benton Counties

T. 12 S., R. 11 W., Secs. 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 12 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 13 S., R. 11 W., Secs. 1, 2, 11, 12, 13, 14, 15, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 13 S., R. 10 ½ W., Secs. 6 and 7, of the Willamette Meridian.

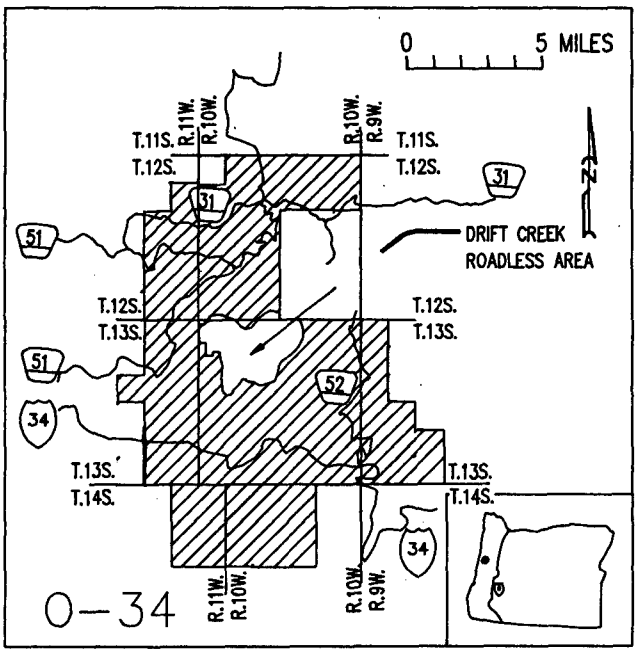
T. 13 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 S., R. 9 W., Secs. 6, 7, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 14 S., R. 11 W., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 14 S., R. 10 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Drift Creek Wilderness, and any private lands.



Description of O–35 taken solely from Bureau of Land Management Maps; Yamhill River 1980, and Corvallis 1980, Oregon.
Lincoln and Tillamook Counties

T. 5 S., R. 10 W., Secs. 32, 33, 34, and 35, of the Willamette Meridian.

T. 6 S., R. 11 W., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

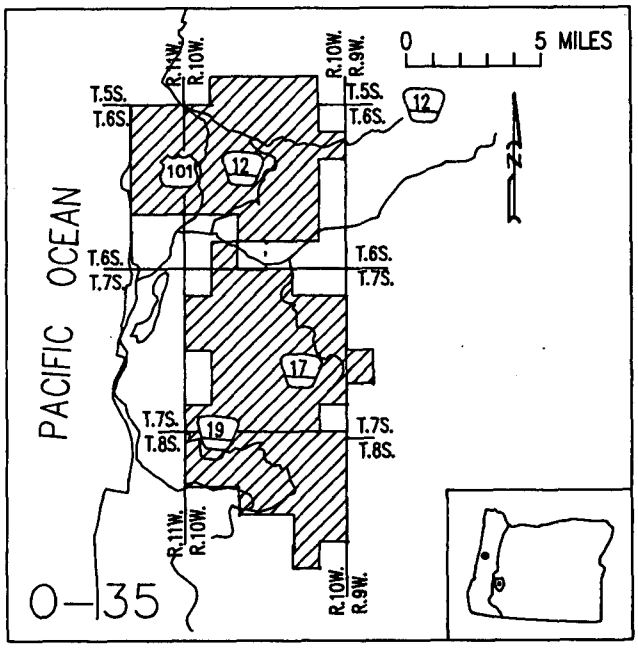
T. 6 S., R. 10 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, and 32, of the Willamette Meridian.

T. 7 S., R. 10 W., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 7 S., R. 9 W., Sec. 19, of the Willamette Meridian.

T. 8 S., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, and 26, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–36 taken solely from Bureau of Land Management Map; Yamhill River 1980, Oregon.

Tillamook and Yamhill Counties

T. 2 S., R. 8 W., Secs. 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 3 S., R. 9 W., Secs. 1, and 12, of the Willamette Meridian.

T. 3 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 7 W., Secs. 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 3 S., R. 6 W., Secs. 7, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 4 S., R. 9 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, and 36 Willamette Meridian.

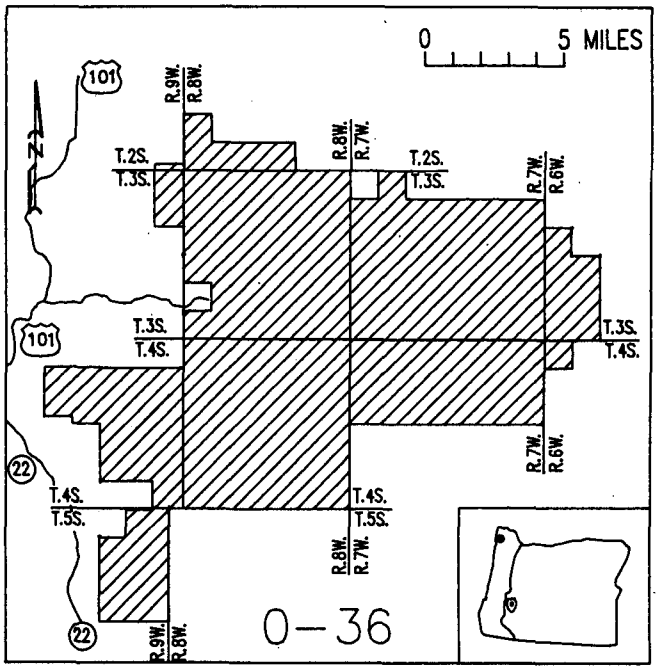
T. 4 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 4 S., R. 6 W., Secs. 5, 6, 7, and 18, of the Willamette Meridian.

T. 5 S., R. 9 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–37 taken solely from Bureau of Land Management Map; Corvallis 1980, Oregon.

Polk County

T. 7 S., R. 8 W., Secs. 1, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

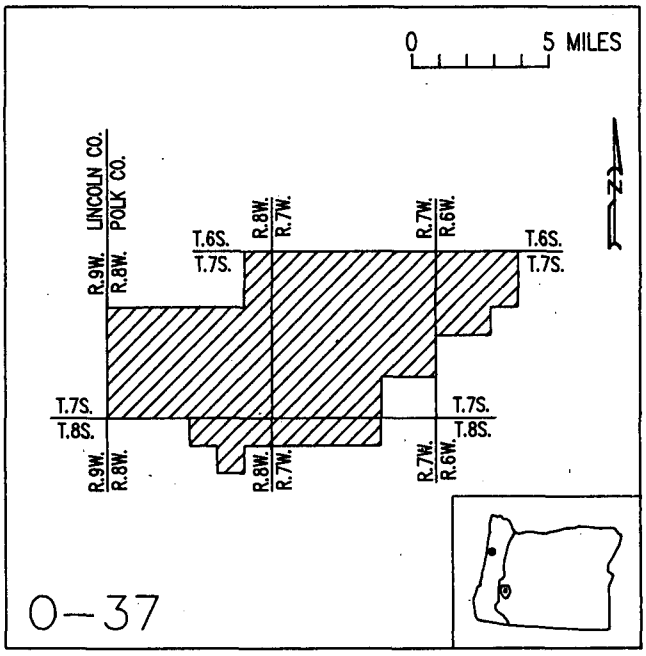
T. 7 S., R. 7 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 7 S., R. 6 W., Secs. 4, 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

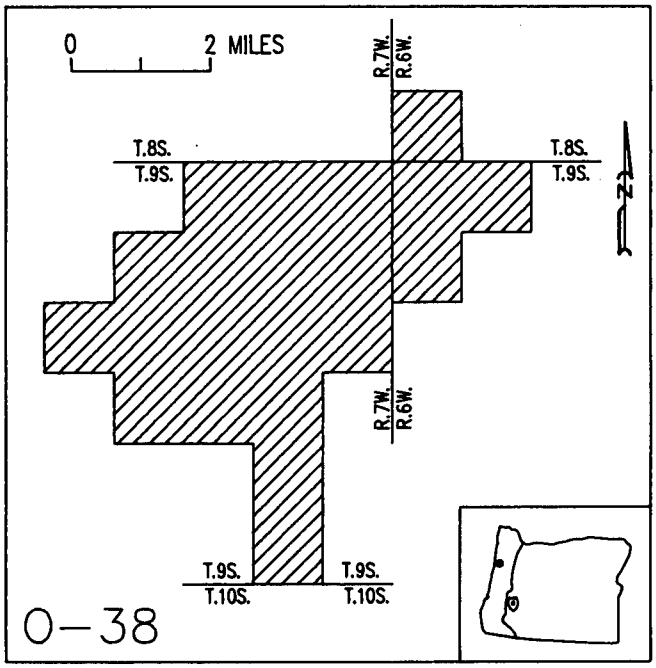
T. 8 S., R. 8 W., Secs. 1, 2, 3, and 11, of the Willamette Meridian.

T. 8 S., R. 7 W., Secs. 3, 4, 5, and 6, of the Willamette Meridian.

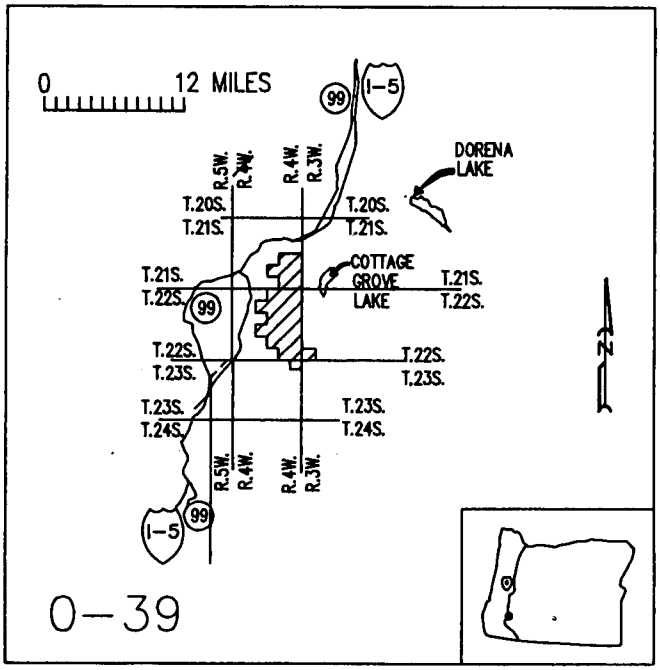
Excluding any private lands within the above area.



Description of O–38 taken solely from Bureau of Land Management Map; Corvallis 1980, Oregon.
Polk County
T. 8 S., R. 6 W., Sec. 31, of the Willamette Meridian.
T. 9 S., R. 6 W., Secs. 5, 6, and 7, of the Willamette Meridian.
T. 9 S., R. 7 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16,
17, 21, 22, 23, 26, and 35, of the Willamette Meridian.
Excluding any private lands within the above area.



Description of O–39 taken solely from Bureau of Land Management Map; Cottage Grove 1979, Oregon.
Douglas and Lane Counties
T. 21 S., R. 4 W., Secs. 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.
T. 22 S., R. 4 W., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.
T. 22 S., R. 3 W., Sec. 31, of the Willamette Meridian.
T. 23 S., R. 4 W., Sec. 1, of the Willamette Meridian.
Excluding any private lands within the above area.



Description of O–40 taken solely from Bureau of Land Management Map; Medford 1978, Oregon.

Jackson County

T. 41 S., R. 1 E., Secs. 12, and 13, of the Willamette Meridian.

T. 40 S., R. 2 E., Secs. 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 41 S., R. 2 E., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 39 S., R. 3 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 31, 34, 35, and 36, of the Willamette Meridian.

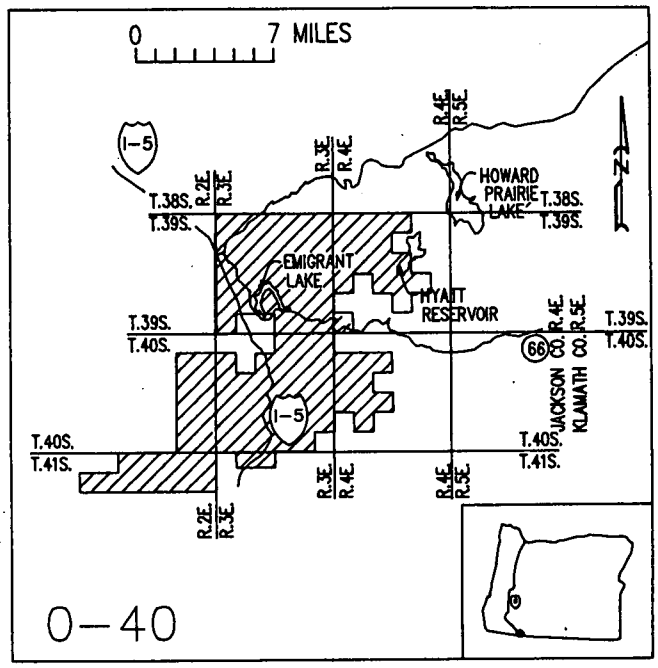
T. 40 S., R. 3 E., Secs. 1, 2, 3, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 41 S., R. 3 E., Secs. 4, and 5, of the Willamette Meridian.

T. 39 S., R. 4 E., Secs. 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 21, 22, 23, 27, and 31, of the Willamette Meridian.

T. 40 S., R. 4 E., Secs. 7, 8, 9, 17, 18, 19, 20, 21, and 29, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–41 taken solely from Bureau of Land Management Map; Madras 1978, Oregon.

Jefferson County

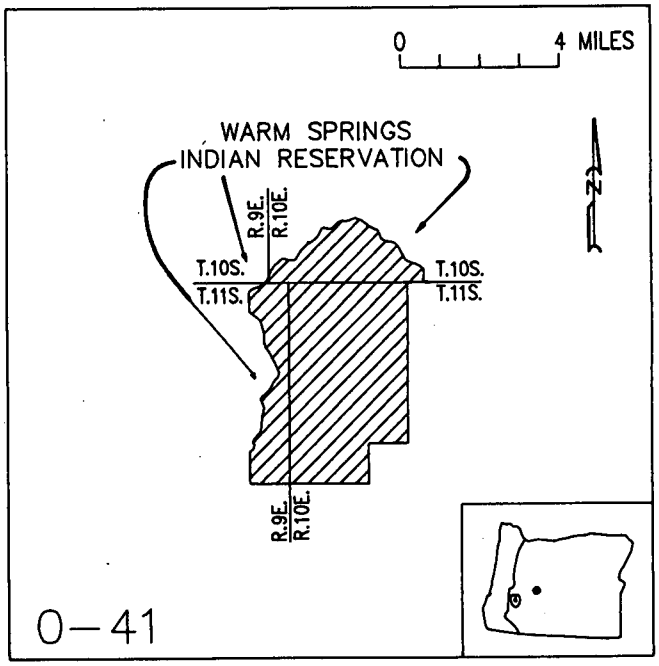
T. 10 S., R. 9 E., Sec. 36, of the Willamette Meridian.

T. 10 S., R. 10 E., Secs. 27, 28, 29, 31, 32, 33, and 34, of the Willamette Meridian.

T. 11 S., R. 9 E., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.

T. 11 S., R. 10 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 29, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and any private lands.



Description of O–42 taken solely from Bureau of Land Management Map; Madras 1978, Oregon.

Jefferson County

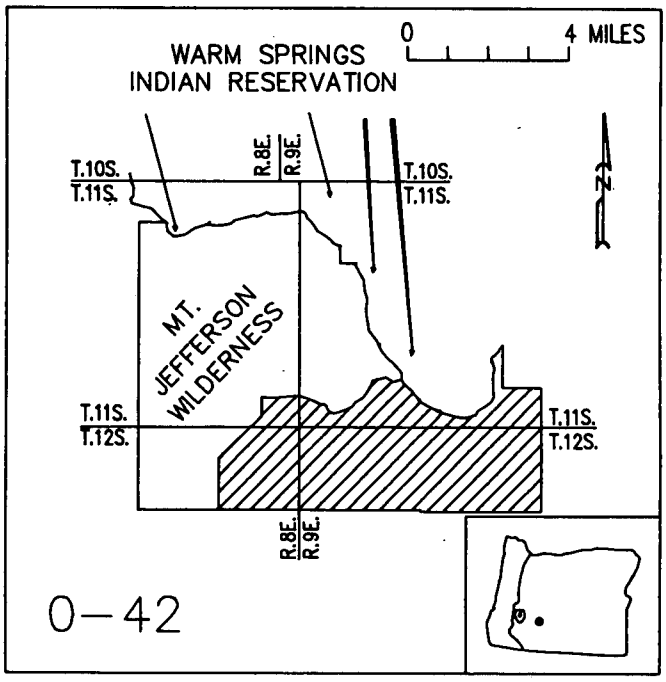
T. 11 S., R. 8 E., Secs. 35, and 36, of the Willamette Meridian.

T. 11 S., R. 9 E., Secs. 26, 28, 29, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 12 S., R. 8 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 12 S., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, of the Willamette Meridian.

Excluding from the above areas any lands within Warm Springs Indian Reservation, and Mt. Jefferson Wilderness, and any private lands.



Description of O–44 taken solely from Bureau of Land Management Map; Bend 1980, Oregon.

Jefferson, Deschutes, and Linn Counties

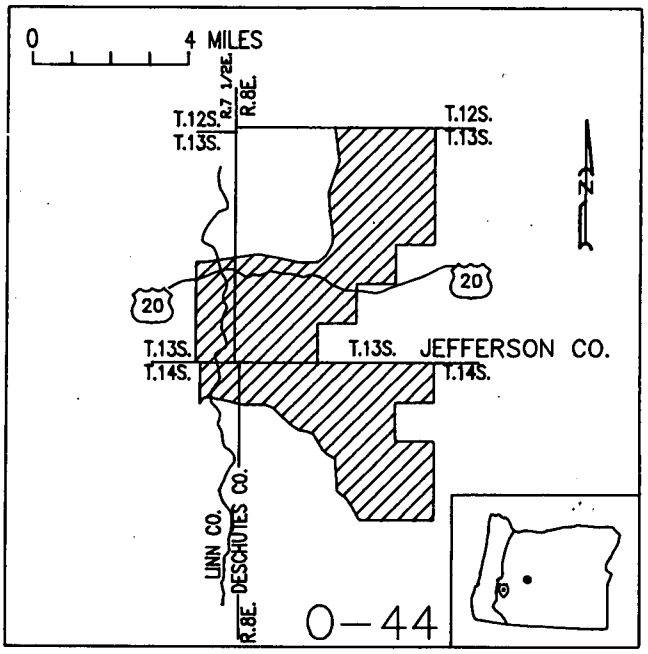
T. 13 S., R. 7 ½ E., Secs. 24, 25, and 36, of the Willamette Meridian.

T. 13 S., R. 8 E., Secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 19, 20, 21, 22, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 14 S., R. 7 ½ E., Secs. 1, and 12, of the Willamette Meridian.

T. 14 S., R. 8 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 21, 22, and 23, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Jefferson Wilderness, Mt. Washington Wilderness, and any private lands.



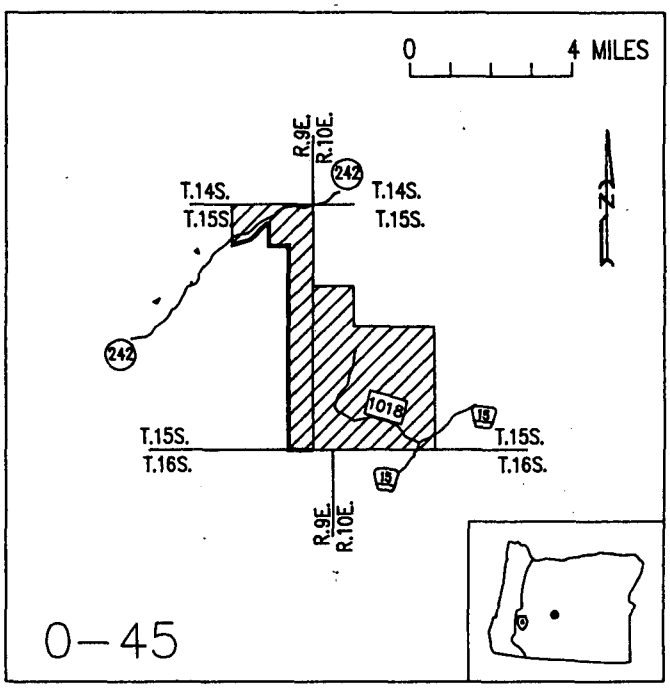
Description of O–45 taken solely from Bureau of Land Management Map; Bend 1980, Oregon.

Deschutes County

T. 15 S., R. 8 E., Secs. 1, 2, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 15 S., R. 9 E., Secs. 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Washington Wilderness and Three Sisters Wilderness, and any private lands.



Description of O–46 taken solely from Bureau of Land Management Map; Nehalem River 1979, Oregon.

Tillamook County

T. 3 N., R. 9 W., Secs. 34, 35, and 36, of the Willamette Meridian.

T. 3 N., R. 8 W., Secs. 31, and 32, of the Willamette Meridian.

T. 2 N., R. 10 W., Secs. 13, 24, 25, and 36, of the Willamette Meridian.

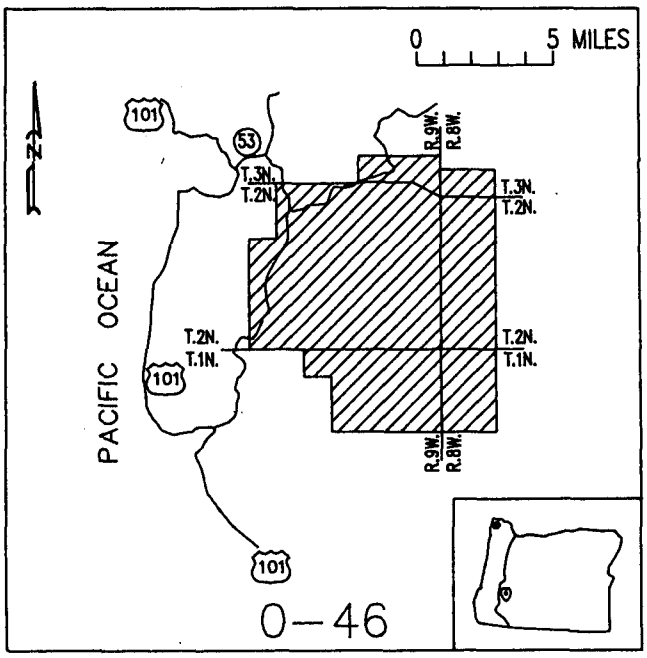
T. 2 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 2 N., R. 8 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 1 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, and 16, of the Willamette Meridian.

T. 1 N., R. 8 W., Secs. 5, 6, 7, 8, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–47 taken solely from Bureau of Land Management Map; Nehalem River 1979, Oregon.
Columbia, Washington, Clatsop, and Tillamook Counties

T. 4 N., R. 6 W., Secs. 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 N., R. 5 W., Secs. 17, and 18, of the Willamette Meridian.

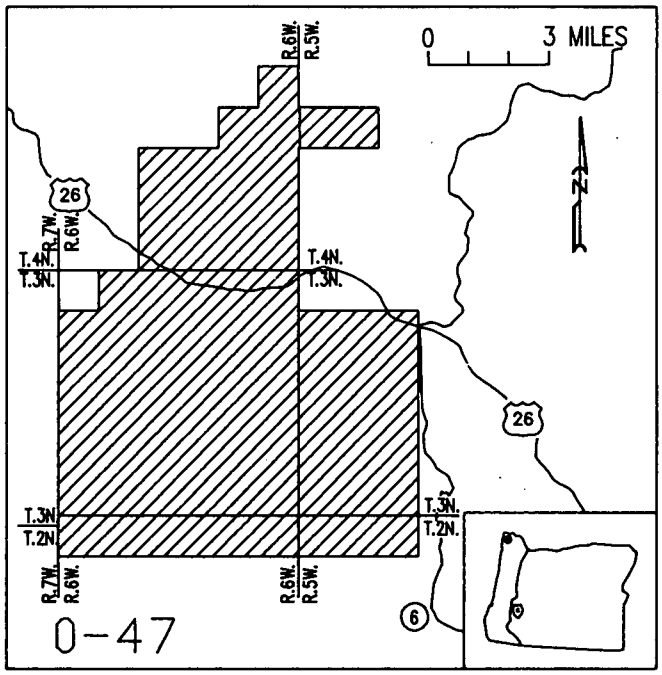
T. 3 N., R. 6 W., Secs. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 2 N., R. 6 W., Secs. 1, 2, 3, 4, 5, and 6, of the Willamette Meridian.

T. 3 N., R. 5 W., Secs. 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 2 N., R. 5 W., Secs. 4, 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of O–48 taken solely from Bureau of Land Management Map; Astoria 1981, Oregon.
Clatsop County

T. 9 N., R. 7 W., Secs. 25, and 36, of the Willamette Meridian.

T. 9 N., R. 6 W., Sec. 31, of the Willamette Meridian.

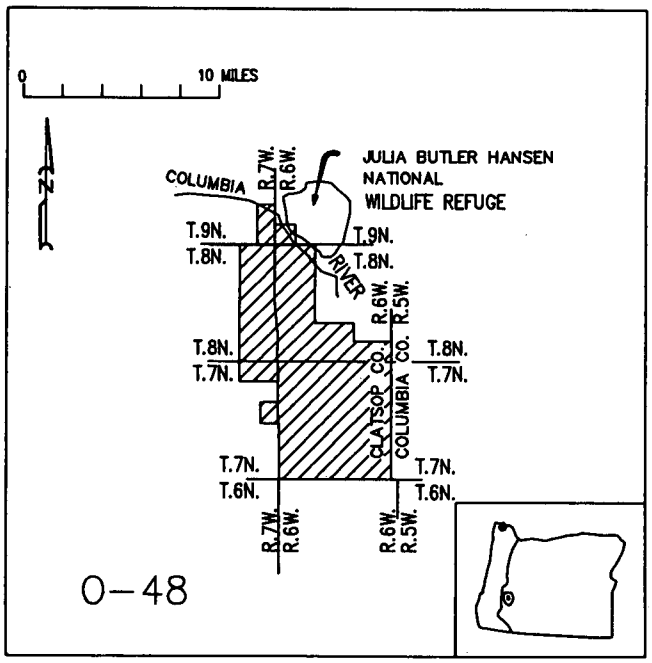
T. 8 N., R. 7 W., Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, and 36, of the Willamette Meridian.

T. 8 N., R. 6 W., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

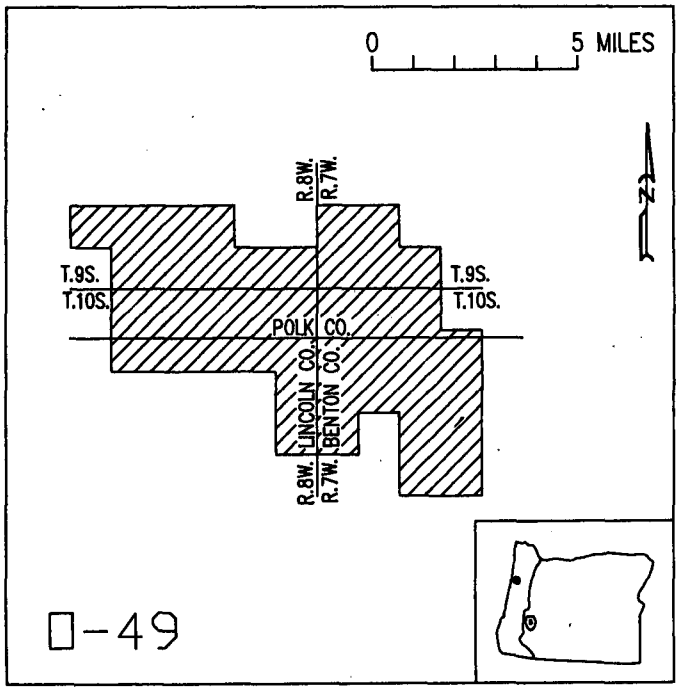
T. 7 N., R. 7 W., Secs. 1, 2, and 13, of the Willamette Meridian.

T. 7 N., R. 6 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

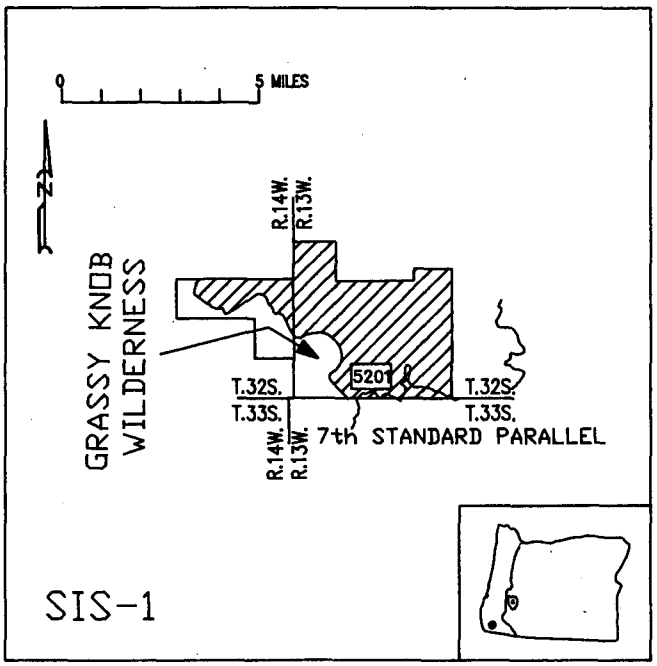
Excluding from the above areas any land within the Julia Butler Hansen Refuge for the Columbian White Tail Deer area, the Columbia River, and any private lands.



Description of O–49 taken solely from Bureau of Land Management Map; Corvallis 1980, Oregon.
Polk, Lincoln, and Benton Counties
T. 9 S., R. 8 W., Secs. 27, 28, 29 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.
T. 9 S., R. 7 W., Secs. 29, 30, 31, 32, and 33, of the Willamette Meridian.
T. 10 S., R. 8 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, and 24, of the Willamette Meridian.
T. 10 S., R. 7 W., Secs. 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 21, 22, 27, and 28, of the Willamette Meridian.
Excluding any private lands within the above area.



Description of SIS–1 taken solely from Bureau of Land Management Map; Port Orford 1978, Oregon.
Curry County
T. 32 S., R. 13 W., Secs. 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.
T. 32 S., R. 14 W., Secs. 22, 23, 24, and 25, of the Willamette Meridian.
Excluding from the above areas any land within the Grassy Knob Wilderness, and any private lands.



Description of SIS–2 taken solely from Bureau of Land Management Map; Canyonville 1979, Oregon.
Curry County

T. 34 S., R. 11 W., Secs. 25, 26, 35, and 36, of the Willamette Meridian.

T. 34 S., R. 10 ½ W., Secs. 19, 30, and 31, of the Willamette Meridian.

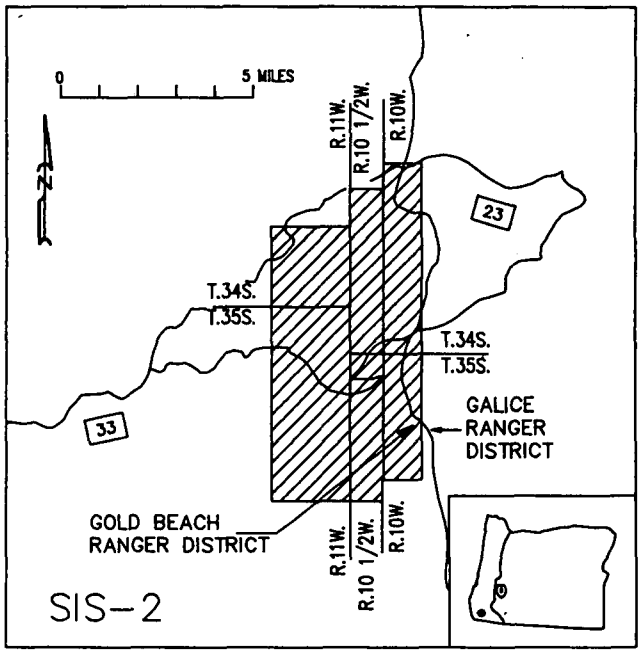
T. 34 S., R. 10 W., Secs. 7, 18, 19, 30, and 31, of the Willamette Meridian.

T. 35 S., R. 11 W., Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 35 S., R. 10 ½ W., Secs. 6, 7, 12, 25, and 36, of the Willamette Meridian.

T. 35 S., R. 10 W., Secs. 6, 7, and 18, of the Willamette Meridian.

Excluding any private lands in the above area.



Description of SNF–1 taken solely from U.S. Geological Survey Map; Waldport 1980, and Bureau of Land Management Map; Eugene 1980, Oregon.
Lincoln and Lane Counties

T. 14 S., R. 12 W., Sec. 36, of the Willamette Meridian.

T. 14 S., R. 11 W., Secs. 29, 30, 31, and 32, of the Willamette Meridian.

T. 15 S., R. 12 W., Secs. 1, 2, 11, 12, 25, and 36, of the Willamette Meridian.

T. 15 S., R. 11 W., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 S., R. 10 W., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 16 S., R. 12 W., Secs. 1, 10, 11, 13, 14, 15, 23, 24, 25, and 36, of the Willamette Meridian.

T. 16 S., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

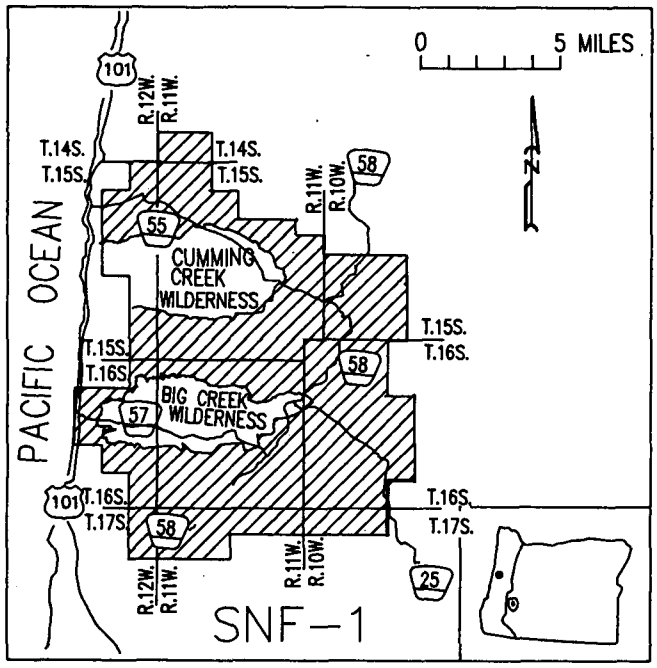
T. 16 S., R. 10 W., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 S., R. 12 W., Secs. 1, and 12, of the Willamette Meridian.

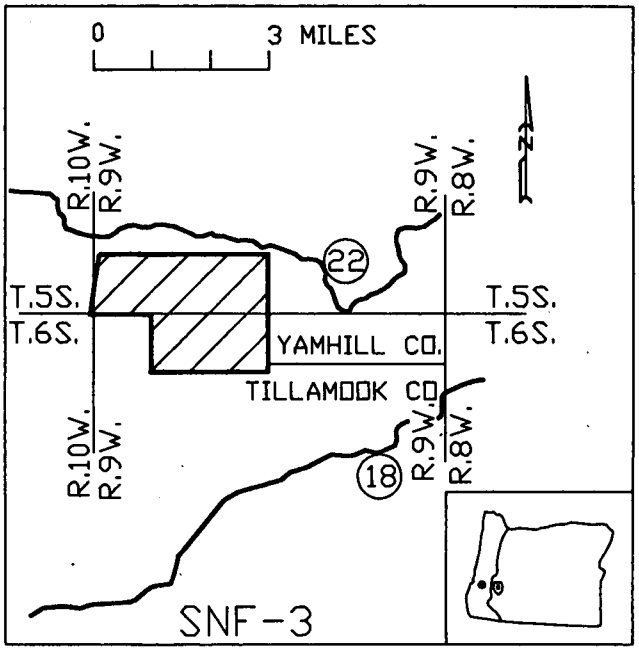
T. 17 S., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

T. 17 S., R. 10 W., Secs. 4, 5, and 6, of the Willamette Meridian.

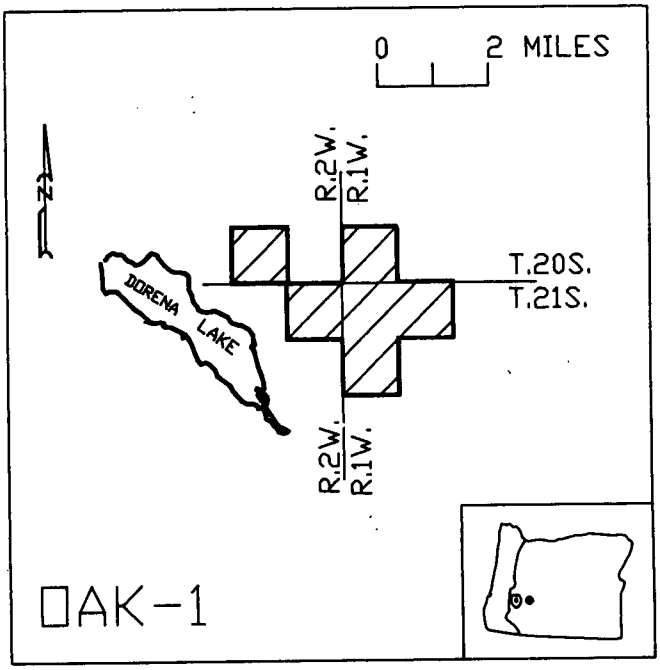
Excluding any of the above area within the Siuslaw Wilderness, and any private lands.



Description of SNF-3 taken solely from Bureau of Land Management Map; Yamhill River 1980, Oregon.
Tillamook County
T. 5 S., R. 9 W., Secs. 31, 32, and 33, of the Willamette Meridian.
T. 6 S., R. 9 W., Secs. 4, and 5, of the Willamette Meridian.
Excluding any private lands within the above area.



Description of OAK-1 taken solely from Bureau of Land Management Map; Oakridge 1974, Oregon.
Lane County
T. 20 S., R. 2 W., Sec. 35, of the Willamette Meridian.
T. 20 S., R. 1 W., Sec. 31, of the Willamette Meridian.
T. 21 S., R. 2 W., Sec. 1, of the Willamette Meridian.
T. 21 S., R. 1 W., Secs. 5, 6, and 7, of the Willamette Meridian.
Excluding any private lands within the above area.



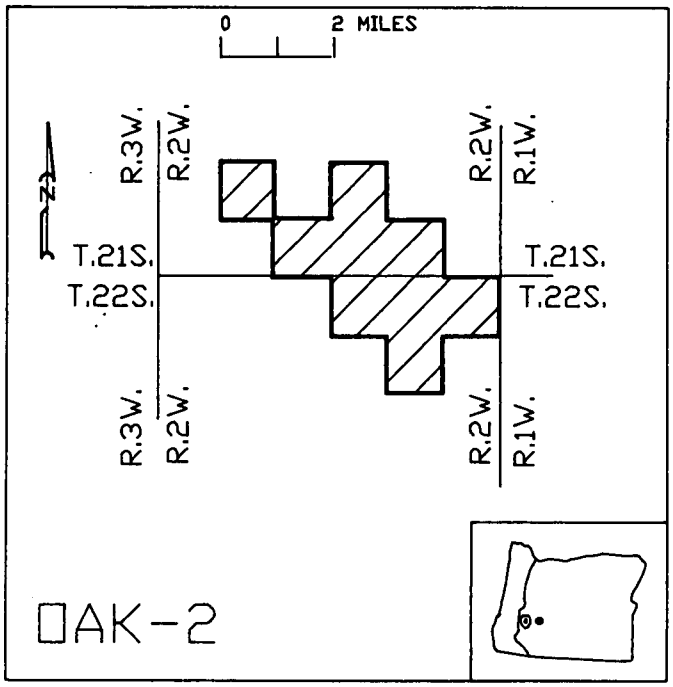
Description of OAK–2 taken solely from Bureau of Land Management Map; Oakridge 1974, Oregon.

Lane County

T. 21 S., R. 2 W., Secs. 27, 29, 33, 34, and 35, of the Willamette Meridian.

T. 22 S., R. 2 W., Secs. 1, 2, 3, and 11, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of RBG–1 taken solely from Bureau of Land Management Surface–Mineral Management Map; Roseburg 1979, Oregon.

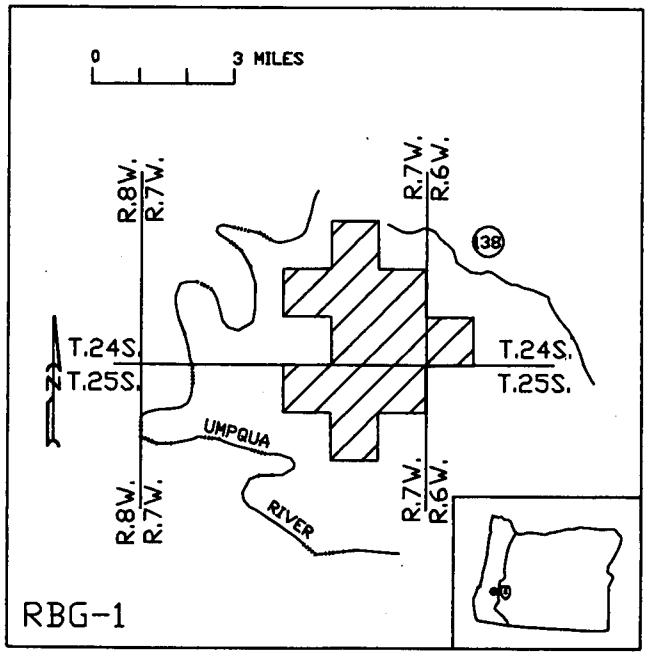
Douglas County

T. 24 S., R. 6 W., Sec. 31, of the Willamette Meridian.

T. 24 S., R. 7 W., Secs. 23, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 25 S., R. 7 W., Secs. 1, 2, 3, and 11, of the Willamette Meridian.

Excluding any private lands within the above area.

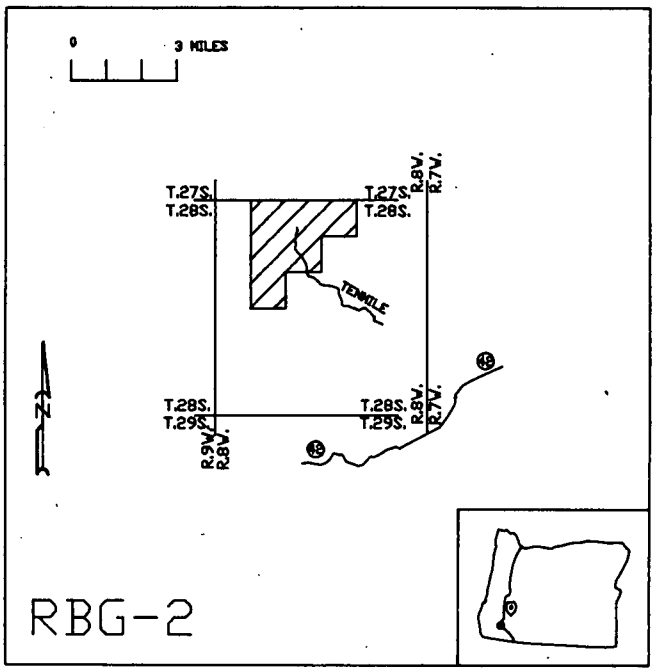


Description for RBG–2 taken solely from Bureau of Land Management Map; Roseburg 1979, Oregon.

Douglas County

T. 28 S., R. 8 W., Secs. 3, 4, 5, 8, 9, and 17, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of UNF–1 taken solely from Bureau of Land Management Map; Oakridge 1974, and Diamond Lake 1978, Oregon.

Douglas and Lane Counties

T. 22 S., R. 1 E., Secs. 23, 24, 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 22 S., R. 2 E., Secs. 19, 30, and 31 of the Willamette Meridian.

T. 23 S., R. 1 E., Secs. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.

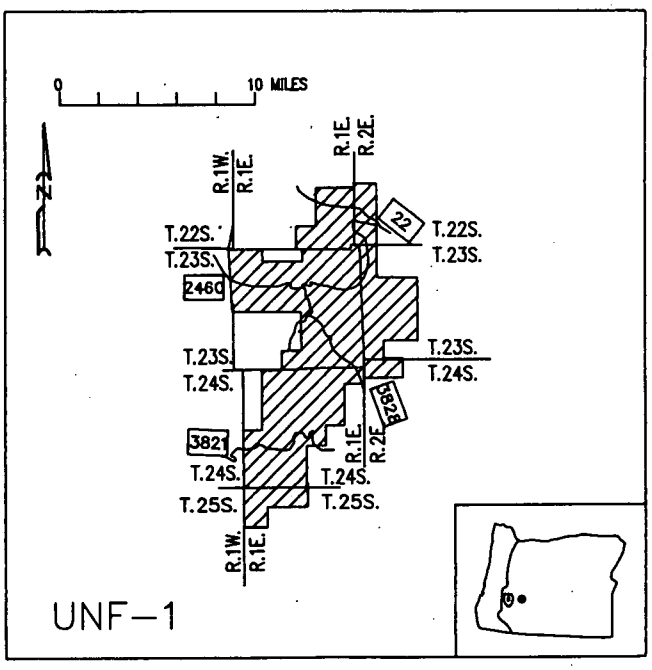
T. 23 S., R. 2 E., Secs. 6, 7, 16, 17, 18, 19, 20, 21, 28, 29, 30, and 31, of the Willamette Meridian.

T. 24 S., R. 2 E., Secs. 5, and 6, of the Willamette Meridian.

T. 24 S., R. 1 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 25 S., R. 1 E., Secs. 4, 5, 6, and 7, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of UNF-2 taken solely from Bureau of Land Management Maps; Canyonville 1979, and Crater Lake 1978, Oregon.

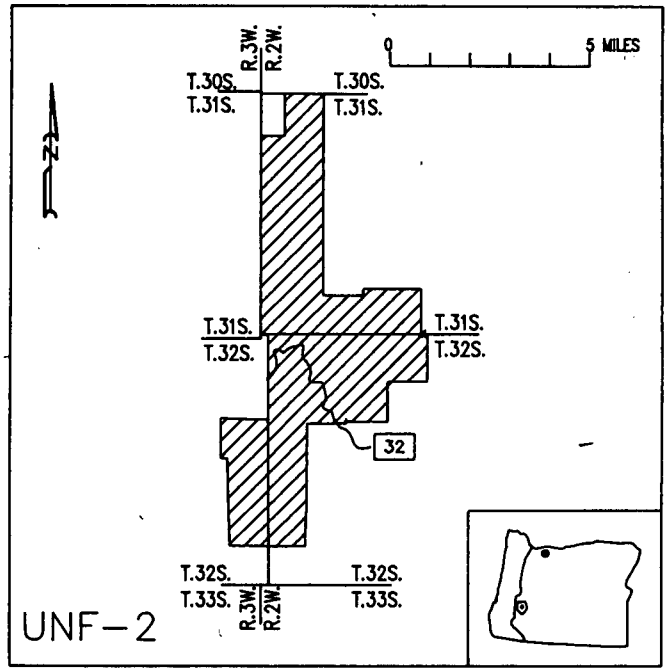
Douglas and Jackson Counties

T. 31 S., R. 2 W., Secs. 5, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 32 S., R. 2 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 18, 19, and 30, of the Willamette Meridian.

T. 32 S., R. 3 W., Secs. 13, 24, and 25, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of WIN-1 taken solely from Bureau of Land Management Maps; Crater Lake 1978 and Medford 1978, Oregon.

Klamath County

T. 34 S., R. 6 E., Secs. 19, 21, 22, 27, 28, 29, 30, 31, 32, 33,and 34, of the Willamette Meridian.

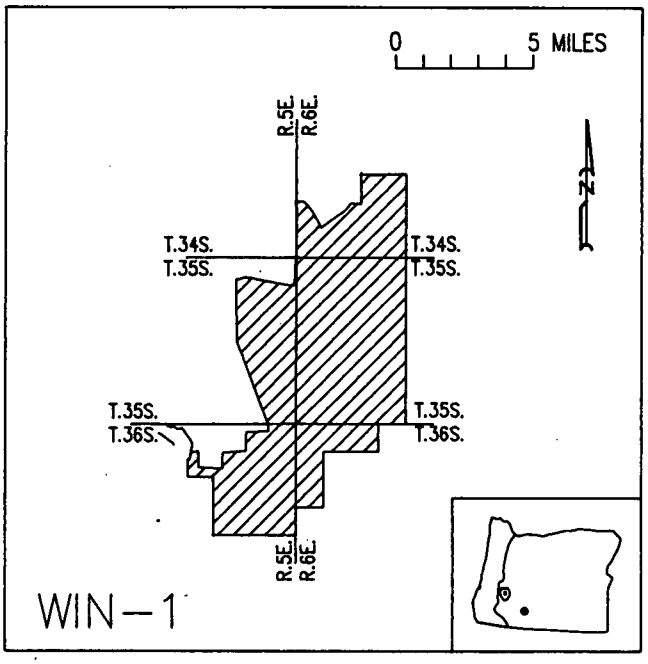
T. 35 S., R. 5 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 35 S., R. 6 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 36 S., R. 5 E., Secs. 1, 2, 9, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 36 S., R. 6 E., Secs. 4, 5, 6, 7, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of WIL-2 taken solely from Bureau of Land Management Maps; North Santiam River 1978, McKenzie River 1973, Madras 1978, and Bend 1982, Oregon.

Linn County

T. 12 S., R. 6 E., Secs. 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

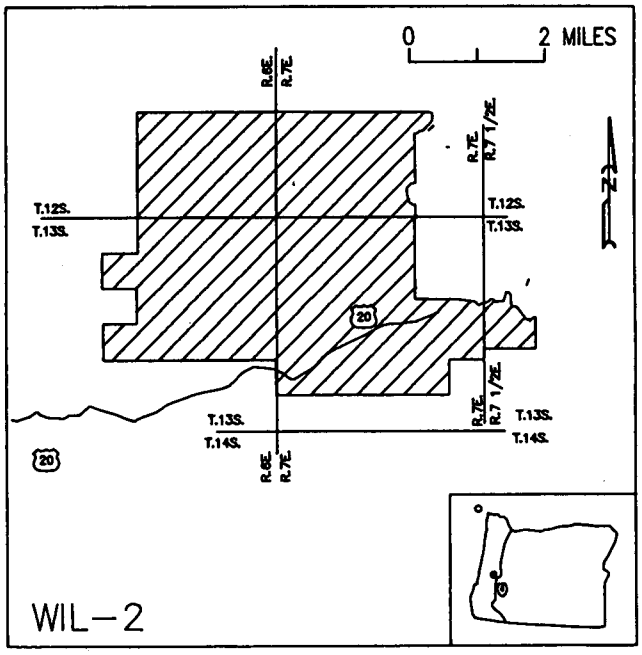
T. 12 S., R. 7 E., Secs. 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 13 S., R. 6 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 13 S., R. 7 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, and 30, of the Willamette Meridian.

T. 13 S., R. 7 ½ E., Secs. 15, 16, 21, and 22, of the Willamette Meridian.

Excluding from the above areas any lands within Mt. Jefferson Wilderness, and any private lands.



Description of YR-1 taken solely from Bureau of Land Management Map; Yamhill River 1980, Oregon.

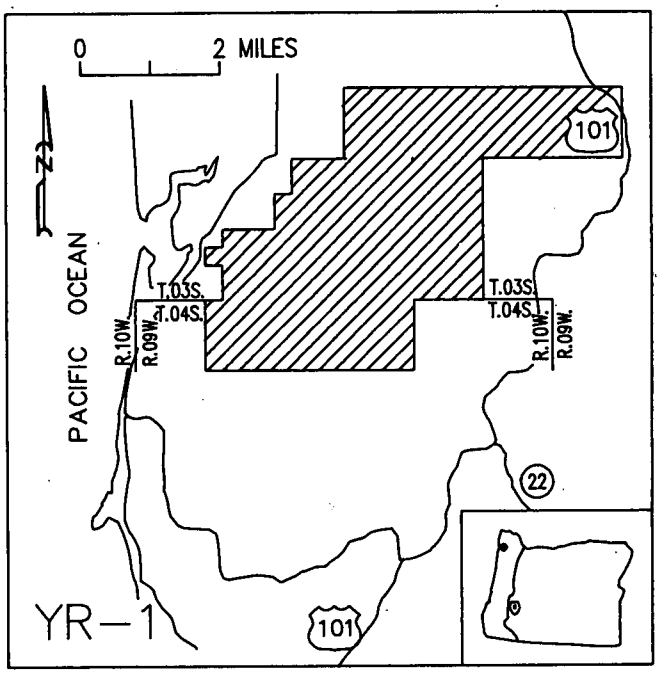
Tillamook County

T. 3 S., R. 10 W., Secs. 22, 23, 24, 26, 27; 28, 32, 33, 34, and 35, of the Willamette Meridian.

T. 3 S., R. 9 W., Sec. 19, of the Willamette Meridian.

T. 4 S. R. 10 W., Secs. 3, 4, and 5, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of YR-2 taken solely from Bureau of Land Management Maps; Nehalem River 1979, and Yamhill River 1980, Oregon.

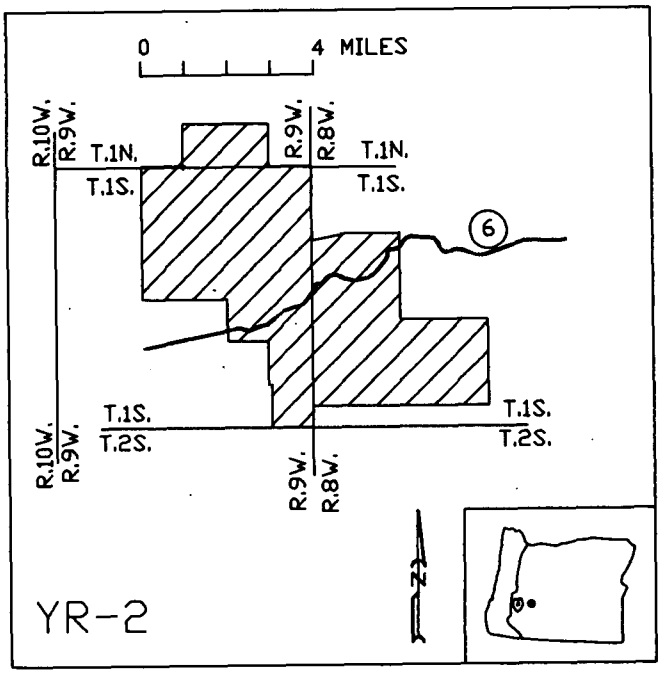
Tillamook County

T. 1 N., R. 9 W., Secs. 34, and 35, of the Willamette Meridian.

T. 1 S., R. 9 W., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 23, 24, 25, and 36, of the Willamette Meridian.

T. 1 S., R. 8 W., Secs. 7, 8, 17, 18, 19, 20, 21, 22, 27, 28, 29, and 30, of the Willamette Meridian.

Excluding any private lands within the above area.



Washington. Areas of land and water as follows:

Description of SQN-1 taken solely from Bureau of Land Management Map; Mount Baker 1979, Washington and British Columbia.

Whatcom County

T. 39 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, and 16, of the Willamette Meridian.

T. 39 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 20, 21, and 22, of the Willamette Meridian.

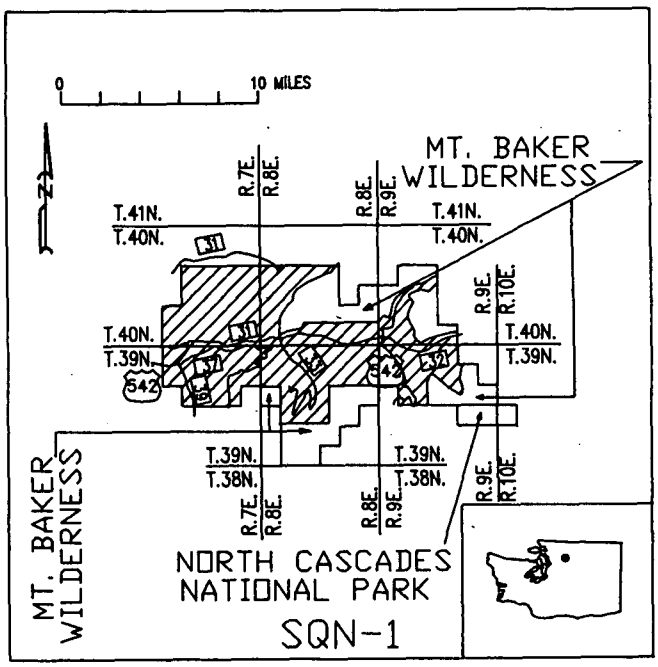
T. 39 N., R. 9 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, and 17, of the Willamette Meridian.

T. 40 N., R. 7 E., Secs. 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 N., R. 8 E., Secs. 15, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 40 N., R. 9 E., Secs. 15, 16, 19, 20, 21, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

Excluding from the above areas any lands within the Mount Baker Wilderness, the North Cascades National Park, and any private lands.



Description of SQN-2 taken solely from Bureau of Land Management Map; Mount Baker 1979, Washington and British Columbia.

Whatcom and Skagit Counties

T. 36 N., R. 7 E., Secs. 1, 2, and 3, of the Willamette Meridian.

T. 36 N., R. 8 E., Sec. 5, of the Willamette Meridian.

T. 36 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Willamette Meridian.

T. 36 N., R. 10 E., Secs. 4, 5, 6, 7, 8, 17, 18, 19, 20, 21, 27, 28, 29, and 30, of the Willamette Meridian.

T. 37 N., R. 6 E., Sec. 1, of the Willamette Meridian.

T. 37 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 10 E., Secs. 6, and 7, of the Willamette Meridian.

T. 38 N., R. 6 E., Secs. 1, 12, 13, and 36, of the Willamette Meridian.

T. 38 N., R. 7 E., Secs. 6, 7, 16, 17, 18, 19, 20, 28, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 38 N., R. 8 E., Secs. 23, 24, 25, 26, 32, 33, 34, 35, and 36, of the Willamette Meridian.

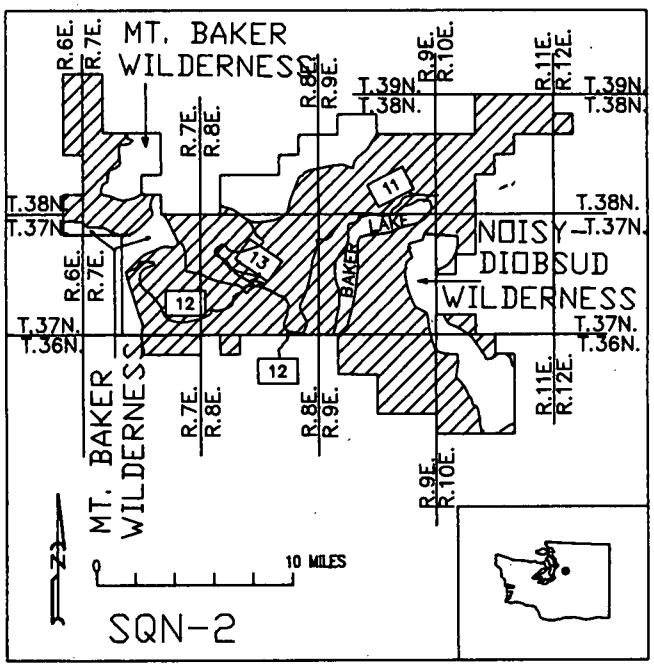
T. 38 N., R. 9 E., Secs. 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 38 N., R. 10 E., Secs. 18, 19, 30, and 31, of the Willamette Meridian.

T. 39 N., R. 6 E., Sec. 36, of the Willamette Meridian.

T. 39 N., R. 7 E., Sec. 31, of the Willamette Meridian.

Excluding from the above areas any lands within the Mt. Baker Wilderness. North Cascades National Park, Noisy-Diobsud Wilderness, and any private lands.



Description of SQN–3 taken solely from Bureau of Land Management Maps; Sauk River 1978, Washington, and Mount Baker 1979, Washington and British Columbia.

Skagit County

T. 33 N., R. 10 E., Sec. 1, of the Willamette Meridian.

T. 33 N., R. 11 E., Secs. 4, 5, and 6, of the Willamette Meridian.

T. 34 N., R. 10 E., Secs. 12, 13, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 34 N., R. 11 E., Secs. 5, 6, 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 34 N., R. 12 E., Secs. 1, 2, 3, 4, 10, 11, and 12, of the Willamette Meridian.

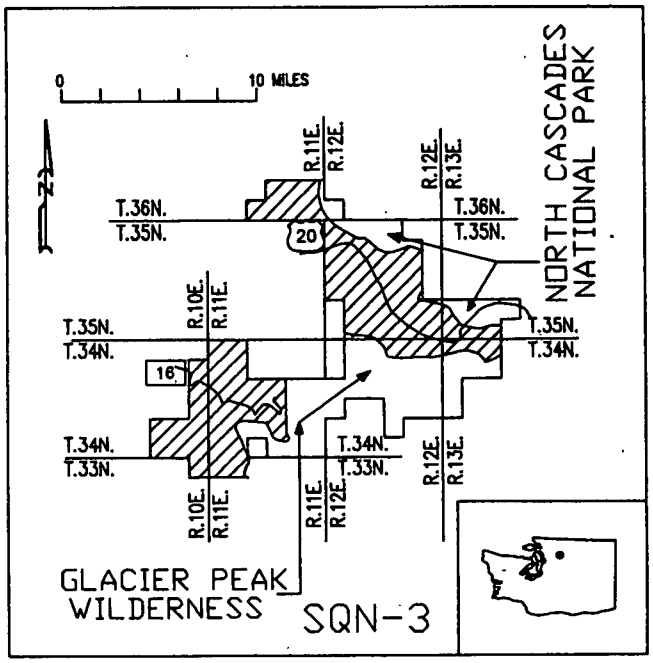
T. 34 N., R. 13 E., Secs. 4, 5, 6, 7, 8, and 9, of the Willamette Meridian.

T. 35 N., R. 12 E., Secs. 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 35 N., R. 13 E., Secs. 30, 31, 32, and 33, of the Willamette Meridian.

T. 36 N., R. 11 E., Secs. 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within North Cascades National Park, Glacier Peak Wilderness, and any private lands.



Description of SQN–4 taken solely from Bureau of Land Management Maps; Sauk River 1978, and Mount Baker 1979, Washington and British Columbia.

Skagit and Snohomish Counties

T. 32 N., R. 8 E., Secs. 1, N ½ of 3, N ½ of 4, N ½ of 5, and N ½ of 6, of the Willamette Meridian.

T. 33 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 33 N., R. 9 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, and 31, of the Willamette Meridian.

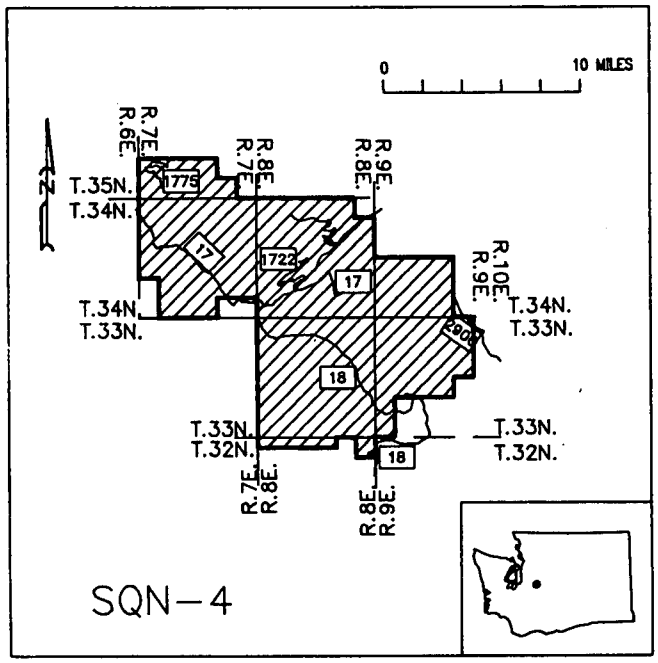
T. 34 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

T. 34 N., R. 8 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 34 N., R. 9 E., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 35 N., R. 7 E., Secs. 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of SQN–5 taken solely from Bureau of Land Management Map; Sauk River 1978, Washington.
Skagit and Snohomish Counties

T. 31 N., R. 11 E., Secs. 1, 2, 3, 4, 10, 11, and 12, of the Willamette Meridian.

T. 31 N., R. 12 E., Secs. 4 and 5, of the Willamette Meridian.

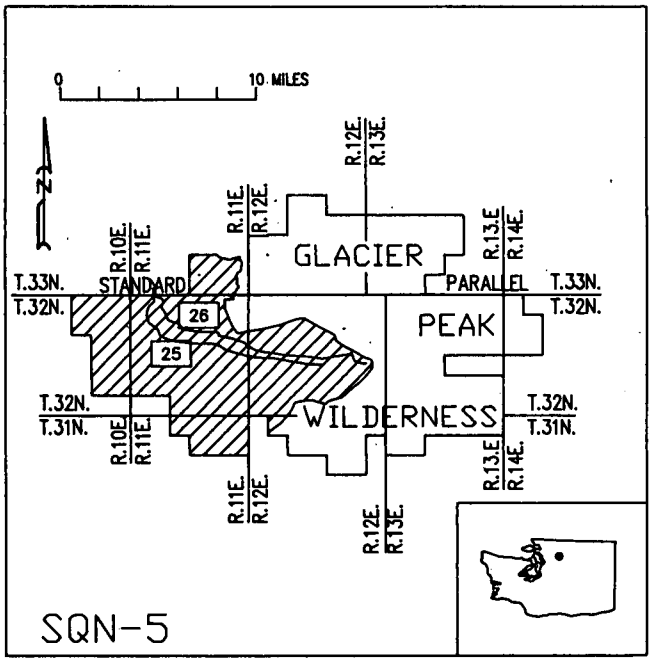
T. 32 N., R. 10 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 32 N., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 32 N., R. 12 R., Secs. 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 33 N., R. 11 E., Secs. 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within Glacier Peak Wilderness, and any private lands.



Description of SQN–6 taken solely from Bureau of Land Management Map; Sauk River 1978, Washington.
Snohomish County

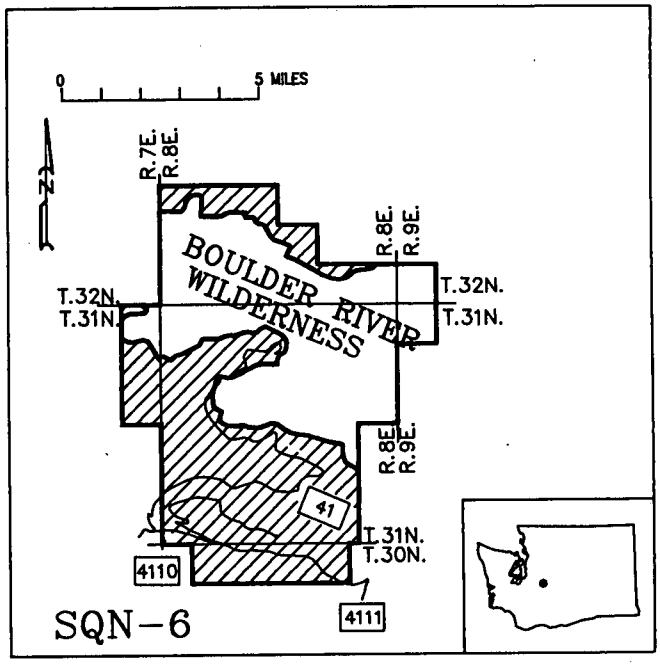
T. 30 N., R. 8 E., Secs. 2, 3, 4, and 5, of the Willamette Meridian.

T. 31 N., R. 7 E., Secs. 1, 12, and 13, of the Willamette Meridian.

T. 31 N., R. 8 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 32 N., R. 8 E., Secs. 19, 20, 21, 27, 28, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Boulder River Wilderness, and any private lands.



Description of SQN-7 taken solely from Bureau of Land Management Map; Sauk River 1978, Washington. Snohomish County

T. 30 N., R. 9 E., Secs. 1, 2, and 12, of the Willamette Meridian.

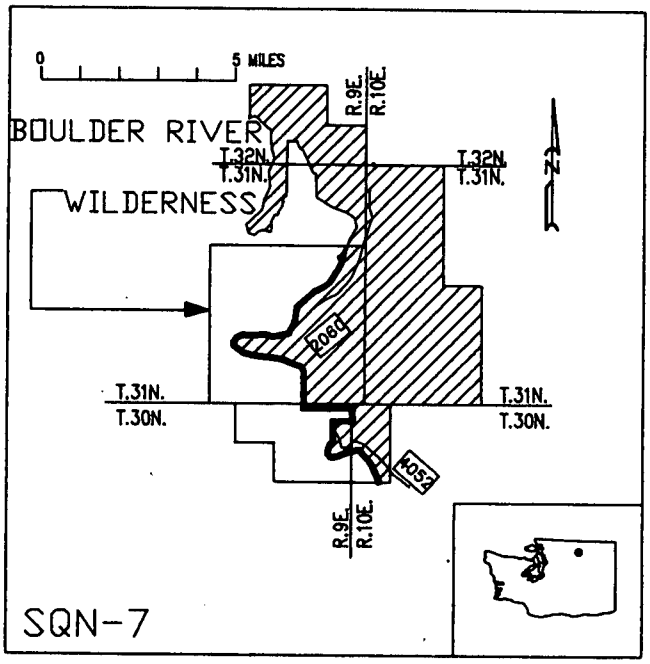
T. 30 N., R. 10 E., Secs. 6, and 7, of the Willamette Meridian.

T. 31 N., R. 9 E., Secs. 1, 2, 3, 10, 12, 13, 23, 24, 25, 26, 27, 28, 35, and 36, of the Willamette Meridian.

T. 31 N., R. 10 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 32 N., R. 9 E., Secs. 26, 27, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Boulder River Wilderness, and any private lands.



Description of SQN-8 taken solely from Bureau of Land Management Map; Sauk River 1978, and Department of Natural Resources Quadrangle; Skykomish River 1973, Washington. Snohomish County

T. 29 N., R. 10 E., Secs. 1, and 12, of the Willamette Meridian.

T. 29 N., R. 11 E., Secs. 6, 7, and 18, of the Willamette Meridian.

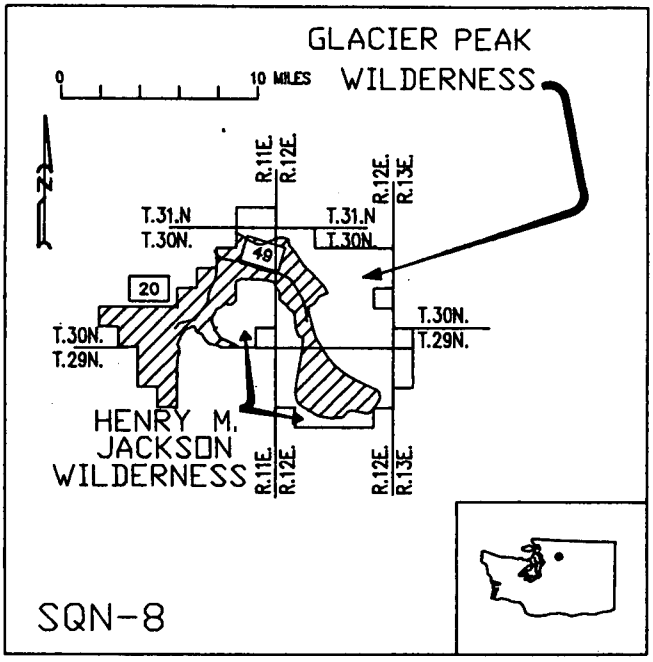
T. 29 N., R. 12 E., Secs. 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23, of the Willamette Meridian.

T. 30 N., R. 10 E., Secs. 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 30 N., R. 11 E., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 30 N., R. 12 E., Secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 29, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within Glacier Peak Wilderness, Henry M. Jackson Wilderness, and any private lands.



Description of SQS–1 taken solely from Department of Natural Resources Quadrangle; Skykomish River 1973, Washington.

Surveyed and Unsurveyed Lands in Snohomish and King Counties

T. 24 N., R. 11 E., Secs. 2, and 3, of the Willamette Meridian.

T. 24 ½ N., R. 11 E., Secs. 34, and 35, of the Willamette Meridian.

T. 25 N., R. 10 E., Secs. 3, 4, 7, 8, 9, 16, 17, 18, 20, 21, 22, 23, 25, 26, and 27, of the Willamette Meridian.

T. 25 N., R. 11 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 26, 27, 30, 33, and 34, of the Willamette Meridian.

T. 25 N., R. 12 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 28, 29, and 30, of the Willamette Meridian.

T. 25 N., R. 13 E., Secs. 6, 7, 18, and 19, of the Willamette Meridian.

T. 26 N., R. 11 E., Secs. 4, 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 12 E., Secs. 1, 2, 3, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 13 E., Secs. 18, 19, 30, 31, and 32, of the Willamette Meridian.

T. 27 N., R. 10 E., Sec. 36, of the Willamette Meridian.

T. 27 N., R. 11 E., Secs. 1, 12, 13, 30, 31, 32, and 33, of the Willamette Meridian.

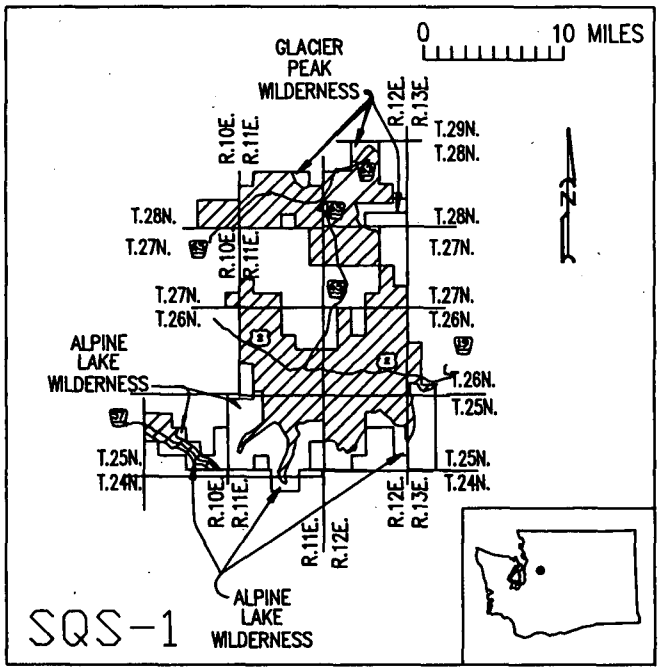
T. 27 N., R. 12 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 10 E., Secs. 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 11 E., Secs. 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 12 E., Secs. 3, 4, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within the Henry M. Jackson Wilderness, Alpine Lakes Wilderness, and any private lands.



Description of SQS–2 taken solely from Department of Natural Resources; Skykomish River 1973, and Snoqualmie Pass 1973, Washington.

King County

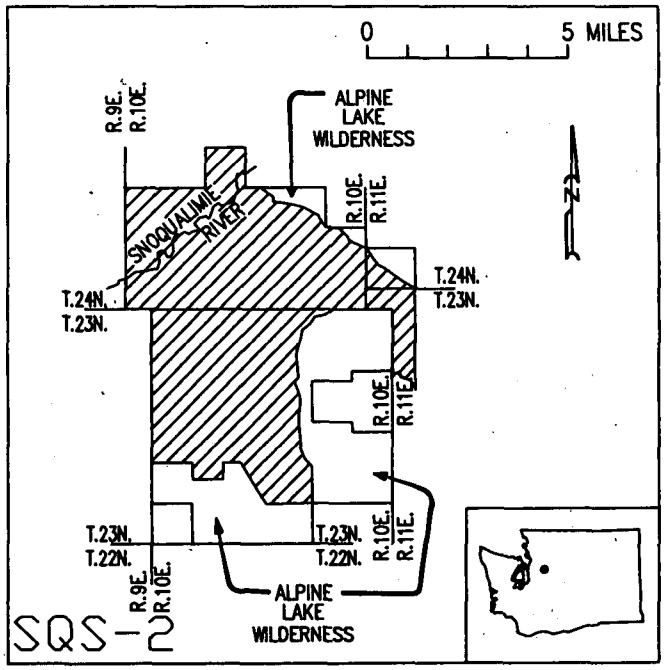
T. 24 N., R. 10 E., Secs. 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 11 E., Sec. 31, of the Willamette Meridian.

T. 23 N., R. 10 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, and 30, of the Willamette Meridian.

T. 23 N., R. 11 E., Secs. 6, 7, and 18, of the Willamette Meridian.

Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.



Description of SQS–3 taken solely from Washington Department of Natural Resources Map; Snoqualmie Pass 1973, Washington.

King and Kittitas Counties

T. 22 N., R. 9 E., Sec. 36, of the Willamette Meridian.

T. 22 N., R. 10 E., Secs. 13, 14, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

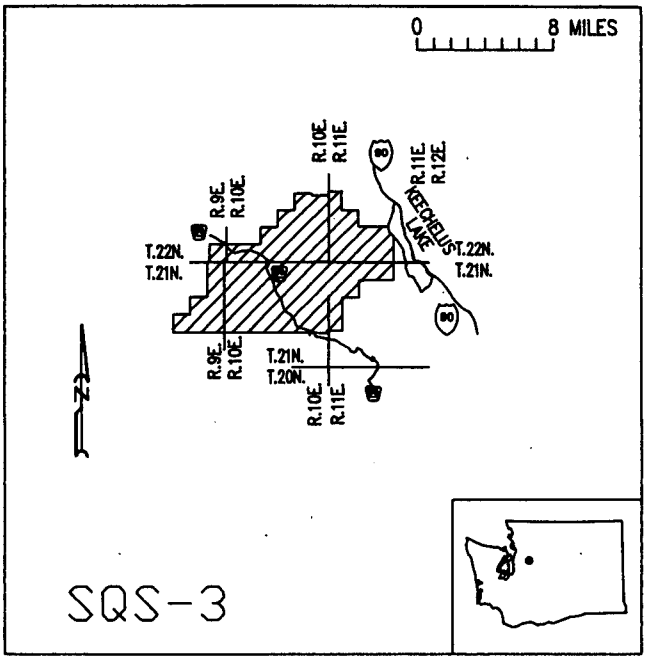
T. 22 N., R. 11 E., Secs. 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 21 N., R. 9 E., Secs. 1, 12, 13, 14, 22, 23, and 24, of the Willamette Meridian.

T. 21 N., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 21 N., R. 11 E., Secs. 3, 4, 5, 6, 7, 8, 18, and 19, of the Willamette Meridian.

Excluding from the above areas any lands within the Keechelus Lake, and any private lands.



Description of SQS–4 taken solely from Bureau of Land Management Maps; Snoqualmie Pass 1978, and Mount Rainier 1978, Washington.

King, Pierce, Yakima and Kittitas Counties

T. 17 N., R. 10 E., Secs. 2, 3, 10, 11, 14, 23, and 26, of the Willamette Meridian.

T. 18 N., R. 8 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 12, 18, 19, 30, and 31, of the Willamette Meridian.

T. 18 N., R. 12 E., Secs. 2, 3, 4, 9, 10, 11, and 15, of the Willamette Meridian.

T. 19 N., R. 10 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 N., R. 11 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

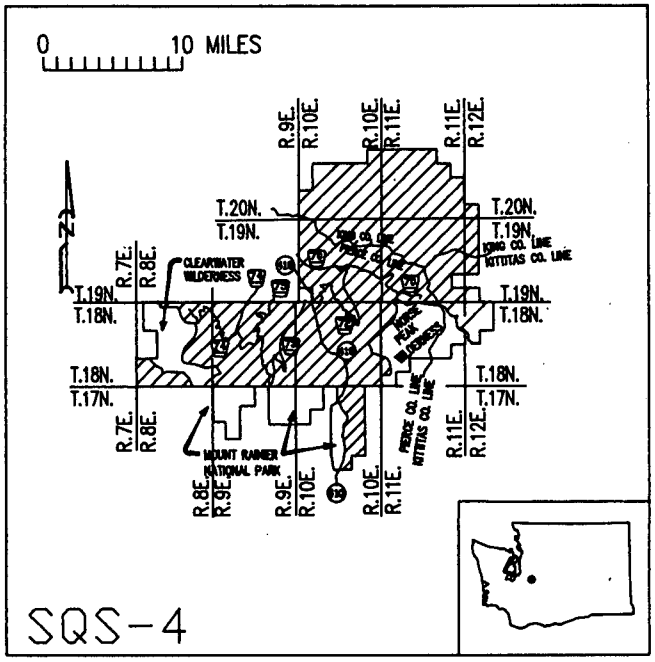
T. 19 N., R. 12 E., Secs. 3, 10, 15, 22, and 34, of the Willamette Meridian.

T. 20 N., R. 10 E., Secs. 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

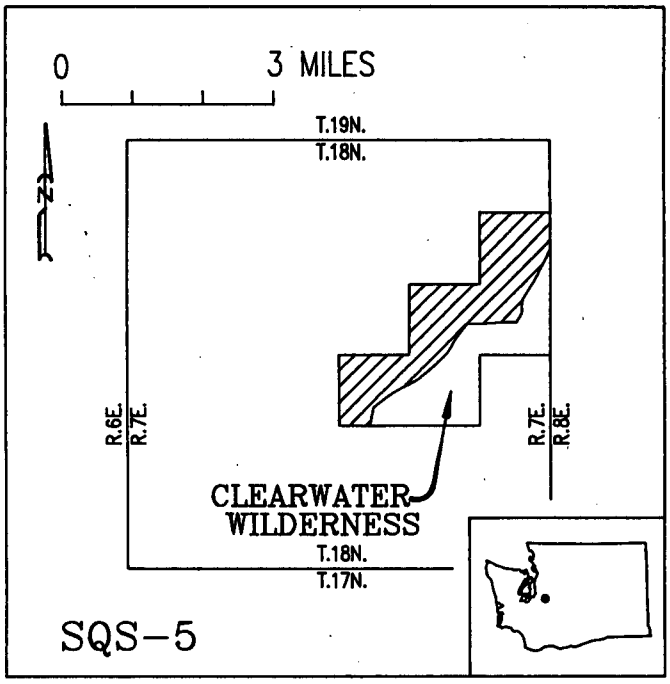
T. 20 N., R. 11 E., Secs. 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 20 N., R. 12 E., Sec. 34, of the Willamette Meridian.

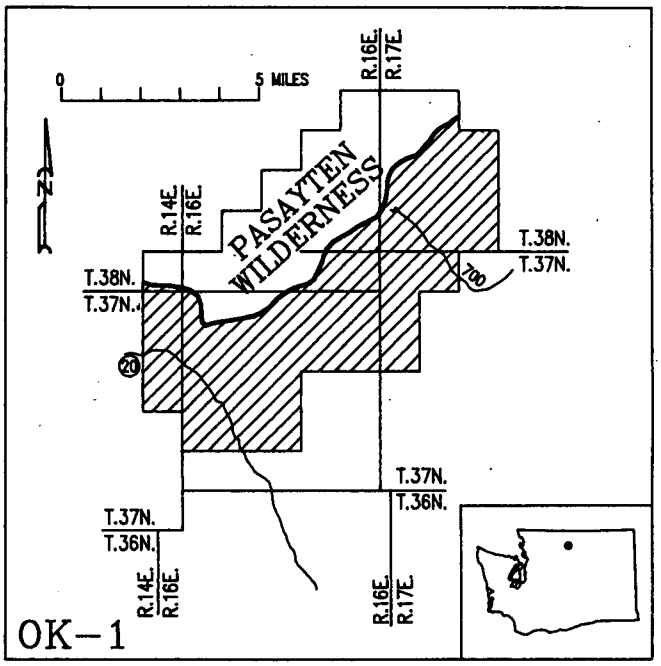
Excluding from the above areas any lands within Clearwater Wilderness, Norse Peak Wilderness, Mt. Rainier National Park, and any private lands.



Description of SQS–5 taken solely from Department of Natural Resources Quadrangle; Snoqualmie Pass 1973, Washington.
Pierce County
T. 18 N., R. 7 E., Secs. 12, 13, 14, 22, and 23, of the Willamette Meridian.
Excluding from the above areas any lands within the Clearwater Wilderness, and any private lands.



Description of OK–1 taken solely from Bureau of Land Management Map; Robinson Mtn. 1979, Washington.
Whatcom County
T. 38 N., R. 14 E., Sec 36, of the Willamette Meridian.
T. 38 N., R. 16 E., Secs. 35, and 36, of the Willamette Meridian.
T. 38 N., R. 17 E., Secs. 17, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.
T. 37 N., R. 14 E., Secs. 1, 12, and 13, of the Willamette Meridian.
T. 37 N., R. 16 E., Secs. 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 27, 28, and 29, of the Willamette Meridian.
T. 37 N., R. 17 E., Secs. 5, 6, 7, and 18, of the Willamette Meridian.
Excluding from the above areas any lands within the Pasayten Wilderness, and any private lands.



Description of OK–3 taken solely from Bureau of Land Management Map; Robinson Mountain 1979, Washington. Okanogan County

T. 35 N., R. 18 E., Secs. 1, 2, and 12, of the Willamette Meridian.

T. 35 N., R. 19 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, of the Willamette Meridian.

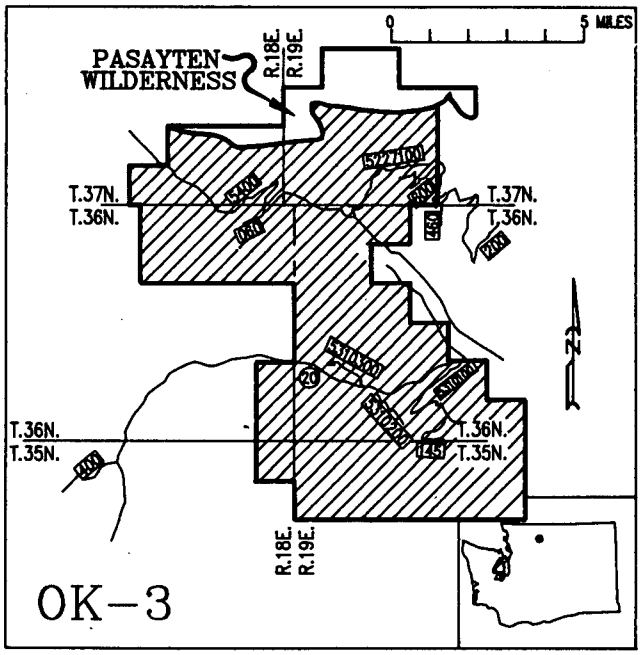
T. 36 N., R. 18 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 36 N., R. 19 E., Secs. 4, 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 18 E., Sec. 25, 33, 34, 35, and 36, of the Willamette Meridian.

T. 37 N., R. 19 E., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

Excluding from the above areas any lands within the Pasayten Wilderness, and any private lands.

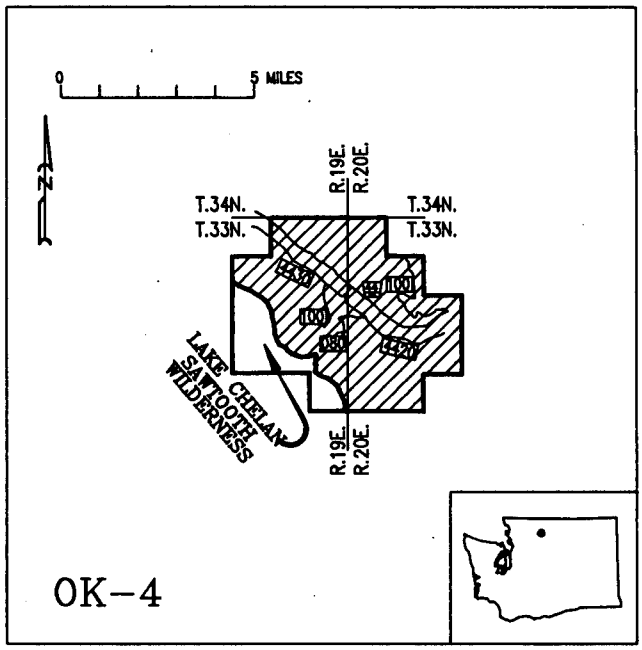


Description of OK–4 taken solely from Bureau of Land Management Map; Twisp 1978, Washington. Okanogan County

T. 33 N., R. 19 E., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 23, 24, and 25, of the Willamette Meridian.

T. 33 N., R. 20 E., Secs. 6, 7, 8, 16, 17, 18, 19, 20, 21, 29, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within the Lake Chelan-Sawtooth Wilderness, and any private lands.



Description of OLY-1 taken solely from Department of Natural Resources Quadrangles; Cape Flattery 1983, Forks 1981, Port Angeles 1988, Shelton 1990, Seattle 1990 and Mount Olympus 1983, Washington.

Clallam, Jefferson, Grays Harbor and Mason Counties

T. 30 N., R. 11 W., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28, and 29, of the Willamette Meridian.

T. 30 N., R. 10 W., Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 30 N., R. 8 W., Secs. 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 30 N., R. 7 W., Secs. 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 11 W., Secs. 13, 22, 23, 24, 25, 26, 27, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridan.

T. 29 N., R. 4 W., Secs. 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 3 W., Secs. 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 2 W., Secs. 19, 30, 31, and 32, of the Willamette Meridian.

T. 28 N. R. 13 W., Secs. 22, 23, 24, 25, 26, 27, and 36, of the Willamette Meridian.

T. 28 N., R. 12 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 28 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, of the Willamette Meridian.

T. 28 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, of the Willamette Meridian.

T. 28 N., R. 4 W., Secs. 1, 4, 5, 8, 9, 12, 13, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 3 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 26, 27, 28, 29, 30, 32, 33, 34, and 35, of the Willamette Meridian.

T. 28 N., R. 2 W., Secs. 5, 6, 7, and 18, of the Willamette Meridian.

T. 27 N., R. 12 W., Secs. 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 22, 23, 24, 25, and 26, of the Willamette Meridian.

T. 27 N., R. 11 W., Secs. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 N., R. 10 W., Secs. 19, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 27 N., R. 4 W., Sec. 2, of the Willamette Meridian.

T. 27 N., R. 3 W., Secs. 2, 3, 11, 14, 15, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, and 36, of the Willamette Meridian.

T. 27 N., R. 2 W., Secs. 19, 20, 21, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 26 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 10 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 9 W., Secs. 19, 29, 30, 31, and 32, of the Willamette Meridian.

T. 26 N., R. 4 W., Secs. 13, and 24, of the Willamette Meridian.

T. 26 N., R. 3 W., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 33, 34, and 35, of the Willamette Meridian.

T. 26 N., R. 2 W., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, and 20, of the Willamette Meridian.

T. 25 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 25 N., R. 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 34, 35, and 36, of the Willamette Meridian.

T. 25 N., R. 9 W., Secs. 6, 31, 32, and 33, of the Willamette Meridian.

T. 25 N., R. 4 W., Secs. 24, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 25 N., R. 3 W., Secs. 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 24 N., R. 12 W., Sec. 24, of the Willamette Meridian.

T. 24 N., R. 11 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, and 19, of the Willamette Meridian.

T. 24 N., R. 10 ½ W., Secs. 12, 13, 14, 23, 24, 25, and 26, of the Willamette Meridian.

T. 24 ½ N., R. 10 W., Secs. 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 ½ N., R. 9 W., Secs. 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 24 N., R 10 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 9 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 24 N., R. 8 W., Secs. 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 24 N., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 10 W., Secs. 1, 2, 3, 10, 11, 15, 23, and 24, of the Willamette Meridian.

T. 23 N., R. 9 W., Secs. 1, 2, 6, 8, 9, 10, 11, 12, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 8 W., Secs. 6, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 7 W., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 6 W., Secs. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 23 N., R. 5 W., Secs. 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 N., R. 4 W., Secs. 3, 4, 5, 6, 7, and 8, of the Willamette Meridian.

T. 22 N., R. 10 W., Secs. 24, 25, and 36, of the Willamette Meridian.

T. 22 N., R. 9 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 8 W., Secs.3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 22 N., R. 7 W., Secs 1, 4, 5, and 6, of the Willamette Meridian.

T. 22 N., R. 6 W., Secs. 1, 3, 4, 5, 6, 9, 10, 15, 16, 21, 22, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.

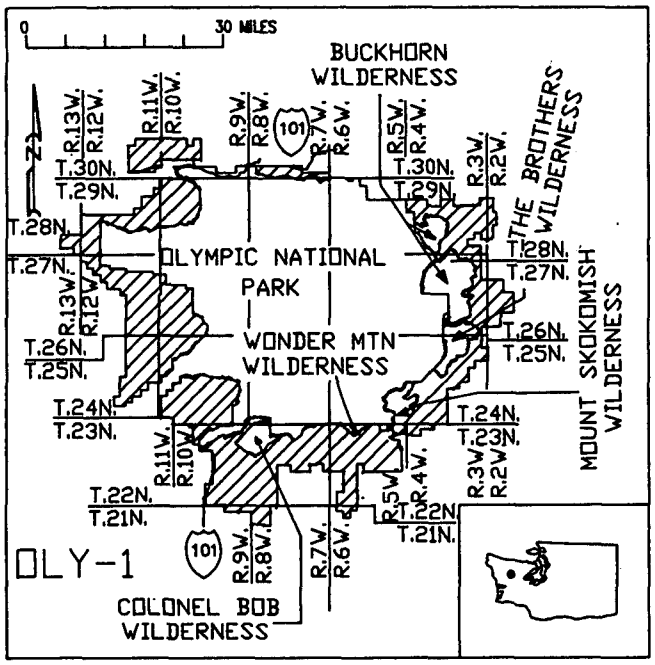
T. 22 N., R 5 W., Secs. 1, 2, 3, 4, 5, and 6, of the Willamette Meridian.

T. 21 N., R. 9 W., Secs. 1, 2, 3, and 4, of the Willamette Meridian.

T. 21 N., R. 8 W., Secs. 4, 5, 6, 7, 8, 9, 16, 17, and 18, of the Willamette Meridian.

T. 21 N., R. 6 W., Secs. 3, 4, 5, and 9, of the Willamette Meridian.

Excluding from the above areas any lands within the Colonel Bob Wilderness, Buckhorn Wilderness, The Brothers Wilderness, Mt. Skokomish Wilderness, Wonder Mountain Wilderness, Olympic National Park, and any private lands.



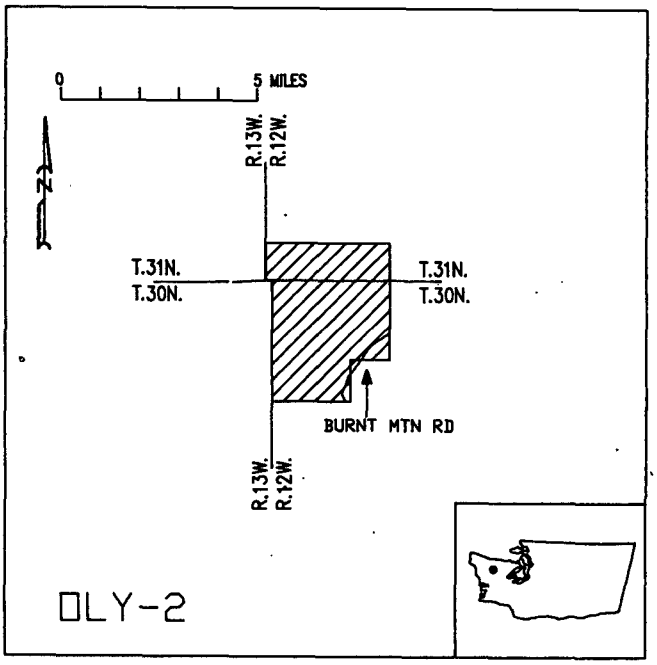
Description of OLY-2 taken solely from Department of Natural Resources Quadrangle; Cape Flattery 1983, Washington.

Clallam County

T. 31 N., R. 12 W., Secs. 31, 32, and 33, of the Willamette Meridian.

T. 30 N., R. 12 W., Secs. 4, 5, 6, 7, 8, 9, 17, and 18, of the Willamette Meridian.

Excluding any private lands within the above area.



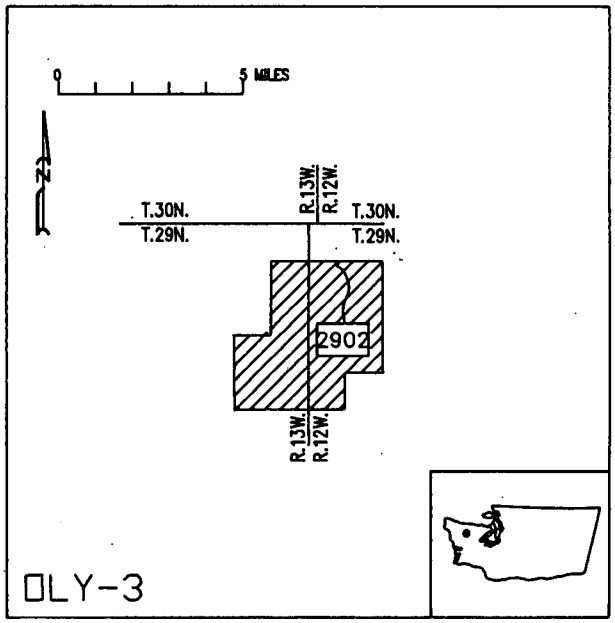
Description of OLY-3 taken solely from Department of Natural Resources Quadrangles; Cape Flattery 1983, and Forks 1988, Washington.

Clallam County

T. 29 N., R. 13 W., Secs. 12, 13, 23, 24, 25, and 26 of the Willamette Meridian.

T. 29 N., R. 12 W., Secs. 7, 8, 17, 18, 19, 20, and 30 of the Willamette Meridian.

Excluding any private lands within the above area.



Description of WN-1 taken solely from Bureau of Land Management Maps; Twisp 1978, and Chelan 1973, Washington.

Chelan County

T. 30 N., R. 16 E., Secs. 11, 14, 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, and 35, of the Willamette Meridian.

T. 30 N., R. 17 E., Secs. 29, 30, 31, and 32, of the Willamette Meridian.

T. 29 N., R. 16 E., Secs. 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 17 E., Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 28 N., R. 16 E., Secs. 1, 2, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 28 N., R. 17 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 18 E., Secs. 30, and 31, of the Willamette Meridian.

T. 27 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 27 N., R. 18 E., Secs. 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

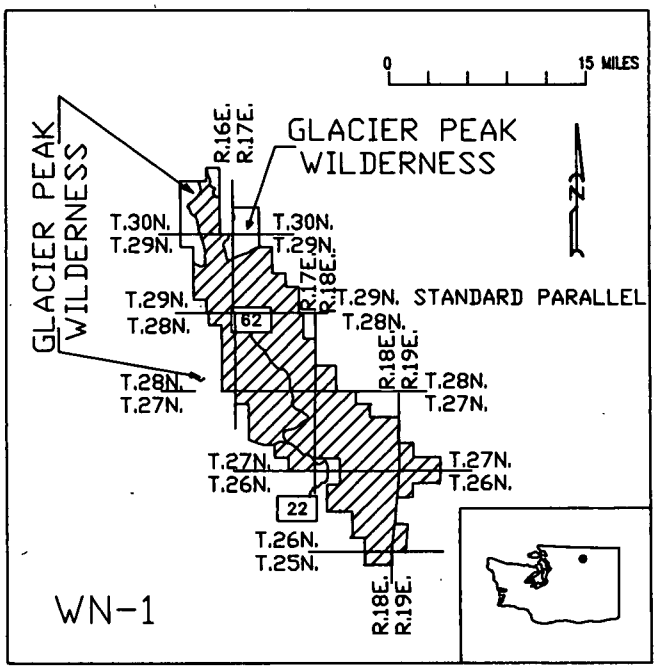
T. 27 N., R. 19 E., Secs. 30, 31, 32, and 33, of the Willamette Meridian.

T. 26 N., R. 18 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 26 N., R. 19 E., Secs. 4, 5, 6, 7, 30, and 31, of the Willamette Meridian.

T. 25 N., R. 18 E., Secs. 1, and 2, of the Willamette Meridian.

Excluding from the above areas any lands within the Glacier Peak Wilderness, and any private lands.



Description of WN-2 taken solely from Bureau of Land Management Maps; Twisp 1978, and Chelan 1973, Washington.

Chelan County

T. 30 N., R. 17 E., Sec. 35, of the Willamette Meridian.

T. 30 N., R. 18 E., Sec. 33, of the Willamette Meridian.

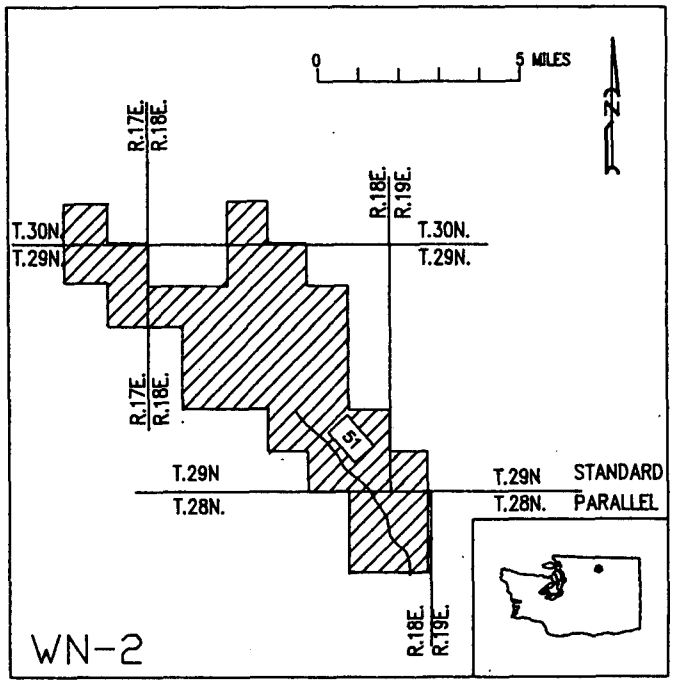
T. 29 N., R. 17 E., Secs. 1, 2, and 12, of the Willamette Meridian.

T. 29 N., R. 18 E., Secs. 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 29 N., R. 19 E., Sec. 31, of the Willamette Meridian.

T. 28 N., R. 18 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

Excluding any private lands within the above area.



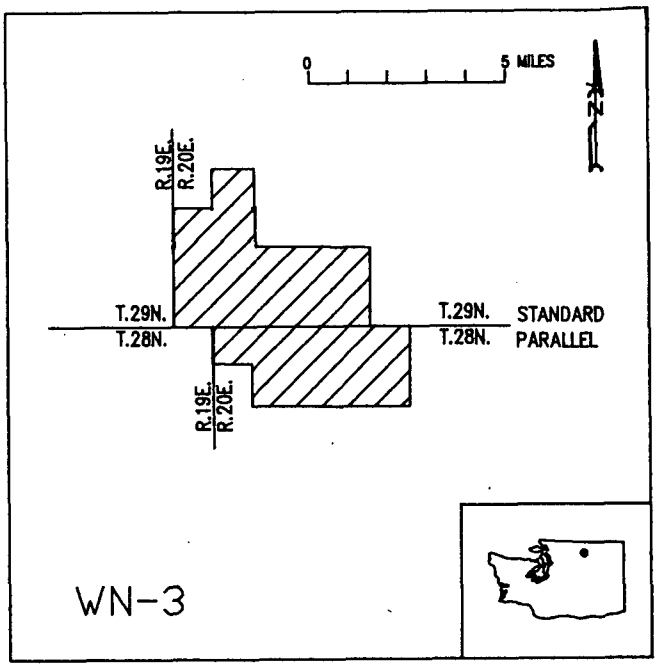
Description of WN-3 taken solely from Bureau of Land Management Maps; Twisp 1978, and Chelan 1973, Washington.

Chelan County

T. 29 N., R. 20 E., Secs. 19, 20, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 28 N., R. 20 E., Secs. 2, 3, 4, 5, 9, 10, and 11, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of WN–4 taken solely from Bureau of Land Management Maps; Chelan 1973, and Sauk River 1978, and Department of Natural Resources Quadrangle; Skykomish River 1973, Washington.

Chelan and Snohomish Counties

T. 28 N., R. 13 E., Secs. 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 14 E., Secs. 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 15 E., Secs. 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 28 N., R. 16 E., Secs. 18, 19, 30, and 31, of the Willamette Meridian.

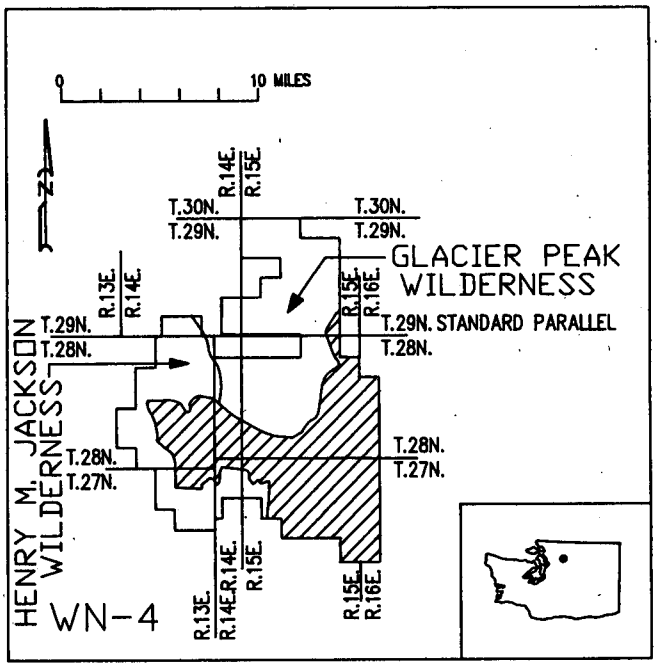
T. 27 N., R. 13 E., Secs. 1, and 2, of the Willamette Meridian.

T. 27 N., R. 14 E., Secs. 1, 2, and 11, of the Willamette Meridian.

T. 27 N., R. 15 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, and 25, of the Willamette Meridian.

T. 27 N., R. 16 E., Secs. 6, 7, 18, 19, and 30, of the Willamette Meridian.

Excluding from the above areas any lands within the Glacier Peak, Henry M. Jackson Wilderness, and any private lands.



Description of WN–5 taken solely from Bureau of Land Management Maps; Chelan 1973, and Department of Natural Resources Quadrangle; Skykomish River 1973, Washington.

Chelan and King Counties

T. 26 N., R. 14 E., Secs. 24, and 25, of the Willamette Meridian.

T. 26 N., R. 15 E., Secs. 1, 2, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, and 30, of the Willamette Meridian.

T. 26 N., R. 16 E., Secs. 6, and 17, of the Willamette Meridian.

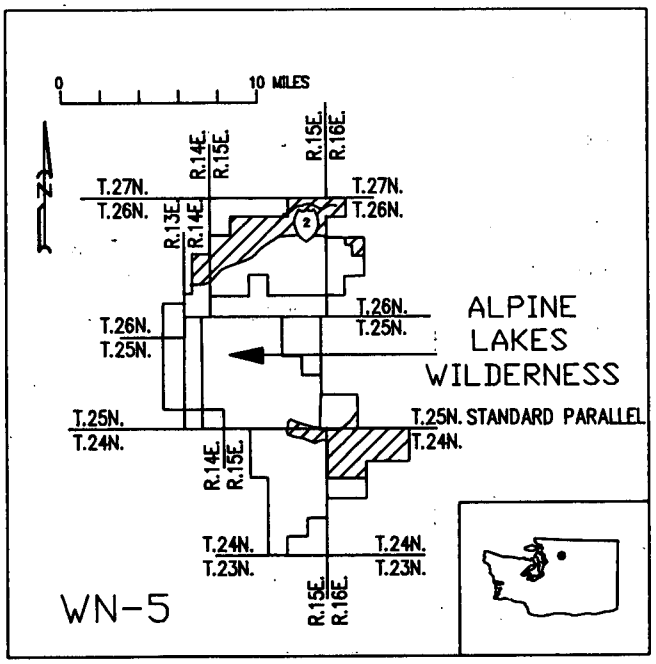
T. 25 N., R. 15 E., Secs. 35, and 36, of the Willamette Meridian.

T. 25 N., R. 16 E., Sec. 32, of the Willamette Meridian.

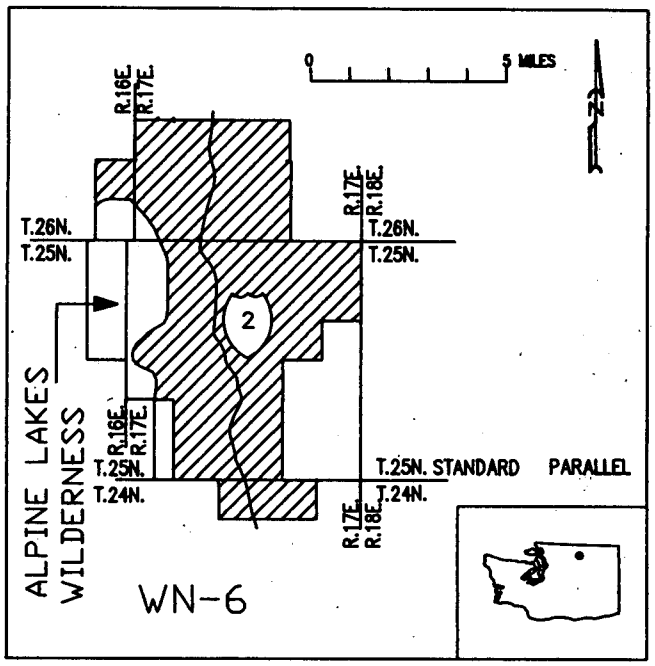
T. 24 N., R. 15 E., Secs. 1, 2, and 3, of the Willamette Meridian.

T. 24 N., R. 16 E., Secs. 3, 4, 5, 6, 7, and 8, of the Willamette Meridian.

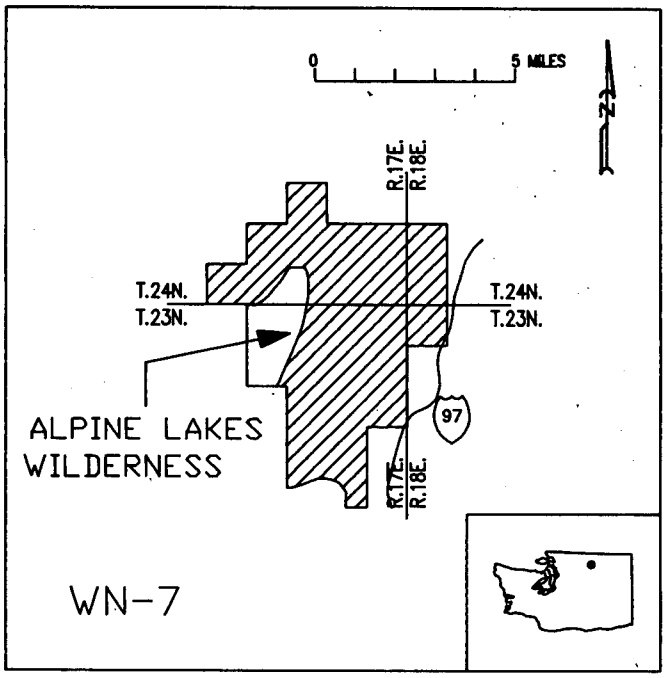
Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.



Description of WN-6 taken solely from Bureau of Land Management Map; Chelan 1973, Washington.
Chelan County
T. 26 N., R. 16 E., Secs. 25, and 36, of the Willamette Meridian.
T. 26 N., R. 17 E., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.
T. 25 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 32, 33, and 34, of the Willamette Meridian.
T. 24 N., R. 17 E., Secs. 3, and 4, of the Willamette Meridian.
Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.



Description of WN-7 taken solely from Bureau of Land Management Maps; Chelan 1973, and Wenatchee 1978, Washington.
Chelan County
T. 24 N., R. 17 E., Secs. 22, 25, 26, 27, 28, 32, 33, 34, 35, and 36, of the Willamette Meridian.
T. 24 N., R. 18 E., Secs. 30, and 31, of the Willamette Meridian.
T. 23 N., R. 17 E., Secs. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 22, 23, and 27, of the Willamette Meridian.
Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.



Description of WS–1 taken solely from Department of Natural Resources Map; Snoqualmie Pass 1973, and Bureau of Land Management Map; Wenatchee 1978, Washington.

Chelan and Kittitas Counties

T. 23 N., R. 13 E., Secs. 21, 22, 23, 26, 27, 28, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 23 N., R. 17 E., Secs. 26, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 12 E., Secs. 13, 14, 23, and 25, of the Willamette Meridian.

T. 22 N., R. 13 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 14 E., Secs. 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 15 E., Secs. 25, 26, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 16 E., Secs. 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 17 E., Secs. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 18 E., Secs. 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 22 N., R. 19 E., Secs. 6, 7, 18, 19, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 21 N., R. 13 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, and 36, of the Willamette Meridian.

T. 21 N., R. 14 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 N., R. 15 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, and 18, of the Willamette Meridian.

T. 21 N., R. 16 E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 21 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 21 N., R. 18 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

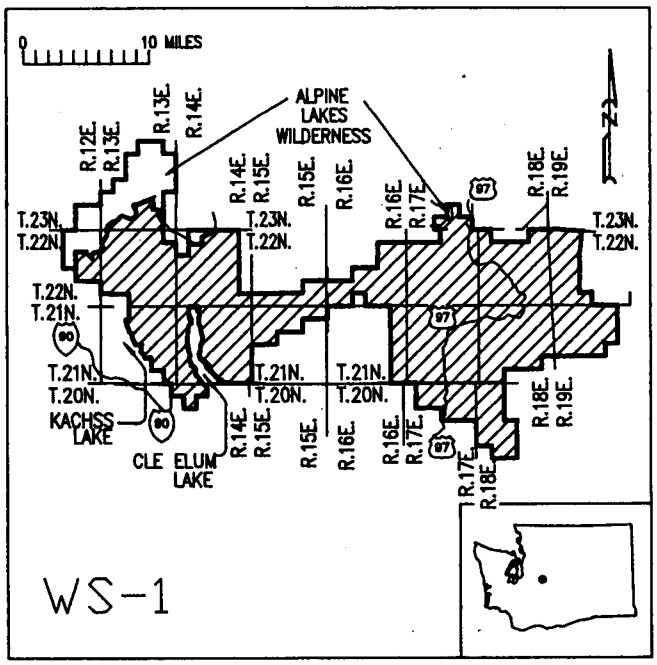
T. 21 N., R. 19 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, and 22, of the Willamette Meridian.

T. 20 N., R. 14 E., Secs. 3, 4, 5, 6, and 8, of the Willamette Meridian.

T. 20 N., R. 17 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, and 15, of the Willamette Meridian.

T. 20 N., R. 18 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within the Alpine Lakes Wilderness, and any private lands.



Description of WS–2 taken solely from Department of Natural Resources Map; Snoqualmie Pass 1973, and Bureau of Land Management Map; Wenatchee 1978, Washington.

Kittitas and Yakima Counties

T. 20 N., R. 14 E., Secs. 30, 31, and 32, of the Willamette Meridian.

T. 19 N., R. 12 E., Secs. 1, 12, 13, and 24, of the Willamette Meridian.

T. 19 N., R. 13 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 19 N., R. 14 E., Secs. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

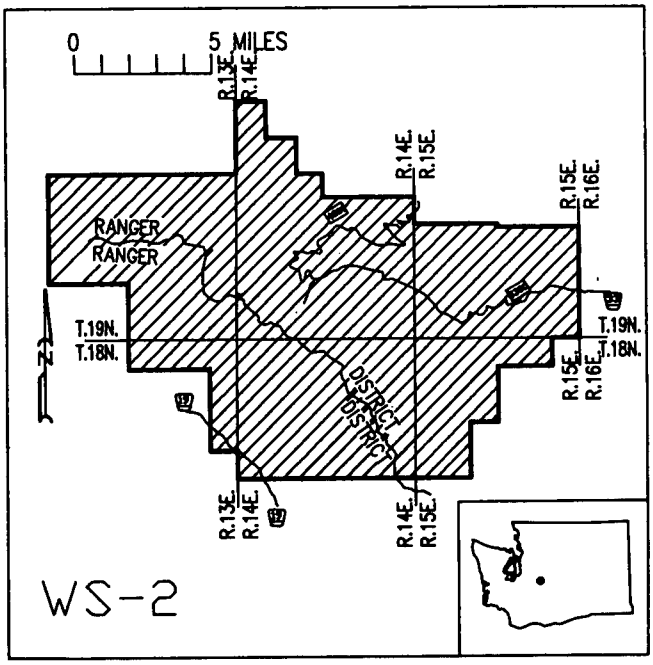
T. 19 N. R. 15 E., Secs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 13 E., Secs. 1, 2, 3, 4, 12, 13, and 24, of the Willamette Meridian.

T. 18 N., R. 14 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, of the Willamette Meridian.

T. 18 N. R. 15 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 29, and 30, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of WS–3 taken solely from Bureau of Land Management Map; Mount Rainier 1978, Washington.

Yakima County

T. 17 N., R. 13 E., Secs. 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 27, 28, 32, 33, and 34, of the Willamette Meridian.

T. 16 N., R. 11 E., Secs. 25, and 36, of the Willamette Meridian.

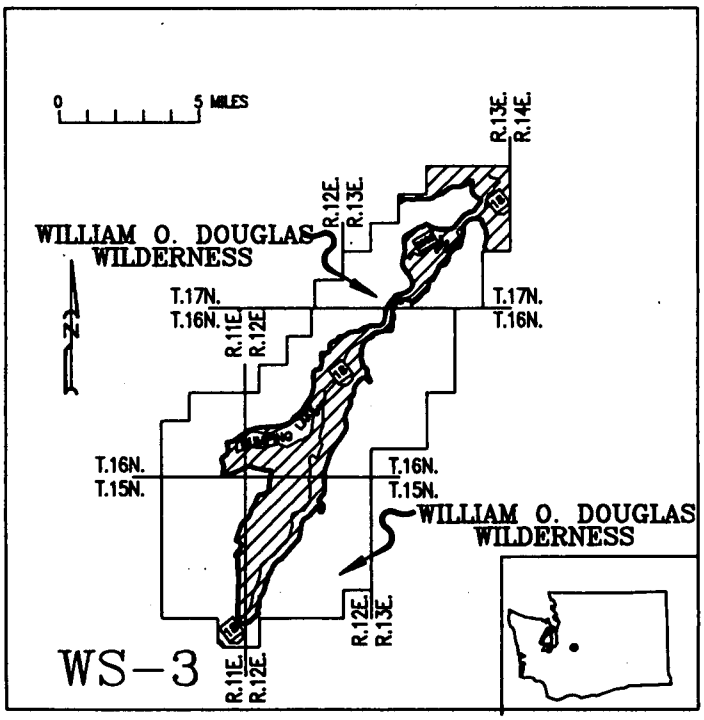
T. 16 N., R. 12 E., Secs. 1, 11, 12, 13, 14, 15, 22, 23, 24, 26, 27, 28, 29, 32, 33, 34, and 35, of the Willamette Meridian.

T. 16 N., R. 13 E., Secs. 5, and 6, of the Willamette Meridian.

T. 15 N., R. 11 E., Secs. 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 15 N., R. 12 E., Secs. 2, 3, 4, 5, 8, 9, 10, 11, 15, 16, 17, 20, 21, 29, and 32, of the Willamette Meridian.

Excluding from the above areas any lands within the William O. Douglas Wilderness, and any private lands.



Description of WS–4 taken solely from Bureau of Land Management Map; Mount Rainier 1978, Washington. Yakima County

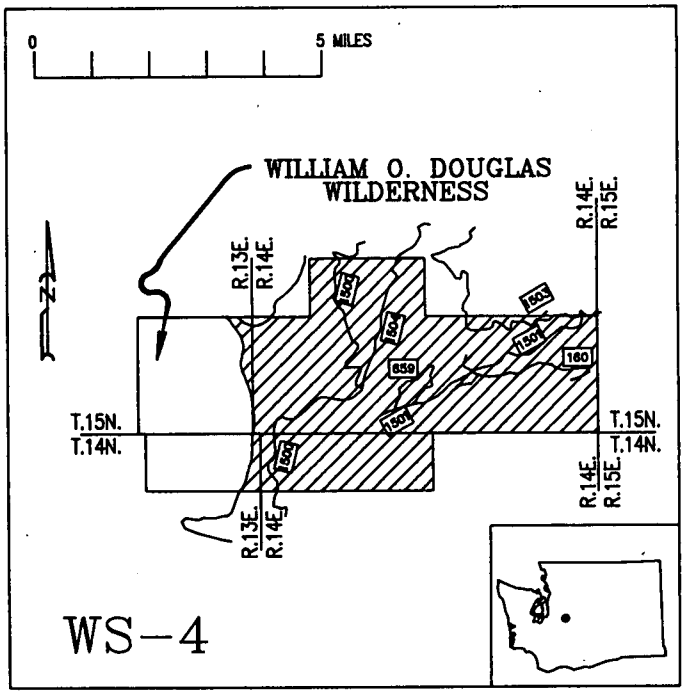
T. 15 N., R. 13 E., Secs. 25, and 36, of the Willamette Meridian.

T. 15 N., R. 14 E., Secs. 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 13 E., Sec. 1, of the Willamette Meridian.

T. 14 N., R. 14 E., Secs. 4, 5, and 6, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of WS–5 taken solely from Bureau of Land Management Map; Mount Ranier 1978, Washington. Lewis and Yakima Counties

T. 14 N., R. 11 E., Secs 35, and 36, of the Willamette Meridian.

T. 14 N., R. 12 E., Secs. 25, 32, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 13 E., Secs. 30, 31, and 32, of the Willamette Meridian.

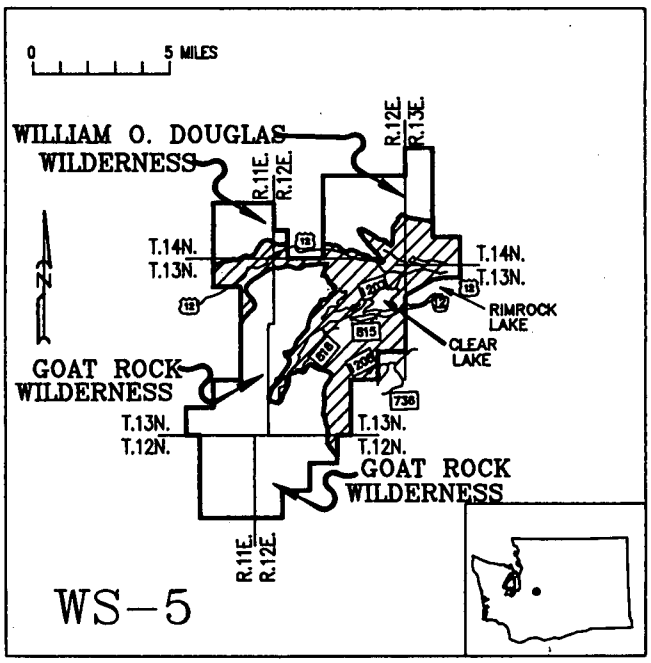
T. 13 N., R. 11 E., Secs. 1, 2, 3, 11, 12, and 25, of the Willamette Meridian.

T. 13 N., R. 12 E., Secs. 1, 2, 3, 4, 5, 9, 12, 13, 14, 15, 16, 20, 21, 22, 23, 29, 32, and 34, of the Willamette Meridian.

T. 13 N., R. 13 E., Secs. 5, and 6, of the Willamette Meridian.

T. 12 N., R. 12 E., Sec. 4, of the Willamette Meridian.

Excluding from the above areas any lands within the Goat Rocks, William O. Douglas Wilderness, and any private lands.



Description of WS-6 taken solely from Bureau of Land Management Map; Mount Rainier 1978, Washington.
Yakima County

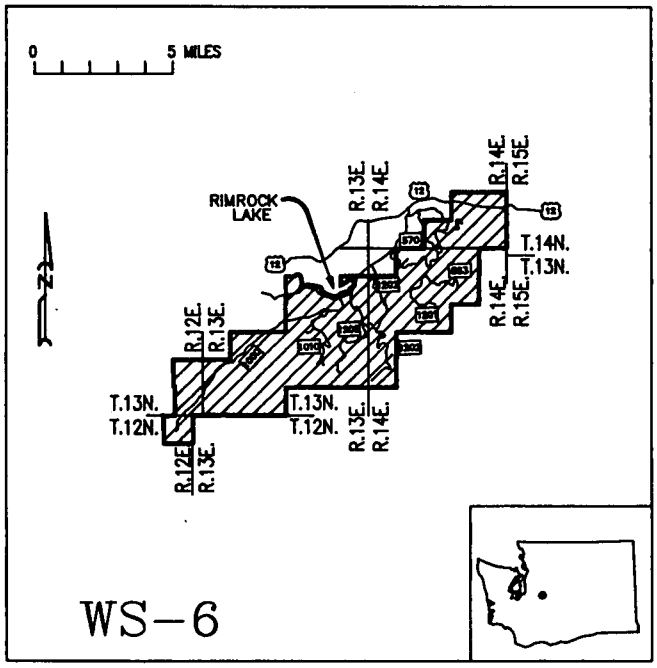
T. 14 N., R. 14 E., Secs. 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 13 E., Secs. 11, 12, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 13 N., R. 14 E., Secs. 2, 3, 4, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 29, and 30, of the Willamette Meridian.

T. 12 N., R. 12 E., Sec. 1, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of W-39 taken solely from Bureau of Land Management Map; Chehalis River 1979, and Department of Natural Resources Quadrangle; Shelton 1987, Washington.
Grays Harbor and Thurston Counties

T. 16 N., R. 3 W., Secs. 4, 5, 6, and 7, of the Willamette Meridian.

T. 16 N., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 26, 27, and 28, of the Willamette Meridian.

T. 16 N., R. 5 W., Secs. 1, 2, 11, 12, and 13, of the Willamette Meridian.

T. 17 N., R. 3 W., Secs. 3, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 N., R. 4 W., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

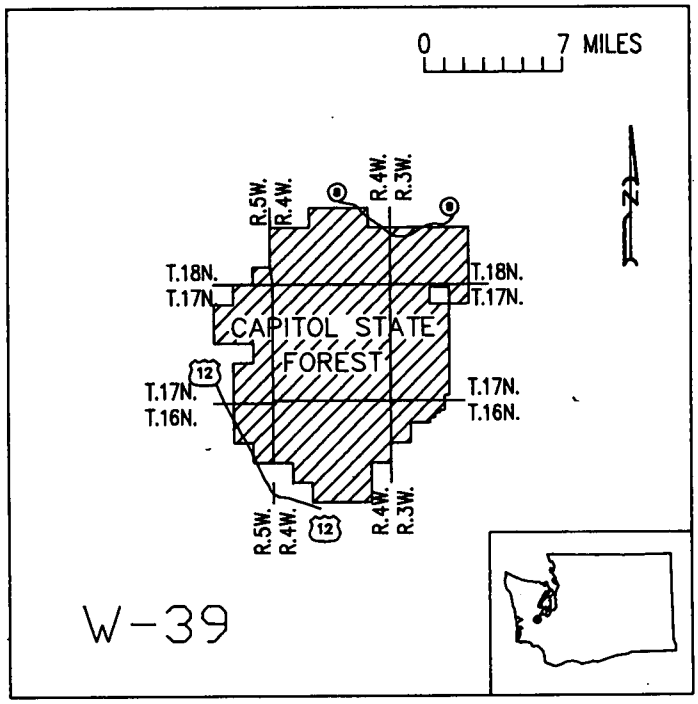
T. 17 N., R. 5 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 3 W., Secs. 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, of the Willamette Meridian.

T. 18 N., R. 4 W., Secs. 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 5 W., Sec. 36, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of W-40 taken solely from Bureau of Land Management Map; Chehalis River 1988, Washington. Pacific and Lewis Counties

T. 13 N., R. 5 W., Secs. 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 29, 30, 31, and 32, of the Willamette Meridian.

T. 13 N., R. 6 W., Secs. 6, 7, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 7 W., Secs. 1, 2, 3, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 29, 30, and 36, of the Willamette Meridian.

T. 13 N., R. 8 W., Secs. 5, 6, 7, 8, 12, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 32, and 33, of the Willamette Meridian.

T. 13 N., R. 9 W., Secs. 12, 24, and 36, of the Willamette Meridian.

T. 14 N., R. 5 W., Secs. 2, 3, 4, 9, 10, 11, 14, 15, 16, 21, 22, 23, 26, 27, 28, 32, 33, and 34, of the Willamette Meridian.

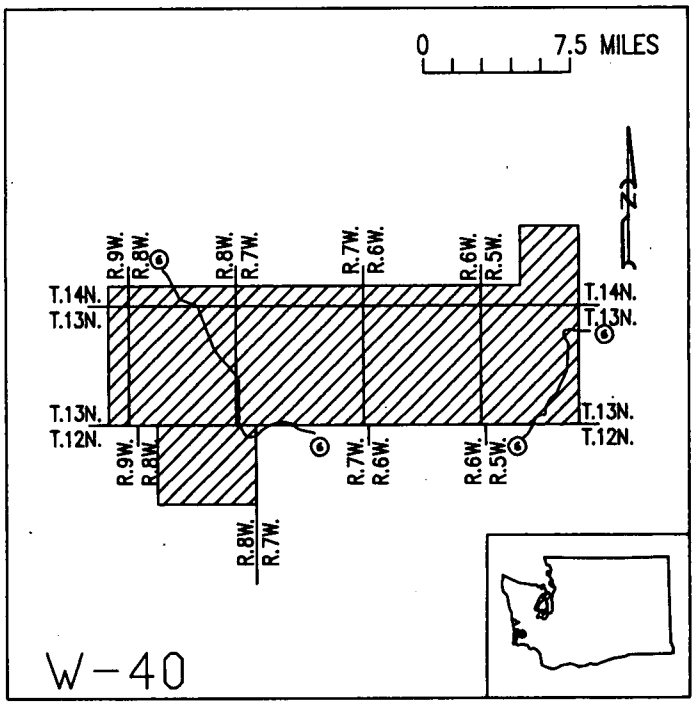
T. 14 N., R. 7 W., Sec. 36, of the Willamette Meridian.

T. 14 N., R. 9 W., Sec. 36, of the Willamette Meridian.

T. 15 N., R. 4 W., Sec. 31, of the Willamette Meridian.

T. 15 N., R. 5 W., Sec. 36, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of W–41 taken solely from Department of Public Resources Map; Astoria 1987, Washington.

Wahkiakum and Cowlitz Counties

T. 8 N., R. 4 W., Secs. 6, and 7, of the Willamette Meridian.

T. 8 N., R. 5 W., Secs. 1, 3, 4, 9, 10, 12, 16, and 21, of the Willamette Meridian.

T. 9 N., R. 4 W., Secs. 7, 16, 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

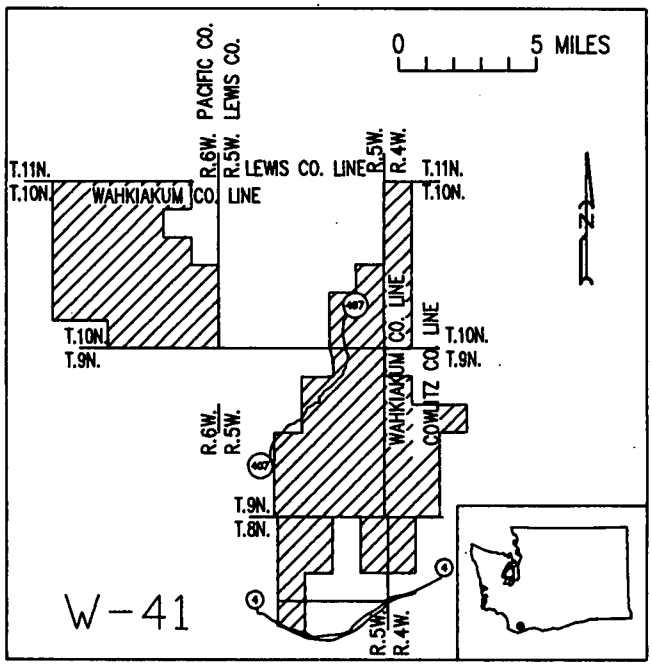
T. 9 N., R. 5 W., Secs. 1, 2, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 10 N., R. 4 W., Secs. 6, 7, 18, 19, 30, and 31, of the Willamette Meridian.

T. 10 N., R. 5 W., Secs. 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 10 N., R. 6 W., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Columbia River, and any private lands.



Description of W–42 taken solely from Department of Natural Resources Quadrangle; Vancouver 1983, and Bureau of Land Management Map; Hood River 1978, Washington.

Skamania County

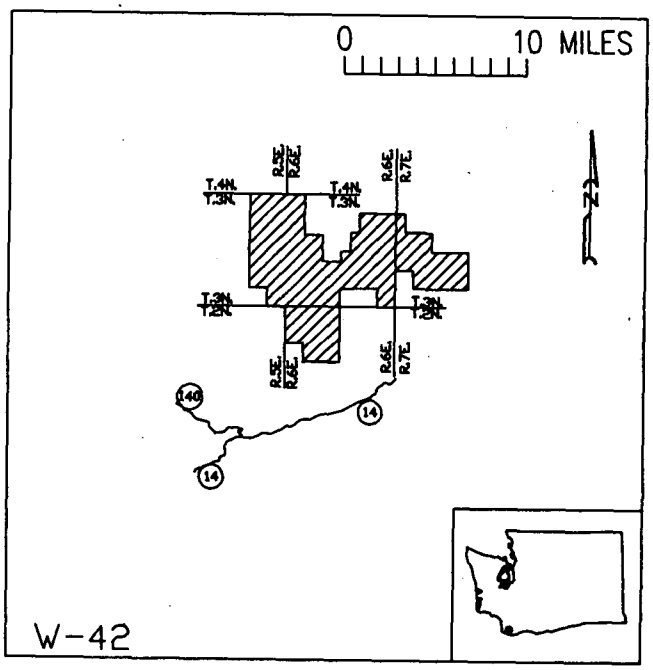
T. 2 N., R. 6 E., Secs. 4, 5, 6, 7, 8, 9, 16, and 17, of the Willamette Meridian.

T. 3 N., R. 5 E., Secs. 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, and 36, of the Willamette Meridian.

T. 3 N., R. 6 E., Secs. 6, 7, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 36, of the Willamette Meridian.

T. 3 N., R. 7 E., Secs. 7, 17, 18, 19, 20, 21, 22, 27, 28, and 29, of the Willamette Meridian.

Excluding any private lands within the above area.



Description of FL–WA taken solely from Department of Natural Resources Quadrangle; Centralia 1980, and Tacoma 1975, Washington.

Thurston and Pierce Counties

T. 18 N., R. 1 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 2 E., Secs. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 36, of the Willamette Meridian.

T. 18 N., R. 3 E., Secs. 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 N., R. 1 W., Secs. 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

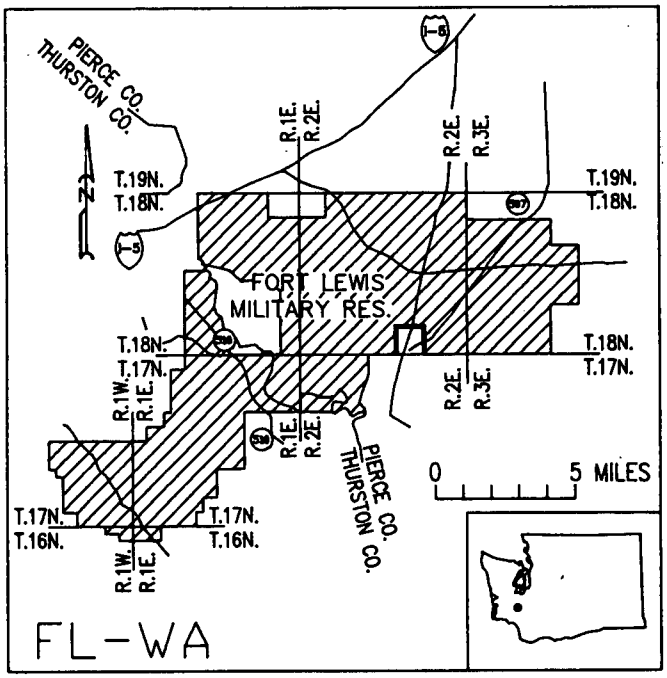
T. 17 N., R. 1 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 17 N., R. 2 E., Secs. 4, 5, 6, 7, 8, 9, 16, and 17, of the Willamette Meridian.

T. 16 N., R. 1 W., Sec. 1, of the Willamette Meridian.

T. 16 N., R. 1 E., Sec. 6, of the Willamette Meridian.

Excluding from the above areas any lands within Sections 16 or 17 south of the Nisqually River, any tribal or private lands.



Description of GP-1 taken solely from Bureau of Land Management Maps; Mount Rainier 1978, and Mount Adams 1978, Washington.

Lewis and Pierce Counties

T. 15 N., R. 7 E., Secs. 20, 28, 29, 32, and 33, of the Willamette Meridian.

T. 15 N., R. 10 E., Secs. 35, and 36, of the Willamette Meridian.

T. 14 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, and 36, of the Willamette Meridian.

T. 14 N., R. 8 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 9 E., Secs. 7, 8, 17, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 14 N., R. 10 E., Secs. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 11 E., Secs. 6, 7, 8, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 13 N., R. 7 E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 13 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 9 E., Secs. 5, 6, 7, 8, 12, 13, 18, 19, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 13 N., R. 10 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

T. 13 N., R. 11 E., Secs. 4, 5, 6, 8, 9, and 16 of the Willamette Meridian.

T. 12 N., R. 7 E., Sec. 1, of the Willamette Meridian.

T. 12 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 23, 24, 25, 26, 27, 34, 35, 36, SE ¼ Sec.14, E ½ NE ¼ Sec. 14, SW ¼ NE ¼ Sec. 14, S ½ Sec. 22, and NE ¼ Sec. 22, of the Willamette Meridian.

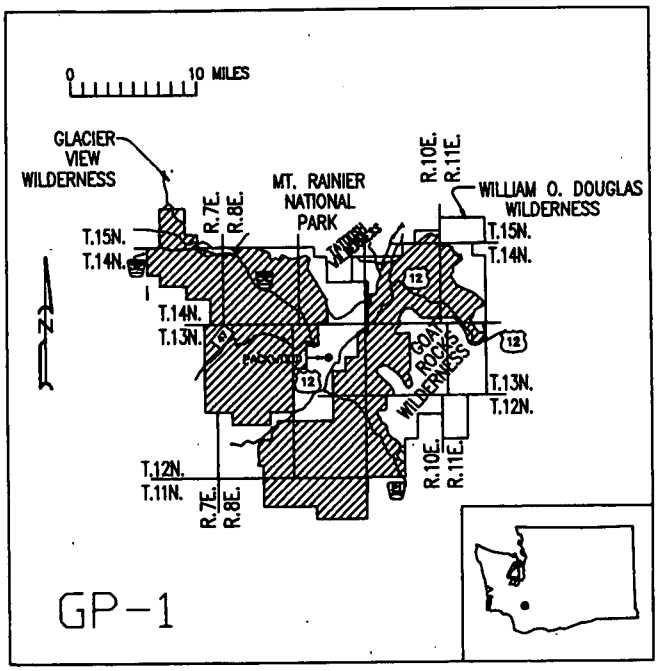
T. 12 N., R. 9 E., Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 12 N., R. 10 E., Secs. 5, 6, 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 11 N., R. 8 E., Secs. 1, 2, 11, and 12, of the Willamette Meridian.

T. 11 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, of the Willamette Meridian.

Excluding from the above area any lands within Glacier View, William O. Douglas, Goat Rocks and Tatoosh Wilderness, and any private lands.



Description of GP-2 taken solely from Department of Natural Resources Quadrangle; Mount Adams 1978, and Mount St. Helens 1978, Washington. Lewis and Skamania Counties

T. 12 N., R. 7 E., Secs. 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 11 N., R. 7 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 10 N., R. 7 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19, 20, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 11 N., R. 6 E., Secs. 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 10 N., R. 6 E., Secs. 1, 2, 3, 4, 5, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Willamette Meridian.

T. 9 N., R. 6 E., Secs. 1, 2, 3, 13, 24, 25, 35, and 36, of the Willamette Meridian.

T. 8 N., R. 6 E., Secs. 1, 2, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 35, and 36, of the Willamette Meridian.

T. 7 N., R. 6 E., Secs. 1, 2, 11, 12, 13, and 14, of the Willamette Meridian.

T. 9 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 N., R. 8 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 9 N., R. 9 E., Secs. 18, 19, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

T. 8 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 8 N., R. 7 ½ E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 8 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, and 32, of the Willamette Meridian.

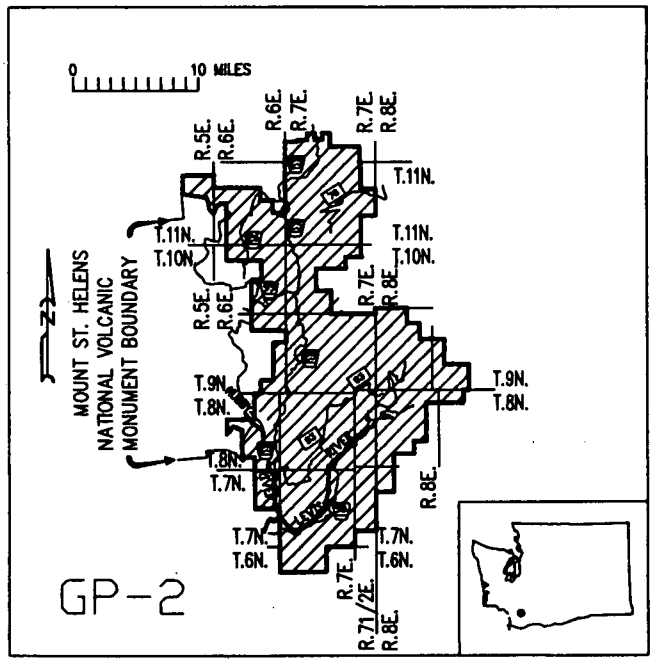
T. 7 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 N., R. 7 ½ E., Secs. 1, 12, 13, 24, and 25, of the Willamette Meridian.

T. 7 N., R. 8 E., Secs. 5, 6, 7, and 8, of the Willamette Meridian.

T. 6 N., R. 7 E., Secs. 3, 4, 5, 6, 7, 8, 9, and 10, of the Willamette Meridian.

Excluding from the above areas any lands within the Mount St. Helens National Volcanic Monument, and any private lands.



Description of GP–3 taken solely from Department Natural Resources Quadrangle; Mount Adams 1978, Washington.

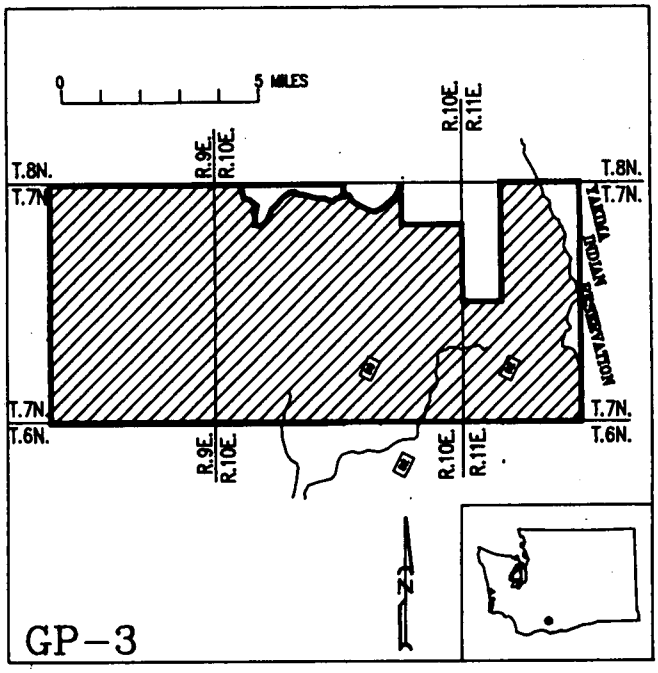
Skamania and Klickitat Counties

T. 7 W., R. 9 E., Secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 N., 10 E., Secs. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 7 N., R. 11 E., Secs. 4, 5, 8, 9, 16, 17, 19, 20, 21, 28, 29, 30, 31, 32, and 33, of the Willamette Meridian.

Excluding from the above areas any lands within the Mt. Adams Wilderness, and any tribal or private lands.



Description of GP–4 taken solely from Bureau of Land Management Maps; Hood River 1978, Mount Adams 1978, Mount St. Helens 1978, and Vancouver 1979, Washington.

Skamania and Klickitat Counties

T. 3 N., R. 8 E., Secs. 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12, of the Willamette Meridian.

T. 3 N., R. 9 E., Secs. 6, and 7, of the Willamette Meridian.

T. 4 N., R. 6 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 24, of the Willamette Meridian.

T. 4 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, and 34, of the Willamette Meridian.

T. 4 N., R. 7 ½ E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 4 N., R. 8 E., Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 4 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 5 N., R. 5 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 6 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 7 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 7 ½ E., Secs. 1, 12, 13, 24, 25, and 36, of the Willamette Meridian.

T. 5 N., R. 8 E., Secs. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33, 34, and 35, of the Willamette Meridian.

T. 5 N., R. 9 E., Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 5 N., R. 10 E., Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, and 32, of the Willamette Meridian.

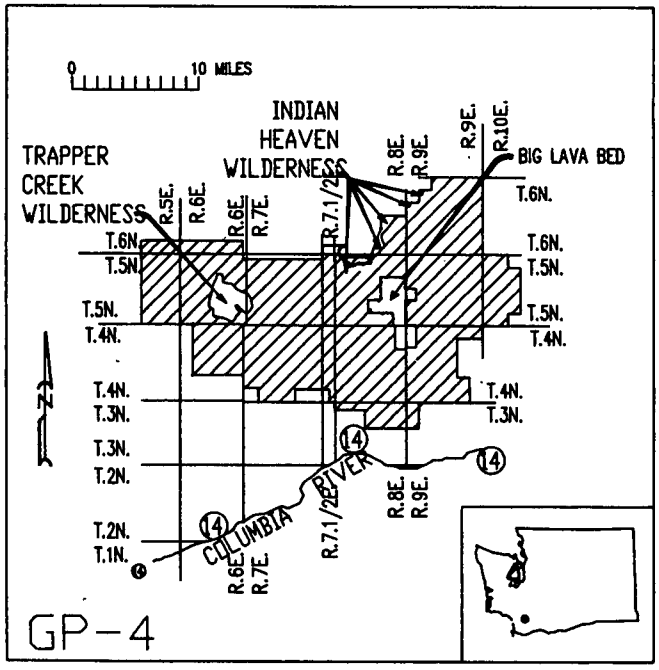
T. 6 N., R. 5 E., Secs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 6 N., R. 6 E., Secs. 17, 18, 19, 20, 29, 30, 31, and 32, of the Willamette Meridian.

T. 6 N., R. 8 E., Secs. 23, 24, 25, 26, 34, 35, and 36, of the Willamette Meridian.

T. 6 N., R. 9 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

Excluding from the above areas any lands within the Indian Heaven Wilderness, Trapper Creek Wilderness, the Columbia River, and any private lands.



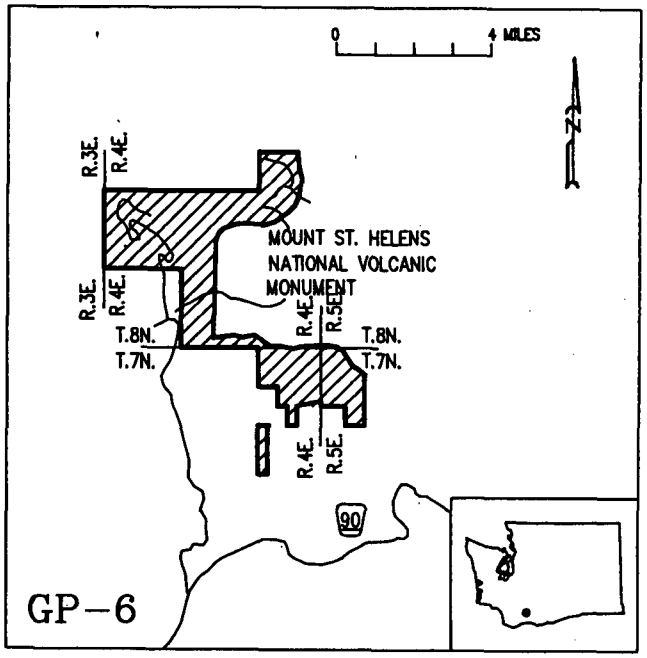
Description of the GP–6 taken solely from Bureau of Land Management Map; Mount St. Helens 1978, Washington. Cowlitz and Skamania Counties

T. 7 N., R. 4 E., Secs. 1, 2, 11, 12, 14, and 23, of the Willamette Meridian.

T. 8 N., R. 4 E., Secs. 11, 14, 15, 16, 17, 18, 19, 20, 21, 28, 33, 34, 35, and 36, of the Willamette Meridian.

T. 8 N., R. 5 E., Sec. 31, of the Willamette Meridian.

Excluding from the above areas any lands within Mount St. Helens National Volcanic Monument, and any private lands.



Description of GP-7 taken solely from Bureau of Land Management Map; Centralia 1980, Washington.

Thurston, Pierce, and Lewis Counties

T. 13 N., R. 3 E., Secs. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, and 24, of the Willamette Meridian.

T. 13 N., R. 4 E., Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21, and 28, of the Willamette Meridian.

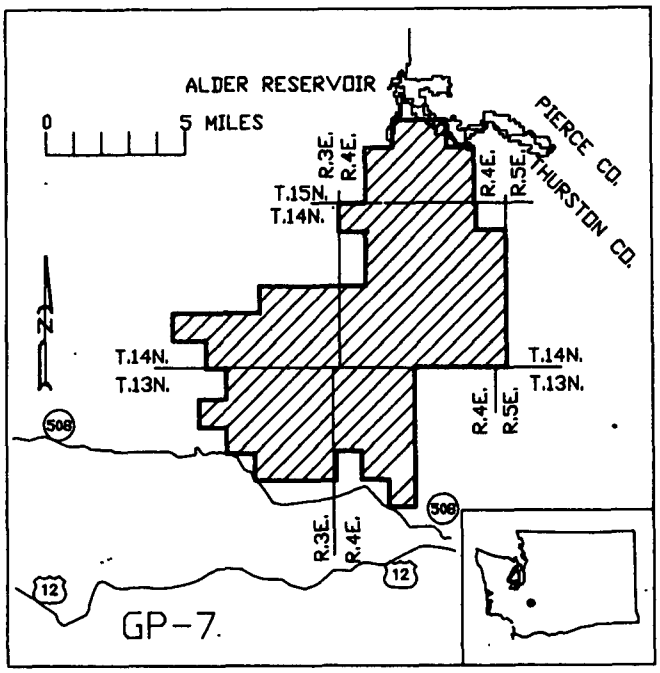
T. 14 N., R. 3 E., Secs. 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 14 N., R. 4 E., Secs. 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Willamette Meridian.

T. 15 N., R. 4 E., Secs. 21, 22, 26, 27, 28, 29, 32, 33, 34, and 35, of the Willamette Meridian.

Excluding any private lands within the above area.

Primary constituent elements: forested lands that are used or potentially used by the northern spotted owl for nesting, roosting, foraging, or dispersing.



Dated: July 31, 1991

John F. Turner

Director, U.S. Fish and Wildlife Service

[FR Doc. 91-18889 Filed 8-5-91; 5:14 pm]

BILLING CODE 4310-55-M

federal register

Tuesday
August 13, 1991

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 273, 274 and 280

Three Proposed Regulations Addressing Certain Food Stamp Program Provisions of the Mickey Leland Domestic Hunger Relief Act of 1990; Proposed Rules

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

[Amendment No. 336]

Food Stamp Program; Monthly Reporting and Retrospective Budgeting Amendments and Mass Changes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement the monthly reporting and retrospective budgeting (MRRB) provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (title XVII, Pub. L. 101-624, 104 Stat. 3359, November 28, 1990). These provisions include the State agency option to budget retrospectively households not subject to monthly reporting, the addition of households residing on Indian reservations to the categories of households exempt from monthly reporting, and the elimination of the requirement that the Secretary of Agriculture prescribe the standards for report forms. The rule also proposes numerous technical changes to the Food Stamp Program MRRB system and revisions and clarifications of the procedures for handling mass changes. These technical changes include a clarification of procedures for handling prorated or annualized income; revised procedures for budgeting certain new household members; clarification of procedures for handling certain mass changes for retrospectively-budgeted households; procedures for handling income received in the form of a single monthly payment or deductions paid in a monthly sum; revised procedures for handling the income of new household members; redefinition of the information required on the monthly report; optional prospective or retrospective suspension; more flexible procedures regarding the mailing of recertification forms; and changes in the current reinstatement policy. This rule also clarifies procedures for implementing regulatory changes for households subject to MRRB.

DATES: Comments must be received on or before September 12, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 (Datafax number (703) 756-4354). All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in room 708 at 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, at the above address or at (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1. This proposed rule would affect the economy by less than $100 million a year. The rule would not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There would be no 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. Therefore, the Department has classified this rule as "nonmajor".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has also been reviewed with respect to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this proposal would not have a significant economic impact on a substantial number of small entities. The changes would affect food stamp applicants and recipients and State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements associated with MRRB have been approved by the Office of Management and Budget (OMB) under OMB No. 0584-0064. The provisions in this proposed rule are related to certification and MRRB but they do not impose additional reporting or recordkeeping requirements.

Background

This proposed rule has four primary objectives. First, the Department is proposing to implement the provisions of sections 1718, 1723 and 1724 of the Mickey Leland Memorial Domestic Hunger Relief Act (title XVII, Pub. L. 101-624, 104 Stat. 3359, November 28, 1990) (Leland Act). Second, the Department is proposing to clarify and simplify procedures regarding the handling of mass changes in the administration of the Food Stamp Program. Third, the Department is proposing numerous changes to the procedures governing the operation of the MRRB system. These proposed changes are the result of a review of current procedures and waivers and are intended to improve administration of the Program and more closely align MRRB procedures in the Food Stamp and Aid to Families with Dependent Children (AFDC) Programs. The fourth objective of this rule is to incorporate several indexed policy memoranda into the regulations. Although these memoranda represent clarifications rather than new policy, the Department believes that the proposed incorporation of these policy memoranda would simplify administration of the Program.

The procedures governing MRRB were first published in an interim rule on May 25, 1982 at 47 FR 22684 and through a final rule published on December 8, 1983 at 48 FR 54951. The Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985) amended the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) by requiring State agencies to apply MRRB to households with earnings or a recent work history. State agencies were allowed to apply MRRB to other categories, with the exception of migrant farmworker households in the migrant job stream and households with no earned income in which all adult members were elderly or disabled. The statutory MRRB provisions were amended by the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988). Under the Hunger Prevention Act, MRRB became a State agency option; the categories of households statutorily exempt from MRRB were expanded to include all seasonal or migrant farmworker households and homeless households; prospective budgeting was mandated for

all households in the beginning months of participation in the Program; and prospective budgeting was mandated for all households not subject to monthly reporting. The MRRB provisions of the Hunger Prevention Act were effective October 1, 1988 and were implemented retroactively through a final rule published June 6, 1989 at 54 FR 24149. On November 28, 1990, the Leland Act made several changes to the MRRB provisions. Section 1718 of the Leland Act gave State agencies the option of using retrospective budgeting for nonmonthly reporting households, except for those which are statutorily exempt from MRRB. Section 1723 of the Leland Act added households residing on Indian reservations to the categories of households excluded from MRRB, and section 1724 eliminated the requirement that report forms conform to standards prescribed by the Secretary. The elimination of this report applies solely to the monthly report form of households and not to any information collection requirement whereby the States report to FNS.

Retrospective Budgeting of Nonmonthly Reporting Households—7 CFR 273.21(b)

Under the current provision of 7 CFR 273.21(b), State agencies are required to use prospective budgeting for all households not subject to monthly reporting. Prior to enactment of the Hunger Prevention Act, State agencies could determine the benefits of households not subject to monthly reporting either prospectively or retrospectively. The Hunger Prevention Act amended section 5(f)(2) of the Food Stamp Act to require State agencies to use prospective budgeting for all households not subject to monthly reporting. Many State agencies objected to the requirement to budget prospectively all households not subject to monthly reporting and requested that the provision be changed. The State agencies believed that retrospective budgeting provided more time to adjust a household's food stamp allotment to reflect changes in income and deductions. Further, for State agencies that wanted to budget households retrospectively, mandatory monthly reporting increased the paperwork burden. In order to provide greater flexibility to the State agencies, section 1718 of the Leland Act amended section (5)(f)(2) of the Food Stamp Act to give State agencies the option of retrospectively budgeting nonmonthly reporting households. Accordingly, the Department proposes to amend 7 CFR 273.21(b) to give State agencies the option of using retrospective budgeting for nonmonthly reporting households other than those households exempt from monthly reporting under the provisions of section 6(c)(1)(A) of the Food Stamp Act.

The Leland Act made two changes in the area of quality control relating to budgeting and monthly reporting. First, the prospective budgeting requirement of the Hunger Prevention Act, which was never implemented in some states, was rescinded by section 1718(b) of the Leland Act retroactive to October 1, 1988 so that State agencies that either implemented late or did not implement the prospective budgeting provisions at all, are held harmless for their failure to implement on time. Second, section 1718(b)(2) of the Leland Act holds State agencies harmless for errors that were committed solely because of implementation of the Hunger Prevention Act's budgeting and reporting changes. The Department will be working with the affected State agencies to help them revise their case findings and payment error rates.

Households Residing on Indian Reservations—7 CFR 273.21(b)

Under current rules at 7 CFR 273.21(b), three categories of households are exempt from MRRB. This exemption is based on section 6(c)(5) of the Food Stamp Act. These categories include migrant or seasonal farmworker households; households in which all members are homeless individuals; and households with no earned income in which all adult members are elderly or disabled. Section 1723 of the Leland Act added a fourth category to households exempt from MRRB, households residing on Indian reservations. To implement this provision, the Department is proposing to add a new § 273.21(b)(4) which will add households residing on Indian reservations to those households exempt from MRRB.

Section 1781 of the Leland Act provides that the implementation date for section 1723 of the Leland Act is the first day of the month beginning 120 days after publication of implementing regulations. The implementing regulations must be published no later than October 1, 1991. However, section 1718 of the Leland Act incorporates a change to be made by section 1723 of the Leland Act to section 6(c)(1)(A) of the Food Stamp Act excluding all households residing on Indian reservations from MRRB. Section 1781 of the Leland Act also provides that section 1718 was to be effective at enactment. Thus, there are two different and conflicting implementing dates for the mandatory prospective budgeting of households residing on Indian reservations. We believe that Congress intended that implementation occur at the later date. We recognize the impossibility of retroactively requiring State agencies to budget prospectively these households. Further, section 1723 is the specific legislative section mandating the prospective budgeting of these households. Therefore, in this rulemaking we are proposing to implement the provision to budget prospectively households residing on Indian reservations in accordance with the implementation date provided for section 1723. We encourage State agencies to implement these provisions sooner, if possible. For example, as such households come in to be recertified or as new households apply, these households should be prospectively budgeted.

The Monthly Report Form—7 CFR 273.21(h)

Under Section 1724 of the Leland Act, the State agency is delegated the responsibility for design of the monthly report form and the determination of the information regarding eligibility and benefits which will be included in the form. Under the prior statutory provisions, State agency monthly report forms were required to conform to standards prescribed by the Secretary.

Currently, 7 CFR 273.21(h)(3) mandates several items which must be included in the monthly report form. In accordance with the Leland Act, the Department proposes to amend 7 CFR 273.21(h)(3) to eliminate the mandatory list of items which must be included on the monthly report. The information and warnings currently mandated at 7 CFR 273.21(h)(2) remain unchanged since they are not directly related to the determination of eligibility and/or benefits and are either directly or implicitly mandated by statute. These include the requirements that the form: (1) be written in clear, simple language; (2) meet the bilingual requirements in 7 CFR 272.4(b); (3) specify the date by which the State agency must receive the form and the consequences of a late or incomplete form; (4) specify the verification which must be submitted with the form; (5) specify the individual or agency unit available to assist in completing the form; (6) include a statement to be signed by a member of the household, indicating his or her understanding that the provided information may result in changes in the level of benefits; (7) include a description of the civil and criminal penalties for fraud under the Food Stamp Act; and (8) include the statement of the State agency's authority to require Social Security numbers, if the form

requests Social Security numbers and certain other information about the use of such numbers.

Mass Changes—7 CFR 273.12(e)

Three clarifications relating to the mass change provisions at 7 CFR 273.12(e) are being proposed in this rulemaking. These clarifications relate to how mass changes are implemented in the following situations: (1) At a specific point in time for households subject to retrospective budgeting; (2) in the annual and seasonal adjustments to the standard utility allowance (SUA) for households subject to retrospective budgeting; and (3) in public assistance (PA) grants for households subject to retrospective budgeting. All three clarifications reflect current policy. The Department is also proposing to provide State agencies with an additional option regarding seasonal adjustments to the SUA.

Current rules at 7 CFR 273.12(e)(1) require that Federal adjustments to eligibility standards, allotments and deductions, and State adjustments to the SUA are effective at the same point in time for all households (i.e., in effect as of the same issuance month). This has been interpreted to mean that the State agency must implement mass changes prospectively even if the household is otherwise subject to retrospective budgeting. If mass changes in the Federal adjustments were permitted to be implemented retrospectively, adjustments in effect as of July 1 would not be reflected in the household's allotment until August or September, depending on the State agency's retrospective budgeting system.

In order to avoid the possibility of implementation of mass changes in Federal adjustments over several months, the Department is proposing to clarify the current provisions by adding a statement at 7 CFR 273.12(e)(1) to require State agencies to implement all changes in adjustments to eligibility standards, allotments, and deductions, and State adjustments to the SUA prospectively in the same month for all households regardless of the budgeting system.

One current exception to the requirement that all mass changes be implemented at the same time for all households concerns implementation of seasonal adjustments to the SUA. Under Policy Memorandum 84-4 (October 18, 1983), which addresses 7 CFR 273.21(j)(1), annual adjustments to the State SUA are implemented prospectively in the same month for all households. Seasonal adjustments, however, are implemented prospectively for prospectively-budgeted households and retrospectively for households subject to retrospective budgeting. FNS has granted one waiver which allowed a State agency to budget prospectively seasonal changes in the SUA for retrospectively-budgeted households. As a result of this waiver, the Department reviewed the issue of implementation of seasonal changes in the SUA for retrospectively-budgeted households and is proposing to amend the rules at 7 CFR 273.12(e)(1) to require State agencies to implement such changes prospectively for all households. The proposed procedure would benefit participating households by ensuring that seasonal adjustments to the SUA occur concurrently with seasonal changes in utility costs rather than one or two months later as would be the case if such adjustments were implemented retrospectively. The Department believes that this procedure will simplify State administrative procedures by requiring that all mass changes be implemented at the same time for retrospectively and prospectively budgeted households.

Finally, this proposed rule clarifies procedures for handling mass changes in PA grants when households are subject to retrospective budgeting. Current procedures at 7 CFR 273.21(j)(1)(vii)(B) allow the State agencies the option of budgeting the PA grant either prospectively or retrospectively when the household is subject to MRRB. The Department is proposing to add a new sentence to 7 CFR 273.21(j)(1)(vii)(B) to clarify that State agencies which choose to budget the PA grant prospectively, i.e., use the issuance month PA grant, would be required to follow the procedures at 7 CFR 273.12(e)(2) for implementing mass changes. When the State agency has at least 30 days advance knowledge of the amount of the PA adjustment, the State agency shall make the change in benefits effective in the same month as the PA change. If the State agency does not have sufficient notice, the food stamp change shall be effective no later than the month following the month in which the PA change was made. In general assistance (GA) programs which are administered by the same State agency that administers the PA programs, mass changes are handled the same as PA mass changes. In GA programs where GA and PA are not administered by the same State agency, GA mass changes would be budgeted under the procedures at 7 CFR 273.12(e)(3), which require implementing the GA mass changes in the same manner that mass changes are made for Federal programs such as Retirement, Disability, and Survivors' Insurance and SSI.

Additional MRRB Changes

Since implementation of MRRB commenced in 1983, the Department has received numerous requests for waivers and policy clarifications. As a result of the waivers, the policy clarifications, the legislative changes mandated by the Leland Act, and the Department's goal of achieving greater consistency with the procedures in the AFDC Program, the Department is proposing several additional changes to the rules governing the MRRB system.

One- and Two-Month Systems—7 CFR 273.21(d)

Under 7 CFR 273.21(d) State agencies are required to use one beginning month in a one-month MRRB system and two beginning months in a two-month system. Under section 5(f)(2)(B) of the Food Stamp Act, State agencies have the option of using either one or two beginning months in which eligibility and benefits must be determined prospectively. The State agency option of using either one or two beginning months was added to the Food Stamp Act by the Hunger Prevention Act. The Leland Act amended section 5(f)(2)(B) to conform section 5(f)(2)(B) to other changes made by the Leland Act, making no modification to the State agency option provision. To conform to the statutory requirements, the Department is proposing to amend 7 CFR 273.21(d) to give State agencies the option of using either one or two beginning months in a one-month MRRB system. State agencies which opt to use a two-month system shall continue to use two beginning months. The choice of a two-month system necessitates two beginning months in order to preclude going back to the month before the household's month of application to determine benefits.

Budgeting the Income of a New Household Member Who Had Been Previously Providing Income to the Household—7 CFR 273.21(f)(1)

It has come to the Department's attention that in certain circumstances, income received in two different months can be counted in determining a household's eligibility and benefits for a single month. This situation occurs when an individual who is providing income to the household while not a household member later joins the household. The income provided prior to the month the individual joined the household is budgeted retrospectively. When the person becomes a household member his income is counted prospectively under the provisions of 7 CFR 273.21(f)(2) which require the State

agency to budget the income of new household members prospectively. This situation is most likely to occur when a member of the armed forces away from the member's permanent home on duty designates a payroll allotment for the benefit of the member's family. Upon returning home, the member's current income is budgeted prospectively while the allotment that was previously received is budgeted retrospectively. For example, a member of the armed forces who had been providing an allotment returns home from a deployment. In a two-month MRRB system, both the amount of the allotment and the current income of such member would be counted in determining eligibility and benefit levels during the first two months following the return to the household. To avoid this situation, the Department is proposing to amend 7 CFR 273.21(f)(1)(iii)(B) to disregard the previously provided income of the new household member while prospectively budgeting his/her current income.

Budgeting the Income of a New Household Member Who Has Received Income From a Terminated Source—7 CFR 273.21(f)(1)(iii)

It has come to the Department's attention that in certain cases, the income of a new member, which terminated before the member joined the household, could be attributed to the household if the new member had been participating in the Program as a member of another household. For example, an individual was certified as a one-person household prior to becoming a member of the current household. While participating as a one-person household the individual was receiving GA as a sole source of income. When the new member joins the current household the GA is terminated. Under current procedures at 7 CFR 273.21(f)(1)(iii)(C), the GA would be attributed to the current household even though the household never had the benefit of the GA and the GA is no longer being received by the new member. To eliminate the situation in which income which was not and will not be received by the household is counted in determining benefits, the Department is proposing to amend 7 CFR 273.21(f)(1)(iii)(C) to require the disregard of budget month income previously received by a new household member from a terminated source.

Adding New Household Members—7 CFR 273.21(f)(1)

The Department is proposing to provide State agencies with the option of adding new household members to ongoing MRRB households using the same procedures that the State agency uses to add new household members in its AFDC Program. Under current policy, the household's entitlement to benefits for a new member commences in the month following the month the new member joins the household unless the new member is reported prior to the household's normal issuance and the State agency can adjust the household's issuance to reflect the addition of the new member. In several AFDC retrospective budgeting systems the household is entitled to benefits for a new member beginning from the date the new member joins the household. For example, in a food stamp MRRB system if a household gains a new member on July 15 the household's benefits for August are adjusted to reflect the addition of the new member. The household is entitled to no benefits on behalf of the new member for the month of July. In an AFDC system, the household is entitled to benefits from the date the new member is added to the household, which in this example would be July 15. To provide greater consistency between food stamp and AFDC MRRB systems, the Department is proposing to add a new paragraph (D) to 7 CFR 273.21(f)(1)(iii) to give State agencies the option of prorating benefits for the new member from the date the new member joins the household if the State agency uses a similar system in its AFDC Program.

The Department has granted waivers allowing State agencies to align food stamp and AFDC procedures for adding new members. The Department believes that providing State agencies with this option is consistent with the intent of Congress expressed in section 5(f)(4) of the Food Stamp Act (7 U.S.C. 2014(f)(4)) which directs the Secretary, in promulgating regulations regarding budgeting, to assure that the income of households receiving benefits in the AFDC and Food Stamp Programs is calculated on a comparable basis. Providing this option would also improve administration of the Program by providing State agencies with greater flexibility.

Prorated Income and Deductions—7 CFR 273.21(f)(2)

In response to waiver requests and inquiries, the Department is proposing to clarify provisions regarding the handling of certain types of income which are prorated over a period of time. This income includes self-employment income prorated over a period of less than one year; income received by contract; and nonexcluded educational income such as scholarships, deferred student loans, and other educational grants which are prorated over the period which they are intended to cover. Instead of providing specific procedures for the handling of such income in an MRRB system, 7 CFR 273.21(f)(2) requires such income to be handled in accordance with procedures at 7 CFR 273.11(a) and 273.10(c) which provide that such income is to be prorated over the period which it is intended to cover. In a strict retrospective budgeting system with two beginning months it is possible to count such income for more months than it is intended to cover. For example, a $900 student loan intended to cover a nine-month academic year from September through May would be prorated at $100 per month. In an MRRB system the loan could result in $1,100 being attributed to the household as the result of counting income received in the beginning months twice (first, while the household is subject to prospective budgeting and again when the household becomes subject to retrospective budgeting).

The Department is proposing in 7 CFR 273.21(f)(2) (ii) and (iii) to require State agencies to budget prospectively all prorated income over the period which it is intended to cover. If income intended to be prorated over a period of time is received later than the beginning of the period which it is intended to cover, the monthly amount is determined by beginning with the first month the income was intended to cover rather than the month in which it was actually received. Using the example of the scholarship intended to cover a nine-month academic year, if the funds are received in November rather than September the monthly amount would be determined by prorating the income over the nine month period beginning in September. This rule also proposes to amend 7 CFR 273.21(f)(2)(iv) to require that deductible expenses prorated over more than one month, such as heating oil, not be deducted over more months than they are intended to cover.

Budgeting Income Received in the Form of a Single Monthly Payment—7 CFR 273.21(f)(2)

Another situation which has come to the Department's attention through the waiver process concerns the budgeting of income which is normally received in the form of a single monthly payment, but as the result of a temporary change in the mailing or payment cycle is received immediately prior to or subsequent to the month which it is intended to cover. An example of such income would be a social security payment for January which is directly-deposited to the household's account on

December 30. Under a strict application of the budgeting procedures at 7 CFR 273.21(f)(2) the amount deposited into the household's account on December 30 would be counted as income for December along with the social security payment deposited into the account at the beginning of December. Although the amount and flow of income is unchanged the household could be ineligible for benefits one month and eligible for a maximum allotment the following month. The Department is proposing to amend 7 CFR 273.21(f)(2) by adding a new paragraph (v) to provide that unearned income and stable earned income received in the form of a single monthly payment be counted for the month it is intended to cover. Unstable or fluctuating earned income, even if received on a monthly basis, would continue to be budgeted for the month in which it is received.

The Department is also proposing to budget stable deductible expenses paid monthly, such as rent, for the month they are intended to cover rather than for the month in which they are paid. The Department is not proposing to apply this method of budgeting to income or expenses received or paid more frequently than monthly since fluctuations in the household's benefits would be smaller and would not justify a deviation from the integrity of the MRRB system.

Interest Income—7 CFR 273.21(f)(2)

This rule proposes to give State agencies three options with respect to the handling of interest income. Under current procedures, interest earned on savings accounts or from similar sources is counted as income in the month received. Under this proposed rule State agencies would have three options regarding the budgeting of interest income for MRRB households. These options are: actual budget month interest income; a prorated amount obtained by dividing the total anticipated interest by the number of months during which the interest will be received; or an averaged amount adjusted for any known differences from the average. The Department is proposing to add these options in a new paragraph (vi) to 7 CFR 273.21(f)(2). These options reflect approved waivers and align procedures for budgeting interest income in the Food Stamp Program with procedures in the AFDC Program.

Terminated Income Received in Beginning Months—7 CFR 273.21(g)

The Department is proposing that terminated income received in either or both of the beginning months be disregarded when the household switches from prospective to retrospective budgeting. Under current procedures at 7 CFR 273.21(g)(3), terminated income is only disregarded for one month. The proposed procedure is more consistent with procedures in the AFDC Program and would more accurately reflect household circumstances.

The Department is also proposing to amend 7 CFR 273.21(g)(3) to redefine terminated income. Currently, income is considered terminated if the household no longer receives income from the same source. Under this proposal income would be considered terminated only if it is not replaced with a similar type of income within 30 days. For example, if a household member obtains new employment within 30 days following the loss of a job, the income from the previous employment would not be considered terminated. This proposed procedure is also more consistent with the procedure used in the AFDC Program. Accordingly, the Department is proposing to amend § 273.21(g)(3) to consider income as terminated only if the household no longer receives income from a source that is not replaced with a similar type of income. In order to be considered a similar type of income, the household must receive income from the new source within 30 days of the date of the last receipt of income from the former source and the estimated monthly amount of income from the new source must be within $25 of the monthly income from the former source. The proposal to use an estimated monthly amount of within $25 of the former income source is analogous to the requirement in prospective budgeting to report changes in income amount that are greater than $25.

Converting and Averaging Income—7 CFR 273.21 (g) and (j)

This proposal would give State agencies the option of converting income received on a weekly or biweekly basis to a monthly sum during the beginning months when the household is prospectively budgeted and using income actually received when the household becomes subject to retrospective budgeting. Although State agencies currently have the option of using either a conversion factor or income actually received during the budget month, the current regulatory provisions at 7 CFR 273.21(j)(1)(vii)(A) do not specifically address whether a State agency may convert income during the beginning months when the household is subject to prospective budgeting and use income actually received when the household becomes subject to retrospective budgeting. The Department is proposing to provide State agencies with such an option since some State agencies may consider conversion to be more appropriate when benefits are determined prospectively (based on a projection), whereas calculating benefits using income actually received may be more appropriate when benefits are determined retrospectively. The Department is also proposing to allow State agencies the option of averaging fluctuating income during the beginning months as is currently done for ongoing prospectively budgeted households under 7 CFR 273.10(c)(3). When the household becomes subject to retrospective budgeting the State agency would be required to use the actual amount of income received during the budget month as currently required under 7 CFR 273.21(f)(2). Accordingly, the Department is proposing to amend 7 CFR 273.21(j)(1)(vii)(A) and 7 CFR 273.21(g)(3) to allow State agencies to convert and/or average income in the beginning months and switch to the use of actual budget month income following the beginning months.

Verification—7 CFR 273.21(i)

To conform verification requirements to the proposed changes in the monthly report the Department is proposing changes to the verification requirements associated with the monthly report.

Currently, the provisions of 7 CFR 273.21(i) require the State agency to verify monthly gross nonexempt income, except for unearned income which has not changed since the last monthly report; monthly utility expenses, unless the household is using the SUA; monthly medical expenses; and any questionable information. The State agency is further required to verify alien status, social security numbers, residency, and citizenship if these items have changed since the last monthly report. Since the State agency would have the option to determine the elements of eligibility included in the monthly report, the Department is proposing to amend 7 CFR 273.21(i) to mandate verification be provided only for those items designated by the State agency which have changed since the last monthly report was submitted. The State agency may require verification of any additional items included in the report that it considers questionable. Procedures at 7 CFR 273.21(j)(3)(iii) regarding missing verification remain unchanged.

State Action on Reports—7 CFR 273.21(j)(1)(vii)(B)

The Department is proposing to clarify how State agencies must handle terminated sources of income which result in an increase in the household's PA grant. Current rules at 7 CFR 273.21(j)(1)(vii)(B) require that terminated sources of income which would otherwise be budgeted retrospectively be disregarded in the food stamp budget when the State agency prospectively budgets the PA grant to be paid in the issuance month. The Department's policy is intended to prevent the situation in which food stamps are significantly decreased because the increased PA grant, reflecting the loss of income, is added to the terminated income from the budget month.

The Department has received several comments which indicate the need to specify that the terminated income would be disregarded only when the issuance month PA grant increases as a result of the terminated source of income. If the PA grant was unaffected, reduced, or terminated, the source of terminating income from the budget month must be included in the food stamp computation. The Department is proposing to include this clarification at 7 CFR 273.21(j)(1)(vii)(B) in the regulations in order to ensure that the current regulatory provisions are followed as intended.

Deductions—7 CFR 273.21(j)(1)(vii)(C)

The Department is proposing two changes in the procedures for handling deductions in the MRRB system. Under the first proposed change, previously discussed, prorated deductible expenses would not be deducted over more months than they are intended to cover. Under the second proposed change, 7 CFR 273.21(j)(1)(vii)(C) would be amended to provide that expenses regularly billed more frequently than monthly could not be averaged. The amount of the deduction would always be equal to the actual expenses billed to the household during the month. Bills for monthly utility expenses received twice in one month as the result of billing cycles would not be affected by this proposed change. The Department is proposing the above changes to ensure that income and deductions are budgeted in the same manner.

Notices of Missing or Incomplete Reports—7 CFR 273.21(j)(3)(ii)

Under the current provisions of 7 CFR 273.21(j)(3)(ii), if the household fails to file a monthly report or files an incomplete report, the State agency is required to provide the household with a notice of incomplete filing within five days of the filing date. Under 7 CFR 273.21(m), if the household fails to submit a complete report by the extended filing date, the State agency is required to provide the household with a notice of termination. On the basis of consistency with similar procedures in the AFDC Program and to reduce the administrative burden of State agencies, the Department has approved several waivers allowing State agencies to combine the notice of incomplete filing with the notice of termination. The Department is proposing to add a new paragraph (G) to 7 CFR 273.21(j)(3)(ii) to provide State agencies with the option of either separate notices of incomplete filing and termination or a combined notice advising the household that its participation will be terminated if it fails to submit a completed report by the extended filing date. Under this proposal, the combined notice would be subject to the requirements of both 7 CFR 273.21(j)(3)(ii), which contains the criteria for the notice of incomplete filing, and 7 CFR 273.21(m)(2), which contains the criteria for the notice of termination. This proposed rule also specifies that the combined notice may only be used if the household will be terminated for failure to submit a complete monthly report. If the household's participation is being terminated for any other reason, the State agency will be required to provide the household with a separate notice of termination.

Reinstatement and Proration of Benefits—7 CFR 273.21(k)

This rule contains a technical correction regarding procedures for determining the benefits of MRRB households following termination and reinstatement. Under current procedures at 7 CFR 273.21(k)(2)(ii), a MRRB household which files a late monthly report in the issuance month is entitled to benefits for the entire issuance month. Current procedures at 7 CFR 273.10(a)(1)(ii) require the State agency to prorate benefits following a lapse in participation by non-MRRB households. To conform current MRRB procedures to the procedures for food stamp households in general, and to be consistent with the procedures used in the AFDC Program, the Department is proposing to amend 7 CFR 273.21(k)(2)(ii) to provide that benefits be prorated for households which submit a report in the issuance month and are reinstated following termination for failure to submit a complete monthly report.

The following example may be helpful for understanding the proposed rule's effect in a two-month MRRB system. A household's monthly report for September is due on October 5. Benefits for November are based on the report. When the household fails to submit a complete monthly report on the due date, the State agency notifies the household that the report is overdue or incomplete and gives the household an extended filing date of October 20. The household again fails to submit a complete report and is terminated. The household submits a complete monthly report on November 18 and is eligible for reinstatement (the State agency has elected to reinstate households which submit late monthly reports). Under current rules, the household would receive a full November issuance. Under the proposed procedure, the household would be entitled to benefits from November 18 through the end of the month. The proposed procedures are consistent with the statute, which requires proration following any break in participation, and treats all households equally, whether or not the State agency has adopted a reinstatement policy.

Other Reporting Requirements—7 CFR 273.21(l)(1)

The Department is proposing to amend 7 CFR 273.21(l)(1) to clarify that the monthly report is the sole reporting requirement for items required to be reported on the monthly report. Currently, 7 CFR 273.21(l)(1) provides that the monthly report is the sole reporting requirement for households required to submit monthly reports. This proposed change reflects Section 4 of Pub. L. 98-204 (December 2, 1983), which provided State agencies more discretion with respect to items included on the monthly report, but specifically prohibits duplicate reporting of items required to be included in the monthly report. This prohibition against dual reporting is found at section 6(c)(3) of the Food Stamp Act (7 U.S.C. 2015(c)(3)). To eliminate redundancy, the reference to the prohibition against dual reporting is being removed from 7 CFR 273.21(a).

Information Reported Outside of the Monthly Report—New § 273.21(o)

The Department is proposing to redesignate the current provisions of 7 CFR 273.21(o) as 273.21(n)(5) and to add a new § 273.21(o) describing procedures for handling information reported outside of the monthly report. This information includes factors of eligibility not included on the monthly report which are required to be reported by the

household pursuant to the change reporting requirement of 7 CFR 273.12(a) and items which are included in the monthly report, but may have been reported voluntarily by the household outside of the report (since the monthly report is the sole reporting requirement for items included in the report, the State agency may not require the household to report information which should be included in the report).

Under proposed § 273.21(o), information reported outside the monthly report would be handled as if it were included in the report, i.e., budget month changes would be reflected in the household's allotment for the appropriate issuance month. For example, a change affecting benefits which occurred on June 22 would be reflected in the household's August allotment (in a two-month MRRB system) whether the change was reported in June or July. This proposed procedure represents a modification of the procedures contained in Policy Memorandum 84–35.

Continuation of Benefits—7 CFR 273.21(p)(2) and 273.21(m)

Under current rules at 7 CFR 273.21(p)(2), an MRRB household which requests a fair hearing is entitled to continuation of benefits during its certification period unless that household expressly waives its right to continued benefits. A household is not entitled to continued benefits if it is terminated for failure to submit a monthly report and admits that the monthly report was not submitted. The regulatory provision prohibiting continued benefits to households which have been terminated for failure to submit complete monthly reports is based on section 6(c)(4) of the Food Stamp Act which provides that "* * * [a]ny household that fails to submit periodic reports * * * shall not receive an allotment for the payment period to which the unsubmitted report applies until such report is submitted".

In response to several inquiries and to resolve an apparent inconsistency between section 6(c)(4) and section 11(e)(10) of the Food Stamp Act, which provides for a right to continued benefits during a household's certification period pending a hearing, the Department is proposing to change 7 CFR 273.21(p)(2)(i) and (iii) so that, in cases in which the submission of a monthly report is at issue and the household has made a timely request for fair hearing, the household would receive continued benefits, provided that a completed report is submitted no later than the last day of the issuance month. This proposal remains in accordance with the requirement of section 6(c)(4) which conditions continued eligibility upon the submission of a complete monthly report while ensuring that the household's right to continued benefits pursuant to section 11(e)(10) is protected. Since the household would be receiving benefits on the basis of its request for a fair hearing, the provisions of 7 CFR 273.21(k) requiring proration of benefits for reinstated households would not be applicable. If the hearing official determines that a report was not submitted in a timely manner, the household's benefits would be recalculated under the proration provisions and a claim would be established in accordance with 7 CFR 273.15 and 273.18. The Department is also proposing to amend 7 CFR 273.21(m)(2)(iv) to provide that the notice of termination shall advise the household that it may receive benefits pending the hearing if the sole issue is the submission of the report and the household submits a complete report.

Recertification—7 CFR 273.21(q)

Under current rules, State agencies have three options for handling the recertification of MRRB households. These options are described at 7 CFR 273.21(q)(3), 273.21(q)(4), and 273.21(q)(5), respectively. Under the first option, described at 7 CFR 273.21(q)(3), the State agency is required to provide the household with the notice of expiration and the recertification form in lieu of the monthly report. The notice of expiration and the recertification form must be mailed together. Under the second option, described at 7 CFR 273.21(q)(4), the State agency is required to provide the household with a notice of expiration, monthly report form, and a recertification addendum, which contains the additional information necessary for recertification. All the requisite forms must be mailed together. Under the third option, described at 7 CFR 273.21(q)(5), the State agency may recertify the household on the basis of the monthly report and the recertification interview. Under this option, the State agency is required to obtain information not provided in the monthly report through the recertification interview. The State agency is also required to obtain a written statement from the household indicating that the household has applied for recertification.

The Department has granted several waivers which allow State agencies to mail the required recertification form, notice of expiration, and monthly report or addenda specified in 7 CFR 273.21(q)(3) and (4) separately rather than together. The State agencies noted that the requirement that the forms be mailed together may be administratively burdensome since the required forms are generated and mailed by automated systems. In some cases the requirement that the forms be mailed together may require manual rather than automated procedures.

The Department is proposing to amend 7 CFR 273.21(q)(3) and (4) to allow State agencies to mail the applicable forms separately as long as they are mailed at the same time.

The Department has also approved waivers allowing State agencies to combine the notice of expiration with the monthly report form. The Department is also proposing to incorporate this procedure into the regulatory provisions at 7 CFR 273.21(q)(3) and 273.21(q)(4). The Department feels that these changes provide more flexibility and would enable State agencies to operate their programs more efficiently.

Changes in Reporting/Budgeting Status—Addition of 273.21(r)

As the result of changes in household circumstances, a household can move in or out of the MRRB system. For example, in a State in which households with earned income are subject to monthly reporting, a previously unemployed household member could obtain employment, thus making the household subject to MRRB. Conversely, in a household in which all adult members are over the age of 60, the only employed member of the household could retire, thereby rendering the household statutorily exempt from MRRB. Current regulatory provisions do not contain procedures for changing the reporting/budgeting status of households. The Department is proposing to add a new paragraph (r) to 7 CFR 273.21 containing procedures for handling households in transition between different reporting and budgeting systems.

The Department is proposing at § 273.21(r)(1) to provide State agencies with broad discretion regarding the handling of prospectively-budgeted households which the State agency elects to move into the MRRB system. Since section 6(c) of the Food Stamp Act and 7 CFR 273.21(b) delegate to State agencies broad discretion (subject only to the exception applicable to those categories of households exempt from monthly reporting under section 6(c)(1)(A) of the Food Stamp Act) to determine which categories of households may be included in a State agency's MRRB system, the Department believes it would also be appropriate to

delegate similar discretion to State agencies to determine procedures for moving households not subject to MRRB into a State agency's MRRB system. The Department is proposing two conditions applicable to changing the status of households from nonmonthly reporting to monthly reporting. First, the Department is specifically proposing that State agencies may not require the submission of a monthly report for any budget month during which the household was required to report all changes under the change reporting requirements of 7 CFR 273.12. This proposed prohibition is based on section 6(c)(3) which specifically provides that the monthly report shall be the sole reporting requirement for subject matter included in the report. Secondly, the Department is proposing to require that State agencies provide all households which become subject to MRRB with the information mandated at 7 CFR 273.21(c), except that an oral explanation of the MRRB system would not be required if the State agency elects to implement the change during the certification period.

The Department is proposing two alternative procedures for handling households which are being shifted from an MRRB system to a change reporting prospective budgeting system and one procedure for households moving from monthly reporting to change reporting in a retrospectively-budgeted system. The first procedure applies to categories of households which become exempt from monthly reporting and/or retrospective budgeting, under the provisions of 7 CFR 273.21(b). These categories include migrant or seasonal farmworker households, homeless households, households with no earned income in which all adult members are elderly or disabled, and households residing on Indian reservations. Under this procedure the household would be notified within 10 days of the date the State agency becomes aware of the change that the household is no longer subject to monthly reporting. Beginning with the month following the month the State agency became aware of the change, all changes would be implemented prospectively, including those changes which may have been reported on the monthly report submitted for that month. The second procedure applies to all households for whom the change from MRRB to prospective budgeting is not mandatory. The State agency may change the household's budgeting/reporting status at any time following the date the State agency receives notice of the change. Households whose status is changed during the certification period shall be notified of the change and of the new reporting requirements. The State agency must use the same time frames for moving all such households. The third procedure applies to households being moved from monthly reporting to change reporting while continuing to be retrospectively budgeted. The State agency may change the household's reporting status at any time following the date the State agency becomes aware of the change. Households whose status is changed during the certification period shall be notified of the new reporting requirements.

Implementation of Regulatory Changes for MRRB Households—Addition of § 273.21(s)

Current regulatory provisions do not provide specific procedures for the handling of regulatory changes affecting MRRB households. The Department has considered three alternatives with respect to implementing changes to procedures affecting eligibility and benefit levels. Under the first alternative, implementation of regulatory changes would be based on the State agency's MRRB system. In a prospective eligibility/retrospective budgeting system, changes affecting eligibility would be implemented prospectively with changes affecting benefit levels being implemented retrospectively. In a retrospective eligibility/retrospective budgeting system, all changes would be implemented retrospectively. The second alternative would require the implementation of all regulatory changes prospectively based on the implementation time frame in the rule. For example, if a rule is published on May 2 and specifies an implementation time frame of 60 days, the State agency would be required to implement the provisions of the rule effective with the July issuance. The third alternative considered by the Department would specify implementation time frames for MRRB households on a rule-by-rule basis with the time frame specified in the rule.

The Department proposes to adopt the second alternative and require implementation prospectively based on the effective date provided in the rule, and is proposing to add a new paragraph, § 273.21(s), containing the applicable procedures. This procedure is analogous to the procedure for implementing mass changes in Federal or State assistance payments and would ensure that all regulatory changes are implemented uniformly for all households in the State agency's caseload regardless of the budgeting system.

MRRB Policy Memoranda

The Department is proposing to clarify several regulatory provisions governing the MRRB system. These clarifications were previously made in indexed policy memoranda and do not reflect new policy.

The introductory provisions of 7 CFR 273.21(g) and the definition of "Beginning month(s)" in 7 CFR 271.2 would be amended to specify that households terminated as the result of a one-month change, such as an extra paycheck, are not eligible for beginning month procedures following the month of ineligibility. (Policy Memorandum 82-27)

7 CFR 273.21(j)(1)(vii)(A) would be amended to specify that the State agency shall count the budget month earned income of a student only if that student is eighteen years of age or older at the beginning of the budget month. (Policy Memorandum 84-6)

Procedures for handling certain nonfinancial eligibility criteria in an MRRB system in which eligibility is determined retrospectively would be incorporated into 7 CFR 273.21(e)(2). These procedures would specifically provide that residency and compliance with requirements regarding social security numbers, work registration, or voluntary quit provisions are to be applied for the issuance month or month of application rather than for the budget month. (Policy Memorandum 84-19)

Procedures for handling excluded household members who lose their exclusion would be incorporated into a new paragraph (E) at 7 CFR 273.21(f)(1)(iii). These persons, including individuals disqualified for intentional program violations and workfare and work requirement noncompliance would be added to the household the month after the disqualification ends. (Policy Memorandum 87-04).

Implementation

The provisions in this rule which require action by State agencies would be implemented no later than the first day of the month 120 days after publication of the final rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food

stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR parts 271 and 273 are proposed to be amended as follows:

1. The authority citation of parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definition of "Beginning month(s)" is amended by adding at the end of the definition, the sentence "The month following the month of termination resulting from a one-month temporary change in household circumstances shall not be considered a beginning month."

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.12, the introductory text of paragraph (e)(1)(i) is revised to read as follows:

§ 273.12 Reporting changes.

* * * * *

(e) *Mass changes.* * * *

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* (i) State agencies shall implement these changes for all households at a specific point in time. Adjustments to Federal standards shall be implemented prospectively regardless of the household's budgeting system. Annual and seasonal adjustments in State utility standards shall also be implemented prospectively for all households.

* * * * *

§ 273.21 [Amended]

4. In § 273.21:

a. the fourth and fifth sentences of the introductory text of paragraph (a) are removed.

b. the second sentence of the introductory text of paragraph (b) is removed and a new sentence is added in its place.

c. a new paragraph (b)(4) is added.

d. the second sentence of the introductory text of paragraph (d) is revised.

e. the second and third sentences of paragraph (d)(1) are removed.

f. paragraph (e)(2) is revised.

g. paragraphs (f)(1)(iii) (B) and (C) are amended by adding a new sentence to the end of each paragraph.

h. new paragraphs (f)(1)(iii) (D) and (E) are added.

i. paragraphs (f)(2)(ii) and (f)(2)(iii) are revised.

j. paragraphs (f)(2)(iv) and (f)(2)(v) are redesignated (f)(2)(vii) and (f)(2)(viii), respectively, and three new paragraphs (f)(2)(iv), (v) and (vi) are added.

k. the introductory text of paragraph (g) is amended by adding at the end of the paragraph the sentence "The State agency shall not apply the procedures of this paragraph to the month(s) following the month of termination resulting from a temporary one-month change."

l. the last two sentences of paragraph (g)(3) are removed and three new sentences are added in their place.

m. paragraph (h)(3) is revised.

n. paragraph (i) is revised.

o. paragraph (j)(1)(vii)(A) is amended by adding the words ", including the earned income of a student only if the student is eighteen years of age or older at the beginning of the budget month," after the first appearance of the word "month" in the first sentence and by adding two new sentences to the end of the paragraph.

p. paragraph (j)(1)(vii)(B)(*2*) is amended by adding the words "which results in an increase in the PA grant" after the word, "source" and by adding a new sentence to the end of the paragraph.

q. paragraph (j)(1)(vii)(C) is revised.

r. a new paragraph (j)(3)(ii)(G) is added.

s. paragraph (k)(2)(ii) is amended by adding three new sentences to the end of the paragraph.

t. paragraph (l)(1) is revised.

u. paragraph (m)(2)(iv) is amended by adding a new sentence to the end of the paragraph.

v. paragraph (o) is redesignated paragraph (n)(5) and a new paragraph (o) is added.

w. paragraphs (p)(2) (i) and (iii) are amended by removing the last sentence of each paragraph and adding a new one in its place.

x. paragraph (q)(3)(ii) is amended by adding a new sentence to the end of the paragraph.

y. paragraph (q)(4)(ii) is revised.

z. new paragraphs (r) and (s) are added.

The revisions and additions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(b) *Included and excluded households.* * * * Except for the categories of households described in paragraphs (b)(1) through (b)(4) below, households not required to submit monthly reports may have their benefits determined on either a prospective or retrospective basis at the State agency's option. * * *

* * * * *

(4) Households residing on Indian reservations.

* * * * *

(d) *One and two-month systems.* * * * A one-month system shall have either one or two beginning months in the certification period and a two-month system shall have two beginning months. * * *

* * * * *

(e) *Determining eligibility for households not certified under the beginning months' procedures of § 273.21(g).* * * *

(2) *Retrospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility retrospectively using the appropriate budget month except for residency and compliance with the requirements regarding social security numbers. Compliance with work registration provisions shall be considered as of the issuance month or month of application. The 60-day time frame for determining the applicability of the voluntary quit provision of § 273.7(n) shall be measured by the State agency from the date of application.

(f) *Calculating allotments for households following the beginning months.*

(1) * * *

(iii) * * *

(B) * * * If the new member had been providing income to the household on an ongoing basis prior to becoming a member of the household, the State agency shall exclude the previously provided income in determining the household's issuance month benefits and eligibility.

(C) * * * In determining the issuance month eligibility and benefit level of the household into which the individual has moved, the State agency shall disregard budget month income received by the new member from a terminated source.

(D) The State agency may add new members to the household effective the first day of the issuance month following the month the household gains the new member, or may add the new member using the same method that the State agency uses in its AFDC Program.

(E) The State agency shall add a previously excluded member who was disqualified for an intentional program violation or failure to comply with workfare or work requirements, was ineligible because of failure to comply with the social security number requirement, or was previously an ineligible alien to the household the

month after the disqualification period ends. All other previously excluded members shall be added in accordance with the procedures in paragraph (f)(1)(iii)(B) above, using the new member's issuance month income and expenses.

(2) * * *

(ii) The State agency shall prorate contract income received over a period of less than one year and prospectively budget such income over the period it is intended to cover.

(iii) The State agency shall prorate and budget prospectively over the period they are intended to cover any nonexcluded scholarships, deferred educational loans, and other educational grants.

(iv) The State agency shall budget deductible expenses prorated over two or more months retrospectively, *provided* that such deductions are not budgeted over more months than they are intended to cover, and the total amount deducted does not exceed the total amount of the expenses.

(v) The State agency shall budget stable income and deductions regularly received or paid as a single monthly payment for the month such income or deduction is intended to cover.

(vi) The State agency, at its option, shall budget interest income using one of the following methods:

(A) Actual interest income received in the budget month.

(B) Prorated interest income calculated by dividing the amount of interest anticipated during the certification period by the number of months in the certification period.

(C) An averaged amount adjusted for anticipated changes.

* * * * *

(g) *Determining eligibility and allotments in the beginning months.* * * *

* * * * *

(3) *The first months of retrospective budgeting following the beginning months.* * * * If the State agency had been averaging income or converting weekly or biweekly income to a monthly amount in the beginning months, it may begin using the household's actual budget month income when the household becomes subject to retrospective budgeting. For purposes of this paragraph, any income received in either or both of the beginning months from a source which no longer provides income to the household (terminated income), which was included in the household's prospective budget, shall be disregarded when the beginning month becomes the budget month, provided it is not replaced by income from a similar source. In order to be considered a similar source, the household must receive income from the new source within 30 days of the date of the last receipt of income from the former source and the estimated monthly amount of income from the new source must be within $25 of the monthly income from the former source.

(h) *The monthly report form.* * * *

(3) *Reported information.* The State agency may determine the information relevant to eligibility and benefit determination to be included on the monthly report form.

* * * * *

(i) *Verification.* Each month the household shall verify information which has changed since the last monthly report for those items designated by the State agency. The State agency may require verification of any additional items included in the monthly report that appear questionable.

(j) *State agency action on reports.*

(1) *Processing.* * * *

(vii) * * *

(A) * * * If the State agency elects to convert weekly or biweekly income for MRRB households, it shall do so for all households in its MRRB caseload. The State agency may convert or average income in the beginning months and use actual earned or unearned income received in the budget month following the beginning months of participation.

(B) * * *

(2) * * *

A State agency which elects to use the PA grant to be paid in the issuance month shall implement mass changes in accordance with the procedures at § 273.12(e)(2).

(C) Deductions as billed or which otherwise come due during the corresponding budget month including those shelter costs billed less often than monthly which the household has chosen to average. Deductions billed more frequently than monthly shall not be averaged.

* * * * *

(3) *Incomplete filing.* * * *

(ii) * * *

(G) The notice may also advise the household that its food stamp program participation will be terminated if a complete report is not submitted by the extended filing date. If the State agency is using a combined notice of incomplete filing and termination the notice shall also conform to the criteria required by paragraph (m)(2) of this section. The State agency may use the combined notice only if termination is for failure to submit a complete monthly report.

* * * * *

(k) *Issuance of benefits.* * * *

(2) *Delayed issuance.* * * *

(ii) * * * If the household is reinstated based on a monthly report submitted after the extended filing date, but during the issuance month, the allotment for the issuance month shall be prorated in accordance with § 273.10(a) from the date the report is received. If the household has requested a fair hearing on the basis that a complete monthly report was filed, the State agency shall reinstate the household if a completed monthly report is filed before the end of the issuance month. The proration requirement does not apply to a household reinstated based on a fair hearing request.

* * * * *

(l) *Other reporting requirements.*

(1) *Information reported on the monthly report.* The monthly report shall be the sole reporting requirement for information required to be included in the monthly report. Changes in household circumstances not subject to monthly reporting shall be reported in accordance with § 273.12.

* * * * *

(m) *Termination.* * * *

(2) * * *

(iv) * * * If termination is for failure to submit a monthly report and the household states that a monthly report has been filed, the notice must advise the household that a completed monthly report must be filed prior to the end of the issuance month as a condition for continued receipt of benefits.

* * * * *

(o) *Information reported outside of the monthly report.* Except for the addition of a new member, the State agency shall handle all changes reported outside of the monthly report in the same manner that such changes would be handled if they were included in the monthly report. The State agency shall reflect budget month changes in the issuance month allotment. Changes affecting household eligibility shall be handled in accordance with paragraph (e) of this section. The State agency shall handle changes in household composition in accordance with paragraph (f) of this section.

(p) *Fair hearings.* * * *

(2) *Continuation of benefits.* (i) * * * If the State agency did not receive a monthly report from the household by the extended filing date and the household states that a monthly report was submitted, the household is entitled to continued benefits, *provided* that a completed report is submitted no later than the last day of the issuance month.

* * * * *

(iii) * * * If the fair hearing is with regard to termination for nonreceipt of the monthly report by the State agency, a completed monthly report for the month in question shall be submitted by the household no later than the last day of the issuance month.

* * * * *

(q) *Recertification.* * * *

(3) *Option One: Recertification form.* * * *

(ii) * * * The State agency may mail the recertification form and notice of expiration separately provided that both forms are mailed at the same time.

* * * * *

(4) *Option Two: Monthly report and addendum.* * * *

(ii) The State agency shall either: mail the monthly report form along with the notice of expiration; use a monthly report form which contains a notice of expiration; or mail the monthly report form and the notice of expiration separately, as long as the forms are mailed at the same time.

* * * * *

(r) *Procedures for households that change their reporting and budgeting status.* The State agency shall use one of the following procedures for households subject to change in reporting/budgeting status.

(1) *Households which become subject to MRRB.* The State agency may change the reporting/budgeting status of households which become subject to monthly reporting at any time following the change in household circumstances which results in the change in the household's reporting/budgeting status, subject to the following conditions:

(i) The State agency shall provide the household with information provided to MRRB households under paragraph (c) of this section. If the State agency elects to implement the change during the certification period, it may omit the oral explanation of MRRB required under paragraph (c)(1).

(ii) The State agency shall not require the household to submit a monthly report during any month in which the household was subject to the change reporting requirements of § 273.12.

(2) *Households which are no longer subject to MRRB.* The agency shall use one of the following procedures to remove households from the MRRB system.

(i) *Procedures for households exempt from MRRB.* For any household which becomes exempt from MRRB under paragraph (b) of this section, the State agency shall notify the household within 10 days of the date the State agency becomes aware of the change which results in the exclusion of the household from monthly reporting. The State agency shall begin determining the household's benefits prospectively in the month following the month the State agency becomes aware of the change. All future reported changes, including changes contained in a monthly report which the household may have submitted, shall be implemented prospectively beginning with the month following the month in which the change which affected the reporting status occurred.

(ii) *Other households moving from MRRB to change reporting and prospective budgeting.* When a household is no longer subject to MRRB under a State agency's system, the State agency may begin determining the household's benefits prospectively in any month following the month the State agency becomes aware of the changed circumstances which necessitate the need to change the household's reporting/budgeting status. If the State agency elects to change the household's reporting/budgeting status prior to recertification it shall provide the household with a notice explaining the change in the month prior to the month the change is effective. If the State agency elects to change the household's status at recertification it shall advise the household at the recertification interview that its reporting/budgeting status is being changed.

(iii) *Households moving from MRRB to retrospective budgeting and change reporting.* If a household's status necessitates changing it from a monthly reporter to a change reporter while continuing to be budgeted retrospectively, the State agency may change the household's status at any time. If the State agency elects to change the household immediately, the State agency shall provide the household with a notice that it is no longer subject to monthly reporting. The notice shall include information about the household's reporting requirements under § 273.12.

(s) *Implementation of Regulatory Changes.* The State agency shall implement changes in regulatory provisions for households subject to MRRB prospectively based on the effective date and implementation time frame published in the **Federal Register.** Rules are effective as of the same date for all households regardless of the budgeting system.

Dated: August 2, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-18904 Filed 8-6-91; 11:07 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

7 CFR Part 273

[Amendment No. 337]

Food Stamp Program; Categorical Eligibility and Application Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule with request for comments.

SUMMARY: This action would amend Food Stamp Program (FSP) regulations to implement three provisions of the Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII, Pub. L. 101-624, enacted November 28, 1990). These provisions revise requirements for the placement of certain information on the food stamp application, require a combined food stamp and general assistance (GA) application in States that have a Statewide GA application, and extend categorical eligibility to households in which all members receive assistance from a State or local GA program which meets certain requirements. These provisions would assist State agencies and applicants by simplifying the design of the food stamp application and reducing the application processing requirements for GA/food stamp applicants.

DATES: Comments must be received on or before September 12, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. They may be datafaxed to (703) 756-3494. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) in room 708, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address, telephone (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512-1

This rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512-1. The Department has classified this

action as nonmajor. The rule's effect on the economy will be less than $100 million, and it will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the ability of United States-based enterprises to compete with foreign-based enterprises.

Executive Order 12372

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

Regulatory Flexibility Act

This proposed rule has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this rule would not have a significant economic impact on a substantial number of small entities. The requirements would affect food stamp applicants and recipients and the State and local agencies that administer the Program. The application and certification process would be simplified for households containing members who receive assistance from certain GA programs.

Paperwork Reduction Act

The requirement of the Hunger Prevention Act of 1988 (Pub. L. 100-435, 102 Stat. 1645, September 19, 1988) that certain statements be placed on the front cover of the food stamp application was implemented in regulations issued June 7, 1989 (54 FR 24518). At that time, the Office of Management and Budget (OMB) approved the requirement under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The requirement had no effect on the approved burden estimates. Therefore, changes that may be made in the food stamp application as a result of the provisions of this proposed rule would not significantly alter the methodologies used to determine the burden estimates currently approved for the application under OMB No. 0584-0064. The remaining provisions of this proposed rule do not contain new or additional reporting or recordkeeping requirements subject to OMB approval.

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Title XVII, Public Law 101-624, 104 Stat. 3359, November 28, 1990) (Leland Act) made a number of changes in the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.). This proposed rulemaking pertains to provisions of the Leland Act which revise requirements for the food stamp application, require that the GA and food stamp applications be combined in States that have a single Statewide GA application, and extend categorical eligibility to households in which all members receive benefits from certain GA programs. These provisions are discussed below.

Food Stamp Program Application Requirements—7 CFR 273.2(b)

Current regulations at 7 CFR 273.2(b)(1) require that the application contain "on the front page" notification of the household's right to immediately file the application as long as it contains the applicant's name, address and signature, a description of the expedited service provisions, and notification that benefits are provided only from the date of application. These provisions created an administrative problem for State agencies whose applications contained the required information on the back of the first page or in the first few pages of the application.

To give State agencies more flexibility in designing their food stamp applications, paragraph one of section 1736 of the Leland Act amends section 11(e) of the Food Stamp Act to require that explanations of these application rights be contained "on or near" the front cover of the application. According to the discussion of section 1736 in the Conference Report (H.R. 101-916, p. 1096), the amendment to require that explanations of recipients' rights and responsibilities be "on or near" rather than "on" the front cover of an application was intended "* * * to facilitate combined applications for more than one public assistance program. The provision was not intended to diminish the responsibility of State agencies to provide prominent notice to the recipients of their rights and responsibilities." The legislative language does not define "near." The Department believes the common usage of the term is intended, and therefore it is unnecessary to define it in the regulations.

This rulemaking proposes to amend 7 CFR 273.2(b)(1) to require that information about the application process be located "on or near" the front page of the application. In addition, the Department is proposing a conforming amendment to 7 CFR 273.2(b)(3) to change the heading of the paragraph to "Design" instead of "Deviations" and to include reference to FNS approval of combined GA/food stamp applications. The Department is also taking this opportunity to amend 7 CFR 273.2(b)(3) to clarify that on-line application forms used in connection with automated systems are considered deviations from the national form and are subject to FNS approval.

Combined Application for General Assistance (GA) and Food Stamps—7 CFR 273.2(j)

Current regulations at 7 CFR 273.2(j) and (j)(1)(i) require State agencies to combine the food stamp application with the public assistance (PA) or GA application and to notify applicants for Aid to Families with Dependent Children (AFDC) of their right to file a joint application. Regulations at 7 CFR 273.2(j)(1)(v) require that the State agency certify a household whose PA or GA application is denied or whose PA or GA eligibility is terminated on the basis of available information from the PA/GA casefile (provided the information is sufficient for food stamp purposes).

The requirement for a combined GA/food stamp application created significant administrative problems for State agencies in States with more than one GA program and application. Some States have a Statewide GA program and an application for GA that is used Statewide. However, in many States, GA programs are locally operated and local jurisdictions may not use a common application. Combining the food stamp and GA applications in these local jurisdictions could result in multiple food stamp applications in one State.

To assist State agencies in combining the food stamp and GA applications, section 1740 of the Leland Act modifies the combined application requirement in section 11(i)(3) of the Food Stamp Act to require a combined GA/food stamp application only in States that have one Statewide GA application. Section 1740 also requires that if there is more than one GA application in a State, offices which administer both GA and the Food Stamp Program shall provide households a food stamp application at the time of their application for GA, along with information concerning how to apply for food stamp benefits. According to information in the Conference Report on Section 1740 of the Leland Act, (H.R. 101-916, p. 1097), if separate offices provide the GA and

food stamp benefits, there is no requirement to combine or provide both applications.

This action proposes to amend the introductory text of 7 CFR 273.2(j) and revise 7 CFR 273.2(j)(3)(iii) to provide that in States with a single Statewide GA application, the food stamp application shall be included in the GA application. If the State has more than one GA application, offices that administer both GA and food stamps would be required to provide households applying for GA with a food stamp application and information concerning how to apply for food stamps. They would also be required to advise GA applicants of their potential categorical eligibility for food stamps. In States in which GA and the Food Stamp Program are administered by separate offices, the State agency would be required to inform GA applicants about their potential categorical eligibility for food stamps and to encourage the agencies administering GA to provide food stamp applications to GA applicants. If the GA agency allows GA applicant households to leave a signed food stamp application at the GA office, the GA agency would be responsible for forwarding the application to the food stamp office the same day. The GA office may advise households that they may receive faster service if they take the application directly to the food stamp office. Provisions of current 7 CFR 273.2(j)(3)(iv) concerning areas in which GA programs are administered by agencies such as the Bureau of Indian Affairs are incorporated in the revised § 273.2(j)(3)(iii). A conforming amendment is proposed in the heading of 7 CFR 273.2(j)(3) to specify that the paragraph concerns applicant GA households.

Categorical Eligibility for GA Households—§ 273.2(j)(4)

Current regulations at 7 CFR 273.2(j)(2) provide that households in which all members are recipients of PA and/or Supplemental Security Income (SSI) are categorically eligible for food stamps, with certain restrictions. There is no comparable provision for households in which all members receive GA benefits. Prior to enactment of the Food Stamp Act of 1977, households receiving PA, GA or SSI were categorically eligible for food stamps. The 1977 Act eliminated categorical eligibility for these households. The Omnibus Reconciliation Act of 1982 (Pub. L. 97–253) gave State agencies the option to consider households in which all members received AFDC to have satisfied the Food Stamp Program's resource test. However, households certified as categorically eligible on the basis of resources still had to meet the income eligibility test. Section 1507 of the Food Security Act of 1985 (Pub. L. 99–198, enacted December 23, 1985) made categorical eligibility mandatory for households consisting solely of recipients of PA and/or SSI and included waivers of the income eligibility limits as well as the resource limits. The provision was originally to be tested through September 30, 1989; however, the Hunger Prevention Act of 1988 (Pub. L. 100–485) eliminated the expiration date, making PA/SSI categorical eligibility a permanent part of the Program. The Department issued interim regulations on August 5, 1986 (51 FR 28196) implementing the categorical eligibility provisions of the Food Security Act and issued final regulations on June 7, 1989 (54 FR 24510).

Section 1714 of the Leland Act amends section 5(a) of the Food Stamp Act to require that households in which each member receives benefits under a State or local GA program shall be eligible for food stamps if the program complies with standards established by the Secretary for ensuring that the program is appropriate for categorical treatment. These households would be eligible for food stamps based on their receipt of GA, except that the provisions of section 6, section 16(e)(1), and the third sentence of section 3(i) of the Food Stamp Act would continue to apply. These sections prohibit participation by certain disqualified and ineligible households and individuals, household members who do not provide their social security numbers (SSNs), and institutionalized individuals.

The Department considered several factors in developing this proposed rulemaking for implementing the GA categorical eligibility provision. These include the appropriateness of a GA program for categorical eligibility and the application of the exemptions to categorical eligibility specified in the Leland Act for GA households. In addition, the Department reviewed the rulemaking for PA/SSI categorical eligibility to determine how the policies already established for categorical eligibility for recipients of benefits from those programs would apply to categorical eligibility for recipients of GA. Those policies are discussed below.

Appropriate Programs

The legislative history of section 1714 of Public Law 101–624 indicates that Congress intended programs considered appropriate for categorical eligibility to be means-tested (House Report 101–569, page 430). According to the Agriculture Committee Report, "To ensure that a State general assistance program is indeed a true means-tested program, USDA is required to certify that the program serves a population appropriate for categorical eligibility." The Report indicates that once the Secretary has determined that a GA program is indeed needs-based and serves a population appropriate for food stamp categorical eligibility, "* * * the State agency will not be required to submit additional material on the program to USDA unless the character of the program is changed."

A study of GA programs prepared for the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services discusses various types of GA programs operated by State and local governments. The study, "Characteristics of General Assistance Programs—1989," published in August 1990 by Lewin/ICF and James Bell Associates, indicates that most GA programs do not have income eligibility standards that are separate from the calculation for determining the amount of the grant. Generally, GA programs have a maximum amount that can be received by a family or individual; this maximum is called the payment standard. Grants may be less than the standard, depending on the formula used to calculate the amount of assistance. In many GA programs, the payment standard is also the figure used to determine eligibility for the program. In these programs, an applicant's monthly income (after allowable deductions have been subtracted from gross income) must be below the standard. The remaining income is deducted from the standard to determine the grant. According to the study, in GA programs that have formal standards, the limits on assets are usually comparable to or less than those for AFDC and less than those for SSI. In States without formal limits, assets are subtracted from the payment standard to determine the amount of the grant. Exclusions typically include a home, a car and miscellaneous personal items.

Under this rulemaking, the Department proposes to establish specific income and resource limits that GA program must include in order to be considered appropriate for conferring categorical food stamp eligibility on the GA recipients. The standards may be included in or separate from the payment standard. The proposed standards are:

1. The program must not serve a population whose gross income exceeds 130 percent of the poverty level, based

on the Federal income poverty levels established as provided in section 672(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2).

2. The program must not serve a population whose resources, as determined by the program, exceed $2,000, including liquid resources and a portion of the value of automobiles (excluding, at the option of the GA program, the value of low-cost automobiles).

In addition to the requirement that GA programs be means-tested, the Department proposes to establish two other criteria for GA programs that confer categorical eligibility on recipients. First, the program must meet the definition of GA in 7 CFR 271.2. As defined, GA means "cash, or another form of assistance, excluding in-kind assistance, financed by State or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients." Therefore, a program that provides only in-kind benefits, for example, does not meet the definition of GA and is not appropriate for categorical eligibility.

Second, among the GA programs that provide cash assistance and third-party payments, some provide ongoing assistance with no durational limits on participation as long as recipients meet the program eligibility criteria. Other programs provide short-term assistance for periods of three, four, six, or twelve months. There are also programs that provide one-time payments or vendor reimbursements for crisis situations and emergency needs. The Department believes that programs providing emergency assistance limited to one or two months are not appropriate for conferring categorical eligibility on recipients of the assistance because these programs may not have a formal application process, verification requirements, and eligibility criteria similar to those of the Food Stamp Program, which provides benefits on an ongoing basis as long as the household reapplies and is eligible.

For ease of administration, the Department proposes that GA programs meeting the following criteria will be considered certified as programs appropriate for categorical eligibility. Proposed criteria for an appropriate program are: (1) The program must be means-tested; (2) the program must provide benefits that meet the definition of GA in 7 CFR 271.2; and (3) the program must provide benefits, in cash or as vendor payments, for at least three consecutive months based on one application. However, State agencies may submit to FNS requests for certification of programs that do not meet all the criteria. State agencies would be required to provide a description of each GA program for which they request certification. The request must include the following information: The type of assistance provided (e.g., cash, voucher, third-party payment, or in-kind); income and resource eligibility limits; and the period for which GA is provided.

The Department proposes to add a new paragraph § 273.2(j)(4) to the regulations to implement requirements for GA categorical eligibility. Proposed § 273.2(j)(4)(i) would contain criteria a GA program would have to meet in order to be considered a program appropriate for categorical eligibility. A conforming amendment is proposed to be made in the heading of 7 CFR 273.2(j)(2) to specify that the paragraph concerns categorical eligibility for PA and SSI households.

Current regulations at 7 CFR 273.2(j)(3) (i) and (ii) provide that in State agencies where certain criteria are met, the joint processing procedures of 7 CFR 273.2(j)(1) are applied to GA households. The regulations include an exception for the categorical eligibility procedures in 7 CFR 273.2(j)(1) which do not currently apply to GA households. With the implementation of GA categorical eligibility, the exception is no longer needed. Therefore, the Department proposes to remove the exception in 7 CFR 273.2(j)(3) (i) and (ii) and replace it with a reference to the effective date of categorical eligibility for GA households.

Legislative Restrictions

Current regulations for categorically eligible PA/SSI households at 7 CFR 273.2(j)(2)(iii) identify certain households that cannot gain eligibility through receipt of benefits from PA and/or SSI. The households are those that contain a member disqualified for intentional program violation or failure to comply with the monthly reporting requirements and households disqualified because a member fails to comply with a workfare requirement of 7 CFR 273.22 or the head of household fails to comply with a work requirement of 7 CFR 273.7. In addition, 7 CFR 273.2(j)(2)(v) provides that certain individuals may not participate as a member of an otherwise categorically eligible household. These are ineligible aliens, ineligible students, SSI recipients in cash-out States as defined in 7 CFR 273.20, and individuals institutionalized in a nonexempt facility as defined in 7 CFR 273.1(e). The disqualifications from PA/SSI categorical eligibility in 7 CFR 273.2(j)(2) (iii) and (v) have their basis in the provisions of the Food Security Act of 1985 (Pub. L. 99–198). Section 1507 of Public Law 99–198 amended section 5(a) of the Food Stamp Act to provide that "Notwithstanding any other provisions of this Act, except sections 6(b), 6(d)(2), and 6(g) and the third sentence of section 3(i)" recipients of benefits from the Aid to Families with Dependent Children program and SSI are eligible for food stamp participation. The interim PA/SSI categorical eligibility rule published August 5, 1986 (51 FR 28196) contains a full description of the rationale for the regulatory provisions.

In authorizing categorical eligibility for certain GA households, Congress specified in section 1714 of the Leland Act that the provisions of section 6, the third sentence of section 3(i), and section 16(e)(1) of the Food Stamp Act would continue to apply to GA households that would otherwise be categorically eligible. These sections differ from those cited in the Food Stamp Act as exceptions to PA/SSI categorical eligibility. Therefore, the regulatory provisions cannot be consistent for all categorically eligible households.

In accordance with the provisions of the Leland Act, the Department proposes in § 273.2(j)(4)(iv) that the following individuals may not participate as a member of a categorically eligible household: an individual disqualified for intentional program violation; an individual (not the head of household) disqualified for failure to comply with the work requirements of 7 CFR 273.7; an individual who fails to provide or apply for an SSN; and individuals who are ineligible aliens, ineligible students, SSI recipients in a cashout State, or institutionalized in a nonexempt facility. The Department proposes in § 273.2(j)(4)(v) that the disqualifications for households that refuse to cooperate, transfer resources, or contain a striking member will apply to GA households who would otherwise be categorically eligible. In addition, households in which the head of household fails to comply with a work requirement of 7 CFR 273.7 cannot be categorically eligible.

Combination Households

Some households may consist entirely of a combination of recipients of PA, SSI, or GA. The Department proposes that these households be categorically eligible, unless one of the restrictions in 7 CFR 273.2(j)(2) or proposed § 273.2(j)(4) applies. As indicated above, the statutory restrictions on categorical

eligibility for PA and SSI households differ from those for households consisting of GA recipients. An issue could arise concerning the eligibility of a combination household in which a Program violation occurs that would disqualify the entire household. For example, a PA recipient in a combination household is on strike. Under the legislation for PA/SSI categorical eligibility and rules at 7 CFR 273.2(j)(2), this action would not cause the household to be ineligible. Under the legislation for GA categorical eligibility and the proposed rules, the household would be ineligible.

The Department considered two options for addressing the eligibility of combination households: (1) Applying the GA categorical eligibility rules to any categorically eligible household that includes a recipient of GA from an appropriate program and (2) applying the categorical eligibility rules for the program from which the member who violates Program rules receives benefits. In the example of a combination household containing a PA recipient who is on strike, the household would be ineligible if option (1) were used. However, the household would be eligible if option (2) were used (and requirements of the PA program did not cause ineligibility) because there is no provision regarding strikers in the PA categorical eligibility rules.

The Department proposes in § 273.2(j)(4)(vi) to adopt option 2. In a combination PA/SSI/GA household, the PA categorical eligibility rules will apply to the PA and SSI recipients; the GA categorical eligibility rules will apply to the GA recipients. This means that whether a household member commits a violation which disqualifies only the violating member or the entire household, the categorical eligibility provisions for the program from which the member receives benefits will apply. Only a small number of households will contain recipients from all three programs. Therefore, the Department does not believe this issue will be a significant one for State agencies in administering categorical eligibility.

Verification and Deemed Food Stamp Requirements

The regulations for PA/SSI categorical eligibility at 7 CFR 273.2(j)(2)(i) identify specific factors of eligibility that are deemed and do not have to be verified for categorically eligible households. These are resources, gross and net income amounts, SSNs, residency, and sponsored alien information. State agencies have to verify other information in accordance with food stamp requirements contained in 7 CFR 273.2(f). They must also verify that the household qualifies for categorical eligibility if the information is questionable. The Department proposes to specify in § 273.2(j)(4)(ii) that in determining GA categorical eligibility, the State agency must verify that each household member receives GA from a program that meets the criteria for a program appropriate for categorical treatment or that the household contains only recipients of PA, SSI, and/or GA from an appropriate program. The State agency must also verify that the household includes no individuals who have been disqualified as provided in 7 CFR 273.2(j)(2)(v) or proposed § 273.2(j)(4)(iv). If household composition is questionable, it must be verified in accordance with 7 CFR 273.2(f). The Department proposes to identify in § 273.2(j)(4)(iii) those factors of eligibility that are deemed for categorically eligible GA households. Those factors are: resources (except in the case of transferred resources), gross and net income limits, residency, and sponsored alien information. All other Program requirements, including the requirement to provide or apply for an SSN, apply to categorically eligible GA households. Because GA programs may not routinely require or verify SSNs, GA household members must provide their SSNs in accordance with 7 CFR 273.6. The State agency must verify the numbers by submitting them to the Social Security Administration, as required at 7 CFR 273.2(f)(1)(v)

The Department proposes to make conforming amendments at 7 CFR 273.8(a) and 7 CFR 273.9(a) to provide that households categorically eligible as defined in proposed § 273.2(j)(4) do not have to meet the resource limits and definitions or the gross and net income eligibility standards. This rule also proposes a conforming amendment at 7 CFR 273.10(g)(1)(ii) to provide that a potentially eligible household whose food stamp case is denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits or benefits from a GA program. The State agency will determine if the GA program meets the criteria for a program appropriate for conferring categorical eligibility on the household.

Recipients

Section 1714 of the Leland Act provides that households in which each member receives benefits under an appropriate State or local GA program shall be eligible for food stamps, with the exceptions noted above. The Department is proposing that "recipients" include individuals whose benefits are suspended or recouped, who are authorized to receive GA but have not yet received payment, and who are entitled to GA benefits but who are not paid such benefits because the grant is less than a specified minimum payment.

Reactivation of Denied Cases

A major issue in the development of regulations for PA/SSI categorical eligibility was the treatment of households that are ineligible as non-PA/SSI households and whose PA/SSI eligibility has not been determined within the 30 day food stamp application processing period. Current regulations at 7 CFR 273.2(j)(1)(iv) require State agencies to deny the food stamp application on the 30th day, but reactivate the application if the household is subsequently approved for PA and/or SSI. The State agency must use available information to update the application and/or make mail or phone contact with the household or an authorized representative to determine any changes in circumstances. The household must initial changes and sign and date the application again, unless the household does not supply new information or information supplied by the household does not deviate from the available information obtained by the State agency.

In the interest of consistency, the Department proposes to adopt the procedures at 7 CFR 273.2(j)(1)(iv) for categorically eligible GA households when GA is authorized after the initial 30-day period. A provision is proposed to be added to 7 CFR 273.2(j)(3)(i) and 7 CFR 273.2(j)(3)(ii) to provide that a categorically eligible GA household will be entitled to food stamp benefits from the date of the original application, the beginning of the period for which GA benefits are authorized, or the effective date of the provision authorizing GA categorical eligibility, whichever is later. Benefits shall be considered authorized when they are paid, suspended, recouped, and when no benefits are issued because they are less than a minimum amount. In no event shall food stamps be issued under categorical eligibility for a month in which the household has been determined to be ineligible for receipt of any GA benefits for that month, unless the household is eligible for food stamp benefits as a non-GA case.

Suspension of Cases Entitled to Zero Benefits

Regulations at 7 CFR 273.2(j)(2)(vii)(F) require State agencies to suspend a PA/SSI case that is categorically eligible but entitled to no food stamp benefits (zero

benefit cases). The Department proposes to adopt the same provision for categorically eligible GA households. Because Congress specified that households in which all members receive GA from an appropriate program "shall be eligible to participate in the Food Stamp Program," the Department has no authority to allow denial of the applications of eligible households entitled to zero benefits. These households must be treated the same as PA/SSI zero benefit households. Therefore, the Department proposes to provide in § 273.2(j)(4)(iii) of this rule that the option given State agencies in 7 CFR 273.10(e)(2)(iii)(A) to deny a zero benefit case does not apply to categorically eligible GA households.

Claims

Another issue considered in development of the PA/SSI categorical eligibility provision was the effect on claims in the event a household certified on the basis of categorical eligibility was subsequently found to have been ineligible for PA or SSI. The preamble to the June 7, 1989 final regulations (54 FR 24513), explains that categorical eligibility cannot be rescinded retroactively. As long as everyone in the household received PA or SSI during a given period, the household would have been properly eligible for food stamps even if its PA or SSI eligibility later were determined to be incorrect. Therefore, no claim would be established on the basis of ineligibility.

Current rules at 7 CFR 273.18(c)(1)(ii) provide that for categorically eligible households, a claim will be established only when it can be computed on the basis of changed household net income and/or household size. Current regulations at 7 CFR 273.18(a)(1)(ii) provide that such a claim will be considered an inadvertent household error claim if the household made an unintentional error. In addition, 7 CFR 273.18(a)(1)(iii) provides that a claim calculated on the basis of net income or household size will also be considered an inadvertent household error claim if Social Security Administration action or failure to take action resulted in the household's categorical eligibility. Regulations at 7 CFR 273.18(b)(1) (iv) and (v) concerning criteria for establishing inadvertent household error claims contain similar provisions.

Regulations at 7 CFR 273.18 (a)(2) and (b)(2)(vi) provide that a claim will be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action which resulted in an incorrect determination of eligibility for PA, provided a claim can be calculated based on a change in net income and/or household size. The Department proposes to adopt the same policy for households categorically eligible because of receipt of GA, and proposes to amend 7 CFR 273.18(a)(2), 7 CFR 273.18(b)(1)(iv) and 7 CFR 273.18(b)(2)(vi) to include references to GA categorical eligibility.

Quality Control (QC)

The preamble to the final categorical eligibility rule for PA/SSI households (54 FR 24514) clarified that a QC variance would be cited if a household received an incorrect food stamp allotment based on incorrect information from the State agency's AFDC program. The same policy applies to GA benefit amounts provided by State or local GA offices. QC reviewers are responsible for verifying the earned and unearned income the household actually received, including the amount of GA benefits, even if the income has already been verified by the GA worker. If the agency providing the GA benefits provides incorrect information which results in an incorrect allotment, a variance will be cited. However, variances are not cited if incorrect information is provided by a Federal agency. Regulations at 7 CFR 275.12(d)(2)(v) provide that a variance resulting from State agency use of information concerning households or individuals received from any Federal source is excluded from the error determination, provided the information is correctly processed by the State agency.

Technical Amendments—§ 273.2(j)

Regulations for PA/SSI households at 7 CFR 273.2(j)(2)(v) do not address the case of a household member in a categorically eligible household who violates a work requirement but is not the head of household. The preamble to the final PA/SSI categorical eligibility rule dated June 7, 1989 (54 FR 24511) indicates that the interim rule had to be revised to take into account the change in procedures for handling the disqualification of households containing members who fail to comply with the work requirements of 7 CFR 273.7. Under the provisions of that section, if the head of household does not comply, the entire household is disqualified.

If the violation is committed by a member who is not the head of household, only the member is disqualified. The final regulation amended 7 CFR 273.2(j)(2) to clarify that households disqualified because the "head of the household" failed to comply with the work requirement of 7 CFR 273.7 shall not be considered categorically eligible. However, the rule did not amend 7 CFR 273.2(j)(2)(v) to provide that a person (not the head of household) disqualified for failure to comply with a requirement of 7 CFR 273.7 shall not be included as a member in any household that is otherwise categorically eligible. Therefore, this action proposes a technical amendment to add a paragraph § 273.2(j)(2)(v)(E) to 7 CFR 273.2(j)(2)(v) to address the disqualification of a household member for failure to comply with a work requirement. The Department also proposes to amend 7 CFR 273.2(j)(2)(v)(D) to correct an error in the reference. The correct citation is § 273.1(e), not § 273.2.

The Department's attention has been called to conflicting provisions of 7 CFR 273.2(j)(1)(iv) and 273.2(j)(1)(v). The last three sentences of 7 CFR 273.2(j)(1)(iv) relate to households that are jointly processed but not categorically eligible. These three sentences should have been removed in regulations implementing the provision of the Hunger Prevention Act reinstating mandatory joint processing of households that apply for PA and food stamps. The regulations, dated June 7, 1989 (54 FR 24522), added a new paragraph § 273.2(j)(1)(v) to specify that households whose PA/GA applications are denied or PA/GA eligibility terminated shall not be required to file a new application, but shall have their food stamp eligibility and benefits determined by available information from the PA/GA casefile, provided the information is sufficient for food stamp purposes. At that time, the last three sentences of paragraph § 273.2(j)(1)(iv) should have been removed. The Department proposes to correct that oversight in this rule.

Implementation

Section 1781 of the Leland Act requires that the provisions of this rulemaking be effective and implemented the first day of the month beginning 120 days after publication of implementing regulations and requires that regulations be published by specified dates. The law provides that implementing regulations for changes in the food stamp application and requiring combined food stamp/GA applications for certain households be published not later than October 1, 1991. The law also requires that regulations implementing the categorical eligibility requirement for recipients of State GA be issued not later than October 1, 1991 and for recipients of local GA not later than April 1, 1992, with implementation by State agencies the first day of the month beginning 120 days after publication of

the regulation. In accordance with the Administrative Procedures Act, the Department is issuing this Notice of Proposed Rulemaking so that State agencies and other interested parties may comment on the proposed procedures for implementing provisions of the Leland Act.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR part 273 is amended as follows:

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2031.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.2:

a. Paragraphs (b)(1)(v), (b)(1)(vi), and (b)(1)(vii) are amended by adding the words "or near" between the word "on" and the words "the front page" in each paragraph;

b. The heading of paragraph (b)(3) is amended by removing the word "Deviations" and adding "Design" in its place;

c. The second sentence of paragraph (b)(3) is amended by removing the words "PA/food stamp" and adding in their place "PA and/or GA and food stamp" and by adding after "computer system" the parenthetical phase "(including the use of on-line applications)";

d. The second through the ninth sentences of the introductory text of paragraph (j) are revised;

e. Paragraph (j)(1)(iv) is amended by removing the last three sentences;

f. The heading of paragraph (j)(2) is revised;

g. Paragraph (j)(2)(v)(D) is amended by removing the regulatory citation "§ 273.2" and adding in its place the citation "§ 273.1(e)" and by adding a new paragraph (j)(2)(v)(E);

h. The heading of paragraph (j)(3) is revised;

i. The introductory text of paragraph (j)(3)(i) and paragraphs (j)(3)(ii) and (j)(3)(iii) are revised.

j. Paragraph (j)(3)(iv) is removed; and paragraph (j)(4) is redesignated as paragraph (j)(5), and a new paragraph (j)(4) is added.

The revisions and additions read as follows:

§ 273.2 Application processing.

* * * * *

(j) PA. GA and Categorically Eligible Households. * * * The applications of these households shall be processed in accordance with the requirements of paragraph (j)(1) of this section, and their eligibility shall be based solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single Statewide GA application, households in which all members are included in a State or local GA grant shall have their application for food stamps included in the GA application. State agencies shall use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The eligibility of jointly processed GA households shall be based solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, persons are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Persons entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. Persons not receiving GA, PA or SSI benefits who are entitled to Medicaid only shall not be considered recipients. The benefit levels of all households shall be based solely on food stamp criteria. Jointly processed and categorically eligible households shall be certified in accordance with Food Stamp Program procedural, timeliness, and notice requirements.

* * * * *

(2) *Categorically eligible PA and SSI households.* * * *

(v) * * *

(E) Ineligible because of failure to comply with a work requirement of § 273.7.

* * * * *

(3) *Applicant GA households.*

(i) State agencies shall use the joint application processing procedures in paragraph (j)(1) of this section for GA households, except for the effective date of categorical eligibility, when the criteria in paragraphs (j)(3)(i) (A) and (B) are met. Benefits for GA households that are categorically eligible, as provided in paragraphs (j)(1) and (j)(4) of this section, shall be provided from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of GA categorical eligibility in § 272.1(g), whichever is later:

* * * * *

(ii) State agencies in which the same eligibility workers do not process applications for GA benefits and PA or food stamp benefits, but otherwise meet the criteria in paragraph (j)(3)(i) of this section may, with FNS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section, except for the effective date of categorical eligibility for GA households. Benefits shall be provided to GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of GA categorical eligibility in § 272.1(g), whichever is later.

(iii) Requirements for combining the GA and food stamp applications or providing food stamp applications to GA applicant households depend on the extent to which applications and administration of the GA and food stamp programs are integrated.

(A) State agencies that have a single Statewide GA application shall include the food stamp application in the GA application and shall inform GA applicant households that they may be categorically eligible for food stamps. The joint GA/food stamp application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in § 273.13(b)(6). With FNS approval, the joint GA/food stamp application may be used for households applying only for food stamps.

(B) State agencies that do not have a single Statewide GA application but have local offices in which the same agency administers both GA and food stamps shall provide households applying for a local GA grant with a food stamp application at the time of their application for GA, along with information concerning how to apply for food stamps, and information about possible categorical eligibility.

(C) State agencies in States in which GA and the Food Stamp Program are administered by separate offices must advise all GA applicant households that they may be categorically eligible for food stamps. The State agency shall encourage the agencies administering

GA to provide applicant households with food stamp applications. State agencies may allow GA applicants to leave a food stamp application at the GA office which contains, at a minimum, the applicant's name, address and signature. If the GA office accepts a food stamp application, it is responsible for forwarding the application the same day to the appropriate food stamp office for processing. The procedural and timeliness requirements that apply to the application process shall begin when the food stamp office receives the application. The GA office may advise households that they may receive faster service if they take the application directly to the food stamp office.

(D) In areas where GA programs are administered by agencies such as the Department of the Interior's Bureau of Indian Affairs, the State agency shall endeavor to gain their cooperation in referring GA applicants to the food stamp program. Where possible, this referral should consist of informing the GA applicants of their potential eligibility for food stamp benefits, providing them with food stamp applications and directing them to the local food stamp offices.

(4) *Categorically eligible GA households.* Households in which each member receives benefits from a State or local GA program which meets the criteria for conferring categorical eligibility in paragraph (j)(4)(i) of this section shall be categorically eligible for food stamps unless the individual or household is ineligible as specified in paragraph (j)(4)(iv) and (j)(4)(v) of this section.

(i) *Certification of appropriate programs.* Programs that meet the criteria in paragraphs (j)(4)(i) (A) through (E) shall be considered appropriate for conferring categorical eligibility upon recipients of benefits from the programs. If a program does not meet all of these criteria, the State agency may request certification of the program by FNS as one that is appropriate for categorical eligibility. In requesting certification, the State agency shall submit to the appropriate FNS regional office a description of the program containing, at a minimum, the following information: The type of assistance provided, income and resource eligibility limits, and the period for which GA is provided.

(A) The program must have income and resource eligibility standards which may be separate from or included in the benefit computation;

(B) The program must not serve a population whose gross income exceeds 130 percent of the poverty level, based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2);

(C) The program must not serve a population whose resources (as determined by the program) exceed $2,000, including liquid resources and a portion of the value of automobiles (excluding, at the option of the GA program, the value of low-cost automobiles);

(D) The program must provide GA benefits as defined in § 271.2 of this part; and

(E) The program must provide benefits for at least three consecutive months without reapplication.

(ii) *Verification requirements.* In determining whether a household is categorically eligible, the State agency shall verify that each member receives PA, SSI, or GA benefits from a program that meets the criteria in paragraph (j)(4)(i) or that has been certified by FNS as an appropriate program and that it includes no individuals who have been disqualified as provided in paragraph (j)(4)(iv) or (j)(2)(v) of this section. The State agency shall also verify household composition if it is questionable, in accordance with § 273.2(f), in order to determine that the household meets the definition of a household in § 273.1(a).

(iii) *Deemed eligibility factors.* When determining eligibility for a categorically eligible household, all Food Stamp Program requirements apply except the following:

(A) Resources. None of the provisions of § 273.8 apply to categorically eligible households except the second sentence of § 273.8(a) pertaining to categorical eligibility and § 273.8(i) concerning transfer of resources. The provision in § 273.10(b) regarding resources available the time of the interview does not apply to categorically eligible households.

(B) Gross and net income limits. None of the provisions in § 273.9(a) relating to income eligibility standards apply to categorically eligible households, except the fourth sentence pertaining to categorical eligibility. The provisions in § 273.10(a)(1)(i) and § 273.10(c) relating to the income eligibility determination also do not apply to categorically eligible households.

(C) Zero benefit households. The provision of § 273.10(e)(2)(iii)(A) which allows a State agency to deny the application of a household with three or more members entitled to no benefits because its net income exceeds the level at which benefits are issued does not apply to categorically eligible households. All eligible households of one or two persons must be provided the minimum benefit, as required by § 273.10(e)(2)(ii)(C).

(D) Residency.

(E) Sponsored alien information.

(iv) *Ineligible household members.* No person shall be included as a member of an otherwise categorically eligible household if that person is:

(A) An ineligible alien, as defined in § 273.4;

(B) An ineligible student, as defined in § 273.5;

(C) Disqualified for failure to provide or apply for an SSN, as required by § 273.6;

(D) A household member, not the head of household, disqualified for failure to comply with a work requirement of § 273.7;

(E) Disqualified for intentional program violation, as required by § 273.16;

(F) An SSI recipient in a cash-out State, as defined in § 273.20; or

(G) An individual who is institutionalized in a nonexempt facility, as defined in § 273.1(e).

(v) *Ineligible households.* A household shall not be considered categorically eligible if:

(A) It refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility, as described in § 273.2(d) and § 273.21(m)(1)(ii);

(B) The household is disqualified because the head of household fails to comply with a work requirement of § 273.7;

(C) The household is ineligible under the striker provisions of § 273.1(g); or

(D) The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Program, as provided in § 273.8(i).

(vi) *Combination households.* Households consisting entirely of recipients of PA, SSI and/or GA from a program that meets the requirements of § 273.2(j)(4)(i) shall be categorically eligible in accordance with the provisions of paragraphs (j)(2)(iii) and (j)(2)(v) of this section for members receiving PA or SSI and provisions of paragraphs (j)(4) (iv) and (v) of this section for members receiving GA.

* * * * *

§ 273.8 [Amended]

3. In § 273.8, the second sentence of paragraph (a) is amended by adding the words "or § 273.2(j)(4)" after the regulatory citation "§ 273.2(j)(2)".

§ 273.9 [Amended]

4. In § 273.9, the fourth sentence of the introductory text of paragraph (a) is

amended by adding the words "or § 273.2(j)(4)" after the regulatory citation "§ 273.2(j)(2)".

§ 273.10 [Amended]

5. In § 273.10, the third sentence of paragraph (g)(1)(ii) is amended by removing the words "NPA food stamps are" and adding in their place the words "food stamp application is" and by adding the words "or benefits from a State or local GA program" after the words "PA and/or SSI benefits".

§ 273.18 [Amended]

6. In § 273.18:

a. paragraph (a)(2) is amended by adding the words "or general assistance" after "public assistance";

b. paragraph (b)(1)(iv) is amended by adding ", or GA" after "PA"; and

c. paragraph (b)(2)(vi) is amended by adding the words "or GA" after "PA".

Dated: August 2, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-18903 Filed 8-8-91; 11:08 am]

BILLING CODE 3410-30-M

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7 CFR Parts 273, 274, and 280

[Amendment No. 338]

Food Stamp Program: Income, Deduction and Disaster Provisions From the Mickey Leland Memorial Domestic Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Food Stamp Program regulations to implement three Program provisions contained in the Mickey Leland Memorial Domestic Hunger Relief Act. The provisions of the Leland Act which are addressed in this proposed rule are: (1) Simplifying resource and eligibility determinations by expanding the criteria by which a resource can be considered inaccessible; (2) using a standard shelter expense estimate in lieu of verification for homeless households with shelter costs; and (3) providing for issuance of food stamp benefits in disasters. The proposed rule should simplify administration of the Food Stamp Program by State and local agencies.

DATES: Comments must be received on or before September 12, 1991 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments can also be sent via fax to Ms. Seymour at (703) 756-4354. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1521-1

This proposed rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture Memorandum No. 1521-1. The Department has classified this rule as nonmajor. The rule will not have an annual effect on the economy of $100 million or more. The rule will have little or no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Further, the rule will not have 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.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the proposed rule and related notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. State and local agencies that administer the Program will be the most affected. Food Stamp applicants and recipients will be affected due to changes in shelter deductions, allowable resource limits, and the exclusion of certain payments previously counted as income for Food Stamp Program purposes.

Paperwork Reduction Act

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

Background

The Mickey Leland Domestic Hunger Relief Act (title XVII, Public Law 101-624, 104 Stat. 3783) made several changes to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et seq.). This proposed rulemaking pertains to several provisions of the Leland Act which affect homeless families. It also simplifies certain eligibility determination procedures to improve the administration of the Food Stamp Program, and addresses issuance of food stamps to replace food destroyed in a disaster. These provisions are discussed below.

Simplifying Resource and Eligibility Determinations—7 CFR 273.8

Currently, regulations at 7 CFR 273.8(c) describe both liquid and non-liquid resources that are counted when determining a household's eligibility for food stamps. Nonliquid resources, such as land, buildings, and licensed and unlicensed vehicles, are included as resources because they can be converted to cash. However, not all resources can be easily sold. An example of such property is "heir property" where heirs inherit undivided fractional interests in a decedent's property and the value of the fractional interest in the property is less than the cost of selling the property.

At the present time, property of this kind poses significant problems for both State agencies administering the Food Stamp Program and households applying for benefits. State agencies may be compelled to seek verification that the household's interest in the property has no fair market value. Moreover, the State agencies may be faced with questions of state property and probate law. Current regulations do not address heir property specifically; rather the regulations focus in general on the accessibility/inaccessibility of resources.

Section 1719 of the Leland Act amends section 5(g) of the Food Stamp Act to address the problem of resource determination. Section 1719 requires the Department to promulgate regulations by which State agencies shall establish standards for excluding resources that,

as a practical matter, the household is unlikely to be able to sell for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be relatively great. Resources so identified would be excluded as inaccessible resources for Food Stamp Program purposes.

The House Committee report on the Leland Act suggests that State agencies may wish to consult with legal or other experts who can provide the best general guidance in identifying types of resources that are unlikely to produce a significant cash return after sales and legal charges. Further, the House report instructs the Department to promulgate regulations that would ensure that the State agencies' standards are clear and, to the extent practicable, are applied uniformly throughout the State. (House Report No. 101-569 part 1, 101st Cong., 2nd Sess., July 3, 1990, p. 430.)

In order to comply with section 1719 of the Leland Act, the Department is proposing to amend 7 CFR 273.8(e) to require State agencies to develop standards for identifying those kinds of resources that, as a practical matter, can be considered inaccessible as the household is unlikely to be able to sell them for any significant return because the household's interest is relatively slight or because the cost of selling the household's interest would be greater than the value of the resource. The Department is proposing to exclude a resource if it cannot be sold for $2,000 or more and the cost of selling the resource is at least 75% or more of the possible sale price. This definition of "significant return" seeks to meet the legislative intent to simplify resource determination. The new standards set by each State must be clear and, to the extent practical, applied uniformly throughout the State.

Estimates in Lieu of Verification for Homeless Households With Shelter Costs—7 CFR 273.9

Present rules regarding the determination of allowable shelter costs are routinely applied to households in a fixed living situation but may pose problems when determining allowable shelter costs of homeless households. While some homeless households often have little or no shelter costs, others can incur significant shelter expenses. If the household is living in a homeless shelter, either public or private, they may or may not be paying a fee to stay there. Some homeless households may be "doubling up" with family and friends until they can find permanent accommodations. In such situations, they may be allowed to stay at no cost or charged for part of the rent and/or utility costs. When they do pay for part of the rent and/or utility costs, the household may have little or no documentation to verify shelter payments. Determining shelter costs for homeless households is further complicated by the fact that their expenses may vary month-to-month. For example, a household may be in a relative's home for part of a month, and in a homeless shelter for the other part.

Section 1737 of the Leland Act amends section 11(e)(3)(E) of the Food Stamp Act to require the Secretary to prescribe rules requiring State agencies to develop standard estimates of the shelter expenses that may reasonably be expected to be incurred by households in which all members are homeless but which are not receiving free shelter throughout the month. Section 1737 also provides that the Secretary may issue regulations to preclude the use of the standard shelter estimate for homeless households with extremely low shelter costs. A State agency would use the estimates in determining the Food Stamp allotments to the households, unless a household verifies higher expenses.

Upon reviewing section 1737 in preparing the proposed rule, the Department believes it should provide specific regulatory guidelines for State agencies in this area as it could be difficult for each State agency to gather the data necessary to obtain shelter cost estimates and the number of homeless households eligible for food stamps in its State which would enable State agencies to develop standard shelter estimates. Under the proposed regulation State agencies may opt to gather the data necessary to obtain shelter cost estimates for homeless households. The maximum shelter cap will be an amount equal to 50% percent of the FY 1991 maximum shelter deduction for non-disabled/non-elderly households applicable for use in a State. The Department is interested in obtaining data or survey information from State agencies on shelter costs for homeless households.

Accordingly, the Department is proposing to amend 7 CFR 273.9(d)(5) by adding a new paragraph (B) that provides for a standard shelter expense estimate that is equal to 50 percent of the Food Stamp Program's FY 1991 maximum shelter cap for non-disabled/non-elderly households ($93). The standard shelter expense estimate would apply only to those households which do incur a shelter-related expense during the month. Households which receive free housing and utilities throughout the month shall not be eligible for the standard shelter expense estimate deduction. Moreover, homeless households with shelter costs higher than the standard shelter expense estimate will need to verify these shelter costs if they want to have such costs used in calculating their entitlement to an excess shelter deduction. If there is no such verification, the standard shelter expense estimate will be used.

Section 1737 of the Leland Act also presents the Department with the option of developing rules that would preclude homeless households with low shelter costs from claiming the standard shelter expense estimate. The House Committee report on the Leland Act states that the homeless population is often ill-equipped to deal with the complexity of the food stamp application process. Thus, one of the purposes of section 1737 is to reduce the paperwork for homeless households in relation to shelter expenses. (House Report No.101-569 part 1, 101st Cong., 2nd Sess., July 3, 1990, p.425). For this reason, the Department has decided not to issue regulations to preclude homeless households with extremely low shelter costs from claiming the standard shelter expense estimate. Homeless households claiming higher shelter expenses will be given the standard shelter expense estimate unless the household verifies the higher shelter expenses. By using the standard shelter expense estimate for all homeless households with shelter expenses, the Department believes Program administration would be simplified and the paperwork requirements for the affected homeless households would be lessened.

Disaster Provision of the Leland Act

Section 1720 of the Leland Act amended section 5(h) of the Food Stamp Act to require the Secretary to issue regulations providing emergency food stamp benefits to eligible households to replace food destroyed in a disaster. The emergency allotments would be equal to the value of food actually lost in a disaster up to a limit approved by the Secretary not greater than the applicable maximum monthly allotment for the household size. Section 1720 also provides that the Secretary shall adjust reporting and other application requirements to be consistent with what is practicable under actual conditions in an affected area, taking into consideration the availability of the State agency's offices and personnel and any damage to or disruption of transportation and communication facilities. These requirements are consistent with current policy and, by

their nature, can only be implemented through evaluation of the circumstances associated with a specific disaster. Therefore, no new regulatory language is being proposed to implement section 5(h)(3)(B) of the Food Stamp Act.

Accordingly, the Department is proposing to add a new paragraph to 7 CFR 280.1 to provide for emergency allotments to eligible households to replace food destroyed in a disaster. The value of the emergency allotments would be equal to the value of food actually lost and shall not be greater than the applicable maximum monthly food stamp allotment for the household size. Conforming language is also being added to 7 CFR 274.6(b)(3).

List of Subjects:

7 CFR Part 273

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

7 CFR Part 274

Administrative practice and procedure, Food stamps, Fraud, Grant program-social programs, Reporting and recordkeeping requirements.

7 CFR Part 280

Disaster assistance, Food stamps, Grant programs-social programs, Indians.

Accordingly, 7 CFR parts 273, 274, and 280 are proposed to be amended as follows:

(1) The authority citation of parts 273, 274 and 280 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.8, a new paragraph (e)(18) is added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(18) Resources that households are unable to sell for any significant return because the household's interest is relatively slight or because the cost of selling the resource would be relatively great. These excluded resources are those with an expected sale price of $2,000 or less where the cost of selling the resource exceeds 75% of the expected sale price. State agencies shall develop clear and uniform standards for identifying the costs likely to be associated with the sale of various types of resources and the likely gross value of such resources as a guide for recipients and certification workers to follow in determining whether or not a resource is accessible.

* * * * *

3. In § 273.9 paragraph (d)(5), introductory text and paragraphs (d)(5)(i)–(v) are redesignated as paragraph (d)(5)(i) introductory text and paragraphs (d)(5)(i)(A)–(E) and a new paragraph (d)(5)(ii) is added.

The addition reads as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deductions.* * * *

(5) *Shelter costs.* * * *

(ii) State agencies shall use a standard shelter expense estimate for homeless households where all members are homeless and are not receiving free shelter throughout the calendar month. If State agencies opt to develop their own standard shelter expense estimate, the estimate must be consistent with area shelter costs. If the State agency does not develop its own standard shelter expense estimate, then the standard shelter expense estimate shall be an amount equal to 50 percent of the Food Stamp Program's FY 1991 maximum shelter cap for non-elderly, non-disabled households ($93). All homeless households which incur shelter costs shall be eligible for the standard shelter expense estimate. The standard shelter expense estimate shall be used in calculating the shelter deduction for homeless households. Homeless households claiming shelter costs higher than the standard shelter expense estimate shall be given the shelter estimate as the shelter deduction unless the higher shelter costs are verified. Homeless households which incur no shelter costs throughout the month shall not be eligible for the standard shelter expense estimate.

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

4. In § 274.6, paragraph (b)(3) is amended by adding the words "Except for households certified under 7 CFR 280," to the beginning of the first sentence.

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

5. Section 280.1 is amended by adding two new sentences to the end of the section to read as follows:

§ 280.1 Interim disaster procedures.

* * * In addition to establishing temporary emergency standards of eligibility, the Secretary shall provide for emergency allotments to eligible households to replace food destroyed in a disaster. Such emergency allotments would be equal to the value of the food actually lost in such disaster but not greater than the applicable maximum monthly allotment for the household size.

Dated: August 2, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91–18902 Filed 8–8–91; 11:09 am]

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Part IV

Department of Education

Final Priorities for the National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Final Priorities

AGENCY: Department of Education.

ACTION: Notice of final priorities for the National Institute on Disability and Rehabilitation Research.

SUMMARY: The Secretary of Education announces final funding priorities under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1991–1992 for a program of activities to support the implementation of the Americans With Disabilities Act (ADA).

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–5801). Deaf and hearing-impaired individuals may call (202) 732–5316 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the dissemination of information that will assist in improving the lives of individuals with disabilities is contained in sections 202 and 204 of the Rehabilitation Act of 1973, as amended. The specific provisions regarding the establishment of the projects that will assist in the implementation of the ADA are included in the House and Senate Reports accompanying the Appropriations bills for the Departments of Labor, Health and Human Services, and Education for Fiscal Year 1991.

On May 21, 1991, the Secretary published proposed priorities for this program in the **Federal Register** at 56 FR 23336. The Department received thirty-nine comments, most of which were supportive of the proposed priorities. Several commenters made suggestions for the operation of the program that NIDRR will implement through the administration of the program. A summary of these comments, and the Secretary's responses to them, are included as an appendix to this notice. No changes were made to the priorities as published.

NIDRR announces the priorities for projects and the special selection criteria for these awards in this notice. The projects will be supported under the Knowledge Dissemination and Utilization Program. Under this program, awards are made to public and private nonprofit and for-profit agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR may make awards for up to 60 months, through grants or cooperative agreements. NIDRR regulations authorize the Secretary to establish priorities by reserving funds to support particular activities (see 34 CFR 355.32). NIDRR announces the following absolute priorities, as authorized by the Education Department General Administrative Regulations (EDGAR) in § 75.105(c)(3). Only applications that are responsive to these priorities can be funded. The publication of these funding priorities does not bind the Department of Education to fund projects under any or all of these priorities, except as otherwise provided by statute. Funding of particular projects depends on the quality of the applications received and the funds available.

In this notice, NIDRR announces priorities for three types of projects. There are two priorities to establish national peer training projects to enhance the capacity of persons with disabilities and their organizations to facilitate the implementation of the ADA; there are three priorities for projects to develop and test technical assistance and training programs in three areas of the Act; and a priority that proposes ten Regional Disability and Business Accommodation Centers (RDBACs) that would focus on providing information and technical assistance to employers and other covered entities to facilitate appropriate implementation of the ADA, successful employment outcomes for individuals with disabilities, and greater accessibility in public accommodations.

Final Priorities

Background

Since its establishment in 1978, the National Institute on Disability and Rehabilitation Research (NIDRR; formerly the National Institute of Handicapped Research) has supported research to improve the employment status and promote the independence of persons with disabilities. Along with other research initiatives, NIDRR has supported research addressing accessible environments, assistive technology, job accommodation strategies, worksite modifications, information dissemination and utilization techniques, independent living, empowerment and self-representation, and the nature of various specific disabilities.

Public Law 101–336, the Americans with Disabilities Act (ADA), was enacted on July 26, 1990, and prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. The ADA requires a number of Federal agencies to issue regulations and undertake technical assistance efforts. In most cases, the ADA requires responsible agencies to issue their final regulations within one year of the date of enactment and develop technical assistance manuals and make them available no later than 180 days after the final regulations have been published. Because of NIDRR's experience in supporting information dissemination and technical assistance on issues related to disability, and its information base of knowledge resulting from NIDRR-supported research and demonstration efforts, Congress provided additional funds to NIDRR for FY 1991 to support a technical assistance initiative related to the implementation of the ADA.

The Senate Report accompanying the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 1991 (Senate Report No. 101–516) frames NIDRR's task in broad terms, referring to funding for "technical assistance related to implementation of the Americans with Disabilities Act." The House Appropriations Report (H.R. 101–591) is more specific and oriented to employment, directing NIDRR to fund "* * * up to ten new regional centers on disability. The primary focus of this new program is to ensure that information and expertise are available on how to make reasonable accommodations for disabled employees in the work setting." The Conference Report did not discuss the issue.

As suggested by the House in its 1991 Appropriations Report, NIDRR has consulted with a range of relevant Federal agencies, including the Department of Justice, the Equal Employment Opportunity Commission, the President's Committee on the Employment of People with Disabilities, and the National Council on Disability, as well as with representatives from business and disability organizations, to develop a responsive and meaningful program that will complement the planned efforts of other public and private agencies. These priorities were developed on the basis of these consultations along with references to NIDRR's existing knowledge base of disability-related information. NIDRR intends to continue to coordinate

activities under this program with other Federal agencies and with other public and private initiatives to implement the ADA.

In response to the Congressional directives and the needs expressed by the representatives of disability and business organizations that NIDRR has consulted, NIDRR will establish a program of regional centers—the Regional Disability and Business Accommodation Centers (RDBACs)—that will address a wide range of issues related to implementation of the ADA, but will place particular emphasis on employment and public accommodation issues. At the same time, NIDRR will support three projects to produce a core set of training materials, resources, and references that will be used by the centers in their technical assistance efforts and by others providing training and technical assistance related to the employment, public accommodations, and telecommunications requirements of the ADA. In addition, NIDRR will support two national peer training projects aimed at enhancing the knowledge of the ADA and, thereby, the capacity of organizations of and for persons with disabilities, as well as the capacities of individuals with disabilities, to facilitate the implementation of the ADA.

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Priorities for National Peer Training Projects

NIDRR believes that the full potential of the ADA can be realized only if the individuals who are protected under the Act are aware of the provisions of the law and of their rights and responsibilities under the Act. Further, persons with disabilities and organizations of and for individuals with disabilities have both an incentive to see the law successfully implemented and the experience and knowledge to facilitate that implementation.

Applicants for peer training projects must present a plan that describes a national target population, equitably dispersed geographically throughout the nation, for the training, presents a method for reaching a diverse target population, describes types of training approaches, which may include training-the-trainers, multimedia designs, providing training at national, State, or regional meetings of organizations representing the target population, or other approaches that maximize impact with the available resources. Applicants must detail their plans for dissemination and utilization of their products as well as evaluation. Applicants for these projects must provide evidence that they include individuals with disabilities or their family members or representatives in all aspects of the planning, management, implementation, and evaluation of the training activity. Applicants must identify key staff that are available and will be assigned as project staff. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

Peer Training for Local Capacity-Building in Independent Living Centers

It is imperative that we take advantage of existing resources in local communities and develop their capacity to facilitate the smooth implementation of the ADA. There are over 400 Independent Living centers (ILCs) in the United States that emphasize consumer control and peer services. These ILCs are natural resources that will have an awareness of the ADA and a strong incentive to promote its full implementation. However, ILC staff, peer associates, and volunteers can be more effective in these ADA facilitation roles if they develop a solid expertise.

Applicants for funding under this priority must provide a plan for peer training that maximizes the roles of individuals with disabilities in the planning and operation of the training program. Applicants must provide evidence of their ability to have a nationwide scope, and must demonstrate the availability of staff and facilities to begin immediately to implement the grant activities. The project must develop training materials and curricula that applies to all individuals with disabilities who are covered under the ADA and which can be used by all ILCs.

A project to be funded under this priority will:

- Provide training to ILC staff, associates, and volunteers on the requirements of the ADA;
- Provide the ILC staff, associates, and volunteers with general awareness training on types of accommodations that can be made, innovative approaches to accommodations, and low cost accommodations;
- Provide training and technical assistance to ILC staff, associates, and volunteers to enhance their capacity to deliver training, information, publicity, and educational programs in their communities about the ADA;
- Provide follow-up and reinforcement of training, consultation, or technical assistance to ILC staff, associates, and volunteers as needed by trainees;
- Assist ILC staff, associates, and volunteers as needed by trainees to select and maintain resource files of instructional materials for various types of audiences, such as individuals with various types of disabilities and their families or representatives and service providers from various service systems, including in these resource files videotapes, audiocassettes, visual presentations, posters, brochures, computer demonstrations, and other media presentations;
- Provide training to ILC staff, associates, and volunteers in various methods to promote awareness and implementation of the ADA, such as displays of model accommodations in malls or at fairs, recognition and award ceremonies, use of local media presentations, and poster or essay contests;
- Provide training to ILC staff, associates, and volunteers on ways to use existing community facilities and resources, such as community colleges, voluntary associations, or public access channels to promote implementation of the ADA;
- Begin training of ILC staff, associates, and volunteers within three months of the grant award and have trained an adequate number of ILCs that can respond to community needs at the effective dates of specific titles of the Act; and
- Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission and the Department of Justice, the Architectural and Transportation Barriers Compliance Board (ATBCB) and with the Peer and Family Training Network project, the Materials Development Projects, and the RDBACs to be funded under these priorities.

Peer and Family Training Network

In order for the potential benefits of the ADA to be fully realized, the intended beneficiaries must be aware of the provisions of the statute, the practical interpretation of those provisions, methods to facilitate implementation of the statute, and sources of assistance. This priority is intended to accomplish those objectives

by developing a peer and family training network in which individuals with disabilities or their parents or other family members will provide training to their peers throughout the country to enhance their awareness of: (1) The provisions of the ADA; (2) their rights and responsibilities under the Act; (3) effective ways in which the employment, public accommodations, and telecommunication provisions of the Act can be implemented; and (4) local and national resources available for expert assistance in resolving issues such as interpretation, reasonable accommodations, or technical aspects of compliance, that may arise concerning the implementation of the provisions of the ADA.

This training network must apply innovative approaches to the delivery of training, including training-the-trainers, training the target population in such settings as organization meetings and conventions, supported employment programs, school transition programs, parent and advisory groups involved in special education programs, parent outreach projects, and similar programs that reach the target population. The project shall prepare individuals with disabilities and their family members or representatives to develop their own skills and awareness, and also prepare them to train other groups in the community, including peers and covered entities. The training may include developing the capacity of local disability organizations to serve as community resources.

Applicants for support under this project must demonstrate representation of and an ability to reach individuals with various types of disabilities—including developmental, cognitive, emotional, physical, and sensory impairments—and their families. Applicants may propose various effective means of delivering the training, including through subcontracts that are made with organizations that also represent individuals with disabilities and their families. The training provided for under this priority must begin within three months of the grant award and additional training and related activities will be phased in over the three year period of the grant.

A project to be funded under this priority will:

- Provide training to individuals with disabilities and their families, by individuals with disabilities or family members, on the provisions of the ADA and on methods to facilitate the implementation of the ADA;
- Train individuals with disabilities and their family members to become trainers of their peers and of other key individuals in their communities, including employers and public or private service providers and administrators;
- Develop the capacity of organizations of and for individuals with disabilities to provide information, training, technical assistance, and education about the ADA within their communities, particularly to persons with disabilities and their families, or to organizations representing individuals with disabilities or those who provide services to them;
- Coordinate and cooperate with the Peer Training for Local Capacity-Building in Independent Living Centers project, the Materials Development Projects, and the RDBACs described in this notice, and share information with these and other relevant entities; and
- Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission, the Department of Justice, and the Architectural and Transportation Barriers Compliance Board.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR has added 60 points to the selection criteria for these projects, so that the maximum possible score for an application in § 350.33(e) is increased to 160 points. NIDRR has distributed the additional points as follows:

(1) The applicant demonstrates that individuals with disabilities, or where appropriate, their family members will plan, manage, implement, and evaluate the project. (Weight: 4; Total Points: 20)

(2) The applicant proposes an effective approach to the timely delivery of training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(3) The applicant demonstrates an ability to begin immediate project operations, demonstrates that key staff and facilities are currently available, and demonstrates an ability to achieve a comprehensive nationwide program within the three year period of the project. (Weight: 4; Total Points: 20) (Approved by the Office of Management and Budget under Control No. 1820-0027)

Priorities for Materials Development Projects

In order to ensure that the RDBACs have high quality, uniform materials to distribute and to make accessible training materials available to various segments of the population that need to know about the ADA, NIDRR announces priorities for projects to develop and test new informational and instructional materials.

NIDRR expects that the target audiences for the RDBACs, as well as the other populations likely to make use of these materials, will have a wide range of information processing styles and interests. As a result, the materials that the RDBACs distribute and the training that they provide must cover a broad range of topics, use a number of different visual, auditory, and experiential media, be available in a variety of accessible formats, and be presented so as to be understandable to a range of target audiences with cognitive or linguistic differences. In order to ensure the usefulness and appropriateness of the materials developed by these projects, NIDRR requires that persons with disabilities and their families must be involved in the development of these materials and resources to the maximum extent feasible.

NIDRR will support three two-year grants or cooperative agreements for materials and resource development and testing. These materials and resources will be available to the RDBACs and to the national peer training projects for reproduction to be distributed and disseminated regionally and nationally. They will also be available for use in further public information, technical assistance, and training activities conducted by the grantees or by other interested entities. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

Using a variety of media, these grantees will develop materials and resources for use by, and with, employers, disability organizations, commercial establishments, labor unions, State and local government agencies, service providers, voluntary organizations, and the general public. In addition, the grantees will develop training materials that can be used by trainers, employers, and disability groups. These materials and resources

will include, but not be limited to: Checklists, self-assessment guides, videotapes, audiotapes, self-guided instructional materials, information guides, manuals, curricula, and reference lists. The products of the grants must be developed in a variety of media and formats so as to be understandable by a wide audience with varying information processing styles and abilities. Each of the materials developed by the grants must be field-tested prior to final production. In order for these materials to have maximum impact on the implementation of the ADA, NIDRR requires that grantees be capable of producing high quality materials in a short time period, and be able to complete initial materials in the first three months of the projects.

NIDRR announces three priority areas for materials development projects and intends to make one award in each of the three areas: (1) Accessibility and public accommodation; (2) employment; and (3) communication and telecommunication. NIDRR has identified four primary target audiences for the materials and resources grants and recognizes that numerous secondary target audiences exist. These four principal audiences are: Persons with disabilities and their families; employers; public and private entities that operate public accommodations; and public and private service providers. Some of the secondary target populations include health care providers, educators, journalists, and the general public. Each of the grantees must ensure that its products are tailored to the primary target audiences identified by NIDRR.

1. Accessibility and Public Accommodation

The concepts of accessibility and public accommodation must be viewed within the context of implementing the ADA. Examples of issues that are likely to emerge include: the accessibility of places of public accommodation—e.g., stores, restaurants, hotels; the accessibility of public facilities owned and operated by State and local governments—e.g., parks, museums, office buildings; and the adaptation of equipment, instructions, guidelines, and informational materials used by health care providers. The primary target audiences for this material are the general business community and State and local governments.

The project to be funded under this priority will:

- Develop or identify and adapt self-administered survey guides, checklists, and other instruments that can be used by the target audiences to evaluate the accessibility of a facility to individuals of all ages with disabilities and have these materials in trial application within three months of the date of the award;
- Develop or adapt training materials and resources that will enhance the skills and ability of the recipients of the technical assistance or training to make an environment, function, or service accessible to persons of all ages with disabilities, and place at least some of these materials into trial applications within six months of the date of the award;
- Develop or package information on design alternatives for renovations, refurbishing, refurnishing, or construction, including low-cost options, and begin trial application of these materials within nine months of the date of the award;
- Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities and representatives of covered entities, evaluate their effectiveness, and modify the materials as needed;
- Coordinate the development, repackaging, and dissemination of materials with the Architectural and Transportation Barriers Compliance Board, the Department of Justice, and other agencies that provide technical assistance on the public accommodations provisions of the ADA;
- Assure that all materials are developed in more than one format to accommodate various individual communication modes;
- Provide copies of all materials along with a final report to NIDRR and file the final report with the National Rehabilitation Information Center (NARIC); and
- Coordinate their technical assistance and training activities with those of other agencies that provide technical assistance on the ADA, such as the Equal Employment Opportunity Commission and the Department of Justice.

(2) Employment

The ADA establishes a number of important safeguards regarding the employment of a person with a disability. These provisions affect the entire continuum of employment, from initial activities such as job development, recruitment and interviewing, through all aspects of employment, including the use of reasonable accommodations, employee benefits, and job structure and retention. In order for these safeguards to promote opportunities for employment, employers and persons with disabilities need information, training, and materials that will enable them to transform the ADA's safeguards into routine business practices. To meet the requirements of the ADA, employers will need to be flexible and resourceful regarding job accommodations that do not result in undue hardship; must be familiar with the array of job and employment strategies and have a readily available pool of expertise and information about existing technology and strategies for individuals of all ages.

The ADA is expected to lead to increased employment among persons with disabilities, and as a result a wider audience of employers will need information addressing workplace issues relating to employees with disabilities. These include, among others, issues of employee benefits, insurance coverage, labor relations, tax incentives, promotions, job retention, and physical accommodations at the workplace.

The principal target populations for these materials are individual employers and employer organizations, individuals with disabilities and their organizations, vocational rehabilitation agencies, insurance providers, and State and local governments.

The project to be funded under this priority will:

- Develop training programs, materials and resources, or repackage appropriate existing materials, that address job structuring, advertising, job recruitment, interviewing, testing, drug testing, medical examinations, assessing job qualifications and hiring in order to attract and retain qualified persons with disabilities, emphasizing low-cost options, and begin the trial application of some of these materials within three months of the award;
- Develop training programs that include model interview guides and job descriptions as well as a model process for developing job descriptions and establishing job qualifications, and begin trial application of some of these materials within three months of the award;
- Develop training programs, materials, resources, strategies and models addressing work schedules, job analysis, job restructuring, and job reassignment, and begin trial applications within six months of the award;
- Develop training programs, materials, and resources addressing retooling, specialized equipment, auxiliary aids, assistive devices, and assistive services, with emphasis on low-cost options and funding resources, and place these materials into trial

applications within nine months of the award;

• Develop training programs, materials, and resources that address workers' compensation, tax incentives, liability insurance, health insurance, medication at the workplace, employee benefits, and labor relations as they relate to employees with disabilities, and begin trial applications of these materials within nine months of the award;

• Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities and representatives of covered entities, evaluate their effectiveness, and modify the materials as needed;

• Assure that all materials are developed in more than one format to accommodate various individual communication modes;

• Provide copies of all materials along with its final report and file the final report with the National Rehabilitation Information Center (NARIC); and

• Coordinate with the Equal Employment Opportunity Commission, the Rehabilitation Services Administration, the President's Committee on Employment of People With Disabilities, the Job Accommodations Network (JAN) and the Architectural and Transportation Barriers Compliance Board in the development and repackaging of materials.

3. Accessibility in Communications

The relationship between opportunity and communication is clearly recognized in the ADA. While our potential ability to overcome barriers to communication is substantial, the successful implementation of the communication requirements of the ADA will depend on the extent to which the public is educated as to not only the communication problems facing persons with disabilities, but also the variety of strategies and technologies available to solve those problems. The target audiences for this project will be public and private operators of public accommodations, individuals with disabilities and their families, State and local governments, and public and private service providers.

The project to be funded under this priority will:

• Develop training programs, materials, resources, and strategies addressing telecommunication (including telephone relay systems), sensory aids, safety/emergency communication systems, signage, alternative methods of communication, and assistive technology, with emphasis on low-cost options;

• Pilot test the materials developed on appropriate target audiences, which in all cases must include individuals with various types of disabilities, including auditory and visual disabilities, evaluate their effectiveness, and modify the materials as needed;

• Assure that all materials are developed in more than one format to accommodate various individual communication modes;

• Coordinate with the Federal Communications Commission and other relevant agencies in the development and dissemination of materials; and

• Provide copies of all materials along with its final report and file the final report with the National Rehabilitation Information Center (NARIC)

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR has added 60 points to the selection criteria for these projects, so that the maximum possible score for an application in § 350.33(e) is increased to 160 points. NIDRR has distributed the additional points as follows:

(1) The applicant proposes an effective approach to the timely development and production of materials and instructional content in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(2) The applicant presents an effective plan to pilot test, and evaluate and modify as needed, materials and training programs on appropriate target audiences, including individuals who have various types of disabilities and parents of individuals with disabilities, employers with various sized work forces, and appropriate representatives of service providers, business, labor, State and local governments, and the general public. (Weight: 4; Total Points: 20)

(3) The applicant involves individuals with disabilities, parents or other family members of individuals with disabilities, as well as representatives of the covered entities and other target populations, in the design and delivery of the informational and instructional content and format. (Weight: 4; Total Points: 20) (Approved by the Office of Management and Budget under Control No. 1820-0027)

Priority for Regional Disability and Business Accommodation Centers (RDBACs)

The ADA is expected to provide a new impetus to current efforts to improve the employment status and independence of persons with disabilities. However, the full realization of the potential impact of the ADA on the lives of persons with disabilities will require both education and technical expertise. For example, the implementation of the employment provisions of the ADA (title I) in an efficient and cost-effective manner is a goal that NIDRR shares with the business community, individuals with disabilities, and others. Implementation of the employment provisions of the ADA could be a complex process, since the ADA not only prohibits policies, procedures, and activities that discriminate against persons with disabilities but also requires employers to make "reasonable accommodations" to permit individuals with disabilities to perform the "essential functions" of a job. Similarly, the implementation of other titles of the ADA is likely to require an understanding of the types of changes that are needed and knowledge of the range of options available to make those changes. Implementation of the accessibility aspects of the legislation will require a variety of public and private entities to take actions to make their facilities and services accessible. The RDBACs are one vehicle to facilitate the implementation process.

A regional center approach to providing technical assistance has a number of advantages. This approach attempts to make an equitable distribution of resources to all parts of the country and promotes the adaptation of the content and format of technical assistance to the unique needs and characteristics of a region.

NIDRR intends to exploit the advantages of the regional center approach while maintaining consistency and quality by providing all of the centers with a core set of technical assistance materials, resources, and references and establishing a national coordinating body (the Technical Assistance Coordinator, or TAC) whose function it will be to identify and address issues, needs, and expertise that emerge in a number of regions.

NIDRR expects that the RDBACs will perform four basic functions:

disseminate information; provide direct technical assistance; where appropriate, provide referrals for specialized information and technical assistance; and conduct training for interested and affected parties. The RDBAC will carry out these functions at the request of a potential client as well as on a proactive basis depending upon the needs of a locality or region.

NIDRR believes that in order for the RDBACs to be successful they must establish networks involving the business and disability communities in their activities, as well as linkages to State and local governments, service providers, and other relevant populations of potential information users. NIDRR believes that the operation of a successful RDBAC is likely to require the cooperation and collaboration of both organizations of and for persons with disabilities and covered entities, or organizations representing covered entities. Potential applicants are encouraged to consider forming consortia or other joint efforts.

This funding priority will establish, by grant or cooperative agreement, one Regional Disability and Business Accommodation Center in each of the ten Federal regions. The RDBAC may be located anywhere within the region, but must provide evidence that the entire region will be covered by the Center's activities. Each RDBAC is encouraged to develop programs geared specifically to the needs of employers, other covered entities, and individuals with disabilities within its region, but each RDBAC must provide a common core of functions. In providing information and technical assistance, the RDBAC and the experts to whom it makes referrals for specialized technical assistance, will provide the client with a range of options and will act only in an advisory capacity; the advice will not be considered a formal policy directive of any Federal agency, including NIDRR.

Each RDBAC will cooperate with the materials development projects to be funded under this program in providing information about needs for materials and in helping to test informational and instructional materials. Each RDBAC will cooperate with the technical assistance coordinator (TAC) that NIDRR intends to establish through grant or contract, that will provide technical information to the RDBACs, establish a network for coordination and information sharing among the RDBACs, and respond to the RDBACs' needs for information. Each RDBAC will be expected to disseminate accurate and current information as provided through the TAC. Grantees will be expected to submit reports and materials to NIDRR, the National Rehabilitation Information Center and other appropriate clearinghouses.

The RDBACs will be dynamic organizations, with a changing and expanding scope of responsibilities over the five-year life of the centers. The centers initially will disseminate existing information, provide general training to organizations in their regions about the requirements of the ADA, and promote the concepts and a general awareness of ADA. They will develop local and regional networks and establish a viable system for the delivery of Center activities throughout the region. Each RDBAC will develop a local resource pool, including experts in public accommodations and job accommodations. These expert pools will include rehabilitation engineers, representatives of independent living programs, architects, representatives of organizations of and for individuals with disabilities, management analysts, designers and engineers, and service providers. The RDBACS will continue throughout their five-year spans to provide general education and information, and will also provide, either directly or through referrals or brokerage, hands-on technical assistance to covered entities that must make accommodations for employees or the public.

Each center to be funded under this proposed priority will:

- Provide general education and distribute information about the ADA and disseminate informational materials that have been developed by various Federal and private agencies, including the Architectural and Transportation Barriers Compliance Board, or by the materials development projects and the peer training projects, beginning this activity within three months of the award of the grant;
- Provide information, using a variety of media, including materials developed by the materials development projects in this program, and such techniques as public speeches, graphic and audio materials, media announcements, telecommunications, hotlines, or computer databanks, to employers, the business community, individuals with disabilities and organizations that represent them, State and local government, and other target populations in the region, on the topics of: Disability awareness; the provisions of the ADA; public accessibility; ADA's impact on the hiring process; job accommodations, accessibility and accommodation in communications; and empowerment for individuals with disabilities in successful implementation of the ADA beginning these services within three months of the award of the grant;
- Provide and distribute information about the existence and future plans of the RDBAC, orient disability, business, and other groups in the region to the ADA and its general implications, and provide information as requested by the various target audiences in the region within three months of the award of the grant;
- Develop linkages to business organizations, disability organizations, State and local governments, service providers, labor organizations, educational institutions, regional and local media, voluntary organizations, and others that will be potential outlets or conduits for the dissemination of information, and develop a plan for marketing the RDBAC services to the primary target populations in the region within six months of the award of the grant;
- Conduct an assessment of the informational needs and preferred information conduits of employers and commercial establishments, and of the disability, public agency, labor, and service provider communities within the region within six months of the award of the grant;
- Provide training to organizations or employers, disability organizations, State and local governments, service providers, commercial establishments, labor organizations, voluntary associations, educators, and other appropriate target groups, on general issues of disability, provisions of the ADA, accessibility, hiring, early intervention in disability at the workplace, job accommodations, communications accessibility, and empowerment for individuals with disabilities in implementing the provisions of the ADA, beginning this activity within six months of the award of the grant;
- Develop information resources, databanks, reference guides, and expert pools that will serve as resources within the region for the implementation of the technical assistance program;
- Provide referrals immediately, if appropriate, to any of the target populations for additional specialized information or for expert assistance;
- Provide technical assistance, or arrange for technical assistance, directly to employers on issues of hiring, early intervention in disability at the workplace, and job accommodation and to business on accessibility and public accommodations, ensuring that inquirers

will be offered a range of options wherever feasible; and

• Apply materials developed by the materials development projects, the coordinating entity, the RDBAC itself, or other sources that are presented in a variety of accessible media and formats.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR 355, apply to these priorities. However, because of the specialized nature of these activities and the potential importance of these projects to the successful implementation of the Americans with Disabilities Act, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under these priorities will be evaluated. NIDRR has supplemented those criteria by adding an additional possible 60 points to the score for each application. Each application may thus receive a maximum of 160 points under § 350.33(e). NIDRR will award the additional 60 points as follows:

(1) Demonstrates the capacity of the applicant entity in the delivery of technical assistance and training to each of the primary target populations. (Weight: 4, Total Points: 20)

(2) Demonstrates the capacity of the applicant entity to reach the range of covered entities in the region in a timely manner. (Weight: 4; Total Points: 20)

(3) Proposes a collaboration of organizations of or for people with disabilities that have knowledge of the provisions of the ADA with entities, or associations representing such entities that are covered by the provisions of the Act, particularly the employment, public accessibility, and telecommunications provisions of the Act. (Weight: 4; Total Points: 20)

(Approved by the Office of Management and Budget under Control No. 1820-0027.)

(Authority: 29 U.S.C. 760-762.)

(Catalog of Federal Domestic Number 84.133D; National Institute on Disability and Rehabilitation Research)

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

Appendix—Analysis of Comments and Responses

The Secretary received 39 comments on the proposed priorities. Most of the comments were supportive of the proposed priorities, while several made suggestions for changes.

Comment: One commenter recommended that eligible entities for all grants be required to limit indirect costs to ten percent.

Discussion: The Education Department General and Administrative Regulations (EDGAR) set the indirect cost rate for training programs at eight percent. This rate applies to the National Peer Training Projects. The recipients' negotiated indirect cost rates will apply to awards for Materials Development Projects and Regional Disability and Business Accomodation Centers.

Changes: None.

Comment: One commenter was concerned that children with disabilities would be neglected by the grantees.

Discussion: The Secretary expects that the grantees will address the needs of all persons with disabilities who are covered under the ADA, regardless of their ages.

Changes: None.

Comment: One commenter recommended that "supported employment" be specifically included in the priority on employment for a Materials Development Project.

Discussion: The Secretary expects all forms of employment, including supported employment, to be addressed by the Employment Materials Development Projects.

Changes: None.

Comment: One commenter recommended that NIDRR provide less support to the Employment Materials Development Project than to the Public Accommodation and Accessibility, and the Communication Materials Development Project because of the employment-related technical assistance efforts of the Equal Employment Opportunity Commission (EEOC) and the Rehabilitation Services Administration (RSA).

Discussion: NIDRR is coordinating its technical assistance efforts with a number of other Federal agencies, including the EEOC and RSA, in order to avoid any duplication of effort and to address the wide range of employment-related issues that are expected to be generated by the ADA. Congress expected NIDRR to establish regional Centers to facilitate the employment provisions of the ADA.

Changes: None.

Comment: A number of commenters expressed concern that certain groups of persons with disabilities (i.e., persons with severe disabilities, persons with mental disabilities, children with disabilities, persons with HIV/AIDS, families of persons with disabilities) would not benefit from the technical assistance activities of the grantees.

Discussion: The Secretary expects grantees to provide technical assistance to all persons with rights or duties under the ADA.

Changes: None.

Comment: One commenter suggested that innovative approaches be taken to establish linkages between the business and disability communities as well as to communicate with persons within the disability community.

Discussion: By establishing additional selection criteria that encourage collaboration between the business and disability communities, the Secretary is encouraging innovative approaches to the technical assistance activities that RDBACs will undertake.

Changes: None.

Comment: A number of commenters suggested that the projects funded under the priorities be awarded to specific entities, i.e., Independent Living Centers, University Affiliated Programs, State Vocational Rehabilitation agencies, or business associations.

Discussion: It is the policy of the Department to award grants on a competitive basis through the peer review process.

Changes: None.

Comment: One commenter urged the Secretary to stress the development of ADA implementation videotapes under the Materials Development Projects Priority.

Discussion: The Secretary expects the Materials Development Projects to use a variety of media, including videotapes.

Changes: None.

Comment: One commenter suggested that the National Peer Training Projects include information about currently existing anti-discrimination protections (e.g., section 504 of the Rehabilitation Act of 1973) in addition to those protections provided by the ADA.

Discussion: The Secretary expects that grantees will include other civil rights protections for persons with disabilities in their technical assistance efforts if appropriate.

Changes: None.

Comment: One commenter suggested that additional assurances be required from applicants in order to ensure the appropriate participation by persons with disabilities in all aspects and levels of the priorities.

Discussion: Selection criteria that promote the inclusion of persons with disabilities in the planning, management, and implementation of the grants have been added for these priorities. The Secretary believes that additional assurances are unnecessary.

Changes: None.

Comment: A number of commenters commended the Secretary for promoting

the role of persons with disabilities in the planning, management, and implementation of the grants.

Discussion: The Secretary believes that it is of significant benefit to all affected parties to promote the establishment of meaningful roles for persons with disabilities in all aspects of this technical assistance effort.

Changes: None.

Comment: A number of commenters were concerned with the various timelines regarding submission of proposals and the carrying out of grant activities.

Discussion: The Secretary recognizes the demanding schedule that is being placed upon those who will submit proposals and operate the grants. The Secretary is maintaining the proposed timelines in order to respond in a timely manner to the technical assistance demands of the ADA.

Changes: None.

Comment: A number of commenters were concerned about the need to control the quality of the technical assistance provided and the need for the grantees to coordinate their efforts among themselves and with other public (e.g., the Department of Justice and the Equal Employment Opportunity Commission ADA technical assistance initiatives) and private agencies.

Discussion: The Secretary recognizes the importance of quality control and coordination. Through a technical assistance coordination contract, the Secretary will take the necessary steps to ensure the quality of the materials produced and the technical assistance provided, as well as the coordination of activities, in order to avoid duplication and utilize fully the information that currently exists.

Changes: None.

Comment: A number of commenters questioned the equity of the distribution of resources for the RDBACs in light of the expected differences in demands that will be placed on the RDBACs across regions of the country.

Discussion: The Secretary will retain the regional structure set forth in the proposed priority statement. However, the Secretary expects the size of the awards to vary across regions depending on the needs of individual applicants.

Changes: None.

Comment: A number of commenters stressed the need for the formats of the materials developed by the grantees to be accessible.

Discussion: The Secretary agrees and retains the requirement included in the proposed priority that materials be developed in a variety of accessible formats.

Changes: None.

Comment: One commenter suggested that journalists be identified as a "top priority" target population for the Materials Development Projects.

Discussion: Because the Secretary recognizes the importance of the press in disseminating information, the MDPs are expected to share their products with journalists to the maximum extent feasible.

Changes: None.

Comment: One commenter suggested that public schools be identified as a traget population for the Materials Development Projects.

Discussion: The Secretary expects the MDPs to provide information and materials to public schools as appropriate and feasible.

Changes: None.

Comment: One commenter recommended that applicants be required to demonstrate "cross-disability representation" in project activities.

Discussion: The Secretary expects that project activities will address the needs of all persons with disabilities who are covered under the ADA.

Changes: None.

Comment: One commenter suggested that the concept of "training the trainers" referred to in the priority for Peer Training Projects may be an inefficient means of reaching the goal and suggested some change in the wording.

Discussion: The Secretary believes that training trainers is one strategy, although not the only strategy, that applicants may propose to adopt to address the problem of training a large number of individuals and organizations quickly.

Changes: None.

Comment: One commenter suggested eliminating the Peer and Family Training Network project and focusing all training funding on independent living centers.

Discussion: The Secretary believes that the Peer and Family Training Network Project will serve a necessary and unique purpose related to the ADA, by reaching additional populations and involving family members.

Changes: None.

Comment: One commenter suggested that there may be too many Material Development Projects.

Discussion: The Secretary believes that the three MDPs will contribute significantly to the success of the RDBACs and the NPTPs. The elimination of any of the three MDPs would result in a gap in the information and materials base of the RDBACs and the NPTPs.

Changes: None.

Comment: One commenter suggested changing the name of the Regional Business and Disability Accommodation Centers to ADA Technical Assistance Centers.

Discussion: The Secretary believes that the name Regional Business and Disability Accommodation Centers accurately communicates the nature and scope of the work of the Centers.

Changes: None.

Comment: One commenter suggested increasing the length of all of the projects to five years.

Discussion: The Secretary believes that the length of time alloted for the Materials Development Projects (2 years) and the National Peer Training Projects (3 years) is sufficient to accomplish their purposes.

Changes: None.

Comment: One commenter suggested that the Secretary provide more guidance regarding the expectations that would be placed on the RDBACs during the first three months after the awards are made.

Discussion: The Secretary recognizes that the early stages of all of the projects are certain to be demanding in light of the effective dates of the ADA and the need for grantees to become operational immediately. The Secretary has set forth some expectations for the initial stages of the projects and plans to implement these expectations in negotiations with successful applicants.

Changes: None.

Comment: One commenter suggested concentrating the funds available for ADA technical assistance on the Materials Development Projects and using currently existing clearinghouses for dissemination.

Discussion: The Secretary believes that currently existing clearinghouses do not have the technical expertise and

resources to perform the functions of the RDBACs and the NPTPs, including the direct technical assistance and outreach functions.

Changes: None.

Comment: One commenter noted that NIDRR's technical assistance grantees should be sensitive to the wide range of communication needs of persons with deafness or hearing loss.

Discussion: The Secretary fully expects the grantees to design and implement their technical assistance efforts based on a necessarily broad understanding of the communication needs of persons with deafness or hearing loss.

Changes: None.

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Federal Register

Tuesday
August 13, 1991

Part V

Nuclear Regulatory Commission

10 CFR Part 50

Emergency Response Data System; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150—AD32

Emergency Response Data System

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees of all operating nuclear power facilities except Big Rock Point to participate in the Emergency Response Data System (ERDS) program. This action requires licensees to submit to the NRC timely and accurate data on a limited set of parameters whose values indicate the condition of the plant during a declaration of an alert or higher emergency classification. This action will ensure that all licensees establish a definite schedule for implementation of the ERDS program.

EFFECTIVE DATE: September 12, 1991.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC. Copies of NUREG documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: M.L. Au, P.E., Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3749.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1990 (55 FR 41095) the Commission published a proposed rule in the **Federal Register** that would require licensees to participate in the Emergency Response Data System (ERDS) Program and to set a schedule for its implementation. ERDS is a direct electronic data link between computer data systems used by licensees of operating reactors and the NRC Operations Center (NRCOC) during the declaration of an alert or higher emergency classification. The ERDS supplements the voice transmission of information over the currently installed Emergency Notification System (ENS), and is activated by a licensee when an alert or higher emergency occurs at a licensed nuclear power facility.

This rule applies to all licensed nuclear power reactor facilities, except Big Rock Point and those that are permanently or indefinitely shut down. However, units shut down for maintenance, or authorized for fuel loading only, or low power operations, are required to report under ERDS. Big Rock Point is exempt because configuration of the facility does not make available as transmittable data a sufficient number of parameters for effective participation in the ERDS program.

The objective of the final rule is to ensure timely and effective implementation of ERDS to provide NRC increased assurance that a reliable and effective communication system that will allow the NRC to monitor critical parameters during an emergency is in place at operating power reactors.

Many of the elements of the rule are currently implemented under the ERDS voluntary program in which over half of the licensed units have volunteered to participate. The ERDS program is not expected to require any advancements in the state of the art, and the configuration of most power reactors is such that the relevant parameter values are available as transmittable data. Therefore, there should be no cause for delay in timely implementation of this rule.

Public Comments

Interested parties were invited to submit comments on the proposed rule. There were 113 comments made by 31 commenters on the proposed rule: Two from interested individuals, one from a citizens' group, one from a former Senior Reactor Operator and Emergency Director at a utility, one from the Nuclear Management and Resources Council (NUMARC), one from the Nuclear Utility Backfitting and Reform Group (NUBARG), 20 from power reactor licensees, one from a non-power reactor licensee, and four from State authorities. Many of the letters contained comments that were similar in nature. These comments were grouped and addressed as one issue. The NRC identified 21 separate issues that cover the significant points raised by commenters. Public comments received on the proposed rule were docketed and may be examined at the Commission's Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC. Upon consideration of the comments received, the Nuclear Regulatory Commission has adopted the proposed regulations, with certain modifications as set forth below.

Analysis of Public Comments

1. *Comment.* The ERDS data would be subject to distortion by terrorists or computer hackers which could cause the NRC to respond improperly in their recommendations to the licensee, Federal agencies, and State and local governments. If the ERDS were hardened, or essential data elements were verified by voice communication, this potential problem would be eliminated.

Response. It is highly unlikely that a computer hacker would be able to locate ERDS transmissions in the NRC's communications network because of the limited access to this system. Also, the communication protocol incorporated for ERDS transmission would make the data unintelligible without knowledge of the specific site link configuration. Error detection/correction has been incorporated into the transmission protocol which would, in all probability, detect any alteration in the data. And finally, as stated in NUREG–1394, "Emergency Response Data System (ERDS) Implementation," and in this final rule, the NRC will continue the requirement for the licensee to maintain voice communication with the NRC during emergencies. Any data indicating rapid unrealistic changes or unexpected conditions would be immediately suspect and subject to verbal corroboration. Therefore, the NRC does not believe the probability for intentional data distortion is sufficiently large to justify resources for further countermeasures.

2. *Comment.* There is inadequate justification that implementing the ERDS would substantially increase the overall protection of the public health and safety. This contention was made by nine commenters, in addition to the seven commenters who endorsed the consolidated comments from NUMARC and NUBARG without further elaboration. The commenters stated that if there was a substantial increase this should be quantitatively demonstrable. They also stated that the utility is solely responsible for the protection of the public health. They argued that because this rule does not improve the manner in which the emergency director makes decisions, the claim of "unquantifiable but significant increase" in the protection of the public is invalid. One commenter stated the ERDS is an improvement to a system that has been deemed "adequate," and therefore is not necessary.

Response. Many have argued, as the commenters have, that the NRC Backfit Rule (10 CFR 50.109) requires quantitative evidence that new NRC requirements will result in a substantial increase in the overall protection of the public health and safety or the common defense and security. The NRC does not agree with this interpretation and believes that the safety enhancement justification for a backfit can also be met on the basis of qualitative considerations. In such cases, the NRC believes that the evidence that a substantial increase in overall protection would occur must be clearly defensible and meaningful. The NRC has used this test in its assessment of the ERDS requirements.

The Commission has previously determined that there exists both a regulatory and statutory basis for having emergency planning as a critical element in the protection of public health and safety. In its July 17, 1979, Advance Notice of Rulemaking, the following statement is made: "The Nuclear Regulatory Commission, in discharging its statutory responsibilities to protect the public health and safety, has given its primary attention to aspects of the reactor site and the facility design. In this regard, emergency planning, including evacuation planning, has been conceived of as a measure that adds to the level of public protection * * *"

The NRC, in its mandated role to protect public health and safety, has a responsibility in the event of a reactor accident to monitor the actions of the licensee, who has the primary continuing responsibility for limiting the consequences of the accident. The NRC also has an important role in assuring the flow of accurate information to affected offsite officials and the public regarding the status of the emergency and, as requested or needed, giving advisory support or assistance in diagnosing the situation, isolating critical problems and determining what remedial actions are appropriate. The NRC must be capable of providing to State and local authorities, and to other Federal agencies, an independent assessment of protective actions recommended by the licensee.

Given the regulatory and statutory basis, and given the importance of emergency planning and response in the defense-in-depth context, when an accident has occurred, the NRC believes that a significant increase in its ability to perform its role would constitute a substantial increase to the overall protection of the public health and safety.

Since the principal effect of ERDS will be a marked improvement in the availability, timeliness, and reliability of key information about what is taking place at the reactor during an accident, particularly during the critical early hours before the NRC Site Team arrives, it is the judgment of the NRC that the implementation of ERDS will provide a significant improvement in the NRC's ability to accurately and promptly assess the situation at the site.

In emergency drills conducted by the NRC and power reactor licensees, the information on the status of the reactor is typically 15–30 minutes old by the time it is received at the NRC Operations Center when transmitted via the existing Emergency Notification System (ENS). Moreover, inaccuracies and errors have been found in that information which in some cases has led to confusion and misunderstanding of the situation.

In drills which have employed a prototype of the ERDS, there has been profound improvement in the availability, timeliness, and reliability of the information transmitted. The actual experience of the NRC using the existing ENS alone contrasted with drills where both ENS and a prototype ERDS were used is the basis for its conclusion, that ERDS will provide significant improvements in the NRC's ability to understand what is taking place during an emergency, and thereby more effectively perform its role of monitoring and advising the licensee. More importantly, the improvement in assessment performance significantly improved the NRC's ability to provide appropriate recommendations and advice to the State and local officials who are required to make the decisions regarding the offsite protective actions which are necessary to protect the public.

Because the decision made by the State and local authorities with regard to offsite protective actions could significantly affect the public health consequences of a reactor accident, it is the judgment of the NRC that a significant improvement in the NRC's ability to provide the right recommendation at the right time provides a substantial improvement in the overall protection to the public. An effective emergency response capability in the event of a reactor accident is an essential element of the defense-in-depth approach to protection of the public health and safety. The NRC's role during an emergency is part of that capability. Because the ERDS will provide a significant improvement in the NRC's ability to perform that role in an emergency, the proposed ERDS improvements are therefore justified, and the costs of implementing those improvements are modest.

3. *Comment.* One commenter believed that the limited group of reactor parameters monitored through ERDS would be inadequate to provide a sound basis for NRC recommendations and therefore requested modifications to ERDS. One commenter urged the NRC to consider a continuous monitoring system, e.g., the Nuclear Data Link considered by the Commission following the Three Mile Island accident. Other commenters stated that the ERDS design uses cumbersome hardware and software, that NRC's communication hardware should be able to accept data from a multiple unit plant through one modem, and allow state-of-the art hardware.

Response. Although the ERDS data does not portray every detail of a nuclear power reactor in an emergency situation, the Commission believes it does provide the data required by the NRC to perform its role during an emergency. The ERDS parameter list was selected based on the information the NRC Technical Teams need to perform their emergency response functions. Moreover, the set of ERDS data will not be the only input to the NRC. The Emergency Notification System (ENS), a voice communication system, will still be available to transmit data and any other relevant information that is not available through ERDS. In combination, the NRC will receive the necessary information to develop timely and appropriate evaluations of the event and to develop the necessary support actions to ensure protection to public health and safety.

The ERDS is designed to transfer needed reactor data from a nuclear power plant only during emergencies. It is not a system to constantly monitor any licensee. The concept of constant monitoring, such as the Nuclear Data Link, was considered after the Three Mile Island accident in 1979. But after much evaluation and deliberation, Congress did not approve the concept for funding.

The current protocol is already in use at several reactors under the volunteer program and is in the process of being implemented at other facilities. The NRC is not requiring additional redesign and retest costs on voluntary licensees who already have an acceptable system inplace or have submitted an acceptable implementation plan.

The ERDS was designed to use commercially available (off-the-shelf) computers which could effectively handle the data requirements, establishing a single link with each unit.

To group several units into a single link would result in a data base size incompatible with the ERDS configuration. The ERDS design has been frozen in order to maintain configuration control and standardization in implementing the ERDS volunteer program.

4. *Comment.* Submittal of an ERDS implementation plan should not be required of licensees that have implemented ERDS under the voluntary program. Similarly, licensees that have submitted the information required by the voluntary program along with a proposed implementation schedule should also be exempt from the schedule and system requirements contained in 10 CFR part 50, paragraphs VI.1, VI.2 and VI.4 of appendix E of the proposed rule.

Response. The NRC agrees that it is unnecessary for licensees that have implemented the ERDS in an acceptable manner to submit an implementation plan. The final rule (appendix E to part 50, section VI, paragraphs 4.c and d) has been modified so that licensees who have submitted all information consistent with the timetable set in paragraph 4.b of appendix E to part 50, section VI, are not required to submit an implementation plan.

5. *Comment.* (a) Nineteen of the commenters, including three that endorsed the NUMARC comments, were concerned that implementing the ERDS would increase the operators' labor burden because the NRC, as well as State or local government agencies receiving the ERDS data, would not be staffed by personnel with sufficient system specific knowledge to understand the data. This would result in extensive inquiries to the licensees to explain the data, thereby distracting the operating staff from their primary functions of accident response and emergency management.

(b) Some of these commenters urged the NRC to limit the data provided to States and local government and direct them regarding the use of the ERDS information to preclude the improper use or release of the data.

(c) Other commenters stated that with the availability of ERDS parametric reactor data, the NRC would modify its oversight role into one of more active participation in event management, a function, the commenters claimed, is solely the responsibility of the licensee.

Response. (a) The NRC does not believe that ERDS will impose an additional burden on licensees during an emergency. Rather, the reduction in the potential for miscommunication and misunderstanding afforded by ERDS should enhance the licensee's efficient use of its resources in dealing with an emergency. The NRC acknowledges that ERDS will impose small additional burdens on licensee resources during periods of non-emergency and typically involving non-operator personnel. These impacts are discussed in the regulatory analysis that accompanies this rule and include incremental licensee person-hours for development of the ERDS program and necessary software, periodic testing, and the preparation of configuration control reports. These incremental costs are judged commensurate with the enhanced protection of the public attributable to ERDS. Concern over the capability of NRC staff to understand the ERDS data are unfounded. The NRC Operations Center staff are experienced professionals with extensive knowledge of reactors, sufficient to allow them to use the data provided by the ERDS to follow the course of the emergency, chart and analyze trends, and support appropriate recommendations relating to the health and safety of the public. Further, the NRC is aware that while not all States have the technical knowledge required to interpret raw ERDS data, some have developed significant expertise in responding to emergencies at nuclear power plants. The NRC believes that since the States are responsible for protective actions to ensure the health and safety of their citizens, they should have available sufficient data upon which to base decisions.

(b) The ERDS link will be established with a State government through a Memorandum of Understanding (MOU) with the NRC. The proper use, control, and dissemination of the ERDS data is one of the subjects addressed by the MOU. Under the MOU, the NRC will provide a liaison to the State at the NRCOC for ERDS data interpretation if such help is requested.

(c) The implementation of ERDS will not alter the respective responsibilities of the utilities and the NRC with respect to emergency management. The utility will retain primary responsibility for emergency management activities at the site locations. The NRC will continue to monitor, inform, and upon request, advise licensees and other local, State and Federal authorities who are responsible for the safety of their citizens, as well as to provide timely advice to the licensees as needed.

6. *Comment.* States may require the licensee to pay for equipment required to receive and process the ERDS data. Furthermore, providing ERDS data to the States and local governments would increase NRC costs beyond that estimated in the Backfit Analysis.

Response. The NRC has no control or authority over the State governments regarding their funding of ERDS receiving equipment. Each individual State government should determine its equipment and data requirements. However, through a Memorandum of Understanding (MOU) between the State and the NRC regarding the ERDS link, the ERDS data can be made available to a State. One of the functions of the NRC is to provide appropriate support to the States during a nuclear power plant emergency. This responsibility exists independent of the ERDS, and in the staff's view, the ERDS interface between the NRC and the States should not result in additional costs to the NRC.

7. *Comment.* Implementing the ERDS seems to imply some general concern that the NRC neither trusts its abilities nor those of the licensees to respond correctly to emergencies using current practices.

Response. ERDS is an enhancement of existing procedures that provides a superior method of assembling and transmitting to the NRC near real time data from a licensee during an alert or higher emergency classification. Accurate and timely data assists the NRC in conducting informed analyses of the plant condition, and facilitates NRC consultation with State or local governments regarding action to ensure protection of public health and safety.

8. *Comment.* Will the time in the header of the ERDS data packet be some standard time such as GMT, EST, etc.?

Response. The time from the licensee's plant computer will be used with ERDS data. Included in each licensee's ERDS implementation plan will be the time standards used in their computers. This practice will ensure that the particular licensee and all monitors of ERDS data relating to a particular emergency or test are using the same time. There is no requirement for all licensees to adhere to a common standard time.

9. *Comment.* Non-power reactors should be explicitly exempt from the ERDS requirements.

Response. Since 10 CFR 50.72 of the regulations applies only to nuclear power reactors, it is not necessary to explicitly exempt non-power reactors in the rule.

10. *Comment.* Licensees are requested by Generic Letter 89–89 to transmit a significant number of data sheets to the NRC during emergencies. With the implementation of ERDS, this should be relieved to allow better use of licensee resources to support ERDS.

Response. The information cited is an Information Notice (IN), and as such, it requires no action on the part of the licensee. The form contained in IN 89–89 is a copy of the work sheet used by NRC Headquarters Operations Center officers in recording routine Event Reports over the ENS. IN 89–89 was provided as information to licensees to aid in structuring their normal event report.

11. *Comment.* The NRC should provide the software required for ERDS communications to the utilities.

Response. The NRC will develop software which may be used in a utility provided personal computer (PC) interface for ERDS. The NRC will provide software and source code for a program that will perform ERDS communications protocol and data transmission functions.

12. *Comment.* There were several concerns regarding the configuration control of ERDS hardware and software. Five commenters stated the requirement to notify the NRC within 30 days following changes in individual parameters is overly prescriptive, and they proposed extending the maximum allowable notification period to 90 days, annually, or during Final Safety Analysis Report (FSAR) updates. Two commenters believed the time estimated to perform the configuration control functions was low by a factor of two or three, and therefore the ERDS would be more costly to the utilities than estimated. One commenter stated there should be specific guidance provided for the configuration control requirements of the utility/ERDS interface; and two were concerned that if the NRC changes its format the licensees are automatically required to change their transmission of data. They recommended that the data should be limited to an initial format with no later changes.

Response. In establishing the current reporting requirement for changes in the ERDS Data Point Library, the staff balanced the time needed by the licensees for its design change control and review processes against the staff's need to know based on safety considerations. The staff views the 30 days as reasonable for the licensees to prepare such a report, and given that such changes can influence the NRC's interpretation of ERDS data does not view any further delay as warranted.

For some licensees, plant to plant variation could result in a greater labor burden associated with configuration control tasks than the 5-person days per reactor year used in the regulatory analysis. However, that value represents an average that, considering the entire nuclear power industry, appears substantially correct. There is an economy of scale for those utilities that can combine submissions from multiple reactor units that reduce the industry average.

The basic guidance information for configuration control of the ERDS is contained in NUREG–1394. Based on the experience of the utilities that have implemented ERDS voluntarily, the configuration control requirements appear to be appropriate.

The proposed rule would require the licensee to change its data transmission if the NRC changes its format, and the staff agrees that this is an unreasonable requirement on the licensees. Therefore the final rule has been revised to require all data transmission to conform to the initial format. As the ERDS matures, or as technical advances increase capabilities, there may be some modifications. However, any such changes will be coordinated with the licensees.

13. *Comment.* The ERDS rulemaking should clearly state that the ERDS is available to the States; and that all future State and local government requests for on-line data should be made through the NRC. Furthermore, the licensees should have access to the same screens as those available to the NRC.

Response. It is not within the authority of the Commission to specify to the States what data they may or may not receive. However, the NRC does recommend that States desiring an emergency data link to nuclear power plants within their jurisdiction use an ERDS connection from the NRC Operations Center. A Memorandum of Understanding with the NRC will provide the State with ERDS data. A provision allowing States to receive ERDS data should not be part of the rule since there is no NRC requirement imposed upon licensees to establish a data link with a State. The concept of providing each licensee with the same work stations as the NRC was considered. However, it was not deemed cost beneficial to expend in excess of $900,000 for the sole purpose of sending back to the licensees that data which they originally sent to the NRC. Any licensee desiring to do so may establish their own work station based on NRC design.

14. *Comment.* The requirement for the reactor parametric data to be transmitted to the NRC Operations Center at time intervals of not less than 15 seconds or more than 60 seconds is too prescriptive and may eliminate the use of some existing computer systems currently supporting the licensee's Technical Support Center (TSC)/ Emergency Operating Facility (EOF), etc. One commenter suggested that data update frequency should be plant specific. Others argued that the wording in the proposed rule puts the licensee in jeopardy of non-compliance in the event of system or telecommunications line failure, and that considering the conditions, the proper descriptor for the data is "near real time" instead of "real time."

Response. Originally the desired update frequency for ERDS data was 15 seconds, but to minimize the use and impact on the central processing unit (CPU), the minimum frequency was reduced by a factor of four, i.e., to at least every 60 seconds. Based upon the experience of those manning the NRCOC, the staff believes that less frequent data collection would diminish the NRC monitors' ability to adequately follow the course of the emergency. Furthermore, allowing update frequencies to range between 15 seconds and 60 seconds should provide sufficient latitude to allow most licensees to use their existing computer systems. Exceptions to this requirement will be considered on a case by case basis by the NRC.

Consistent with the NRC's enforcement policy, licensees are not cited for matters beyond their control, such as equipment failures that are not avoidable by reasonable licensee quality assurance measures or management controls. Nonetheless, in the wording of the final rule, the term "near real time" has been used to describe the ERDS data.

15. *Comment.* The requirement to activate the ERDS at the time the NRC is notified of the declaration of an alert or higher emergency classification should be relaxed because it places a heavy labor burden on the plant operators at this critical time. Several commenters suggested a delay of one hour in order to allow actuation from the Technical Support Center, thus removing the burden from control room personnel. Four commenters stated the ERDS should not be operated from an on-site computer, and two suggested the rule should allow the ERDS to be activated by computer operations personnel or a software switch. One commenter stated the licensee should be the only entity to activate or deactivate the ERDS for a given plant.

Response. There is no requirement for the ERDS to be activated from the control room or by control room personnel. The use of computer operations personnel or a software switch is acceptable to activate the

ERDS. The only requirement is to initiate ERDS data transmission as soon as possible but not later than one hour after declaring an emergency class of alert, site area emergency, or general emergency. This change is reflected in the final rule. The specific methods selected to achieve this requirement should be fully described in each licensee's ERDS implementation plan. The notification requirement is valid in order for NRC to fulfill its mandated role to monitor the licensee during an emergency. A delay of one hour or more could deprive the NRC of vital information necessary to perform its advisory and monitoring role. The licensee is currently required in 10 CFR 50.72 to have a shift communicator maintain continuous contact with the NRC Operations Center. This request is not being changed, and this person could be responsible for initiating the ERDS link.

Similarly, the requirement to use an on-site computer does not mean this equipment must be located in the control room. Any on-site location, such as the Technical Support Center or a computer facility, which is capable of meeting the requirement for notification is an acceptable location. However, off-site computers, e.g., at some central location used to service more than one plant site could be prone to additional commercial link vulnerability. This could potentially decrease the ERDS availability and reliability beyond acceptable limits.

The ERDS link will be activated or deactivated by the licensee to transmit the ERDS data to the NRC Operations Center via the NRC-provided telephone lines. In the event that NRC perceives the need to disconnect a plant from the NRC Operations Center to allow another plant onto the system, for example, terminating the transmission of exercise data to allow a unit with a real emergency to access the system, this capability must be available to the NRC.

16. *Comment.* The 18 month ERDS implementation schedule does not provide adequate flexibility for all utilities to install the system. Adhering to that schedule will cause serious operational and cost impacts to some utilities because the system requires extensive hardware modifications.

Response. The voluntary program demonstrated that an implementation period of 18 months is generally adequate. However, the NRC realizes there are plant to plant variations which, in certain cases, may require more extensive and time consuming modifications. Utilities that experience exceptional difficulties in meeting the 18 month implementation schedule should request an extension from the NRC. Extension requests will be reviewed on a case-by-case basis. Extensions will not be granted in the absence of reasonable and good faith efforts to meet the schedule.

17. *Comment.* The requirement in the proposed rule contained in appendix E to part 50, section VI .2, should be clarified to indicate that the licensee will provide data from each unit via an output port on the appropriate data system and necessary software to assemble the data to be transmitted.

Response. The staff agrees with this clarification. This section of the final rule will be modified appropriately.

18. *Comment.* Quarterly testing of the ERDS is too frequent. Testing on a semi-annual or periodic but unspecified schedule should be sufficient. One commenter noted that the rule does not address reporting requirements for system failures during testing. Also for consistency between the discussion section and the rule, the following statement regarding the use of ERDS during emergency training exercises should be added to 10 CFR 50.72(a)(4) of the rule. Although there is no requirement, the ERDS may also be activated by the licensee during emergency drills or exercises if the licensee's computer system has the capability to transmit the data.

Response. Quarterly testing during the initial year or 18 months of the ERDS program is necessary for both the licensees and the NRC monitors to gain experience and confidence with the system, as well as prove the availability and reliability of the system. An established schedule allows both the NRC and licensees to plan and allocate time and resources for testing rather than trying to accommodate testing on an unregimented basis. After a period of approximately one year of demonstrated system performance, i.e., proper functioning during quarterly testing, the test frequency may be relaxed to semi-annually.

There are no explicit reporting requirements for failures during testing because the quarterly testing will be conducted with NRC. If there are failures during these tests, the NRC, because of its participation in the tests, will be aware of them. It is unlikely there will be any system testing of which the NRC is unaware, e.g., with State or local governments, since the State links will most probably be through the NRC Operations Center. The recommended additional statement regarding use of ERDS during emergency training exercises has been included in the final rule.

19. *Comment.* Three commenters stated that this rule should impose no new isolation requirements, and suggested that references should be deleted to a potential requirement for additional isolation requirements.

Response. The reference to the potential need for isolation devices is not a new requirement. It is intended merely to serve to reinforce requirements as a design control mechanism in 10 CFR 50.55a and adds emphasis for adequate protection against spurious electrical signals. More recently constructed nuclear power reactors have adequate isolation of their computer interfaces, but in some older reactors it is conceivable the computer assembling the ERDS data may not be fully buffered, and as such, could require appropriate isolation devices. The statement alerts the licensees to the potential need for additional isolation devices.

20. *Comment.* There should be more flexibility in acceptable quality indicators (tags) for the ERDS data, thus allowing greater use of existing plant methodologies. Requiring the utilities to use the quality tags prescribed by the NRC would force major software changes and added costs for some licensees.

Response. Using the data quality indicators prescribed by the NRC should necessitate, at the most, only very minor licensee software changes. A simple translation matrix that converts the quality tags used by the licensee to the form to be used by the NRC Operations Center is sufficient. This can be applied to the ERDS data prior to transmission.

There is no requirement for the utilities to change the quality tags used at their facility. However, if each utility transmits ERDS data to the NRC Operations Center using their own quality tags, variation from licensee to licensee could cause confusion to the NRC monitors, thereby necessitating additional telephonic consultation with the licensee.

21. *Comment:* Four commenters stated that when ERDS is implemented the requirement for full time manning of the Emergency Notification System (ENS) should be relaxed. Without this relaxation the affected utility will not be able to redirect its efforts as claimed.

Response: It is not the intent to replace the ENS with ERDS; rather, ERDS is a supplemental system specialized in automatic collection and transmission in near real time of a selected set of parametric reactor data required by the NRC in its emergency monitoring role. Although implementing ERDS will diminish the current ENS

burden, not all functions of the ENS will be subsumed into the ERDS. Therefore, telephone contact will still be required via the ENS. Nevertheless, the effort required by the licensee's personnel to gather the data for periodic relay to the NRC will be reduced, thus permitting their use of personnel in other emergency functions.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget under approval number 3150-0011.

Public reporting burden for this collection of information is estimated to average 115 hours per response the first year and 38 hours per response thereafter, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019 (3150-0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for the final rulemaking on this subject. The analysis examined the costs and benefits of the alternatives considered by the NRC. The NRC requested public comments on the preliminary regulatory analysis. Comments received were considered, but no changes to the regulatory analysis are considered necessary. Therefore, the preliminary regulatory analysis is adopted as the final regulatory analysis without change.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for this rule. The Commission concluded that the rule will provide a substantial increase in the overall protection of the public health and safety by ensuring far more accurate and timely flow of data for the NRC to fulfill its role during an alert or higher emergency. The direct and indirect costs estimated for the implementation of this rule are justified in view of this increased protection. Further, the implementation and maintenance requirements of the rule will have no effect on occupational radiological exposure. The backfit analysis on which this determination is based is as follows:

Item 1: Statement of the specific objective that the backfit is designed to achieve.

Response: The objective of this rulemaking is the timely and effective implementation of ERDS so as to provide increased assurance that a reliable and effective communications system, that will allow the NRC to monitor available critical parameters during an emergency, is in place. The availability of accurate, near real-time data depicting what is taking place at a reactor facility during an alert or higher emergency will improve the NRC's understanding of the event as it is happening, and thereby better enable the NRC to perform its role of (i) providing State and local authorities recommmendations and advice on offsite action that they may need to take to protect their citizenry; (ii) supporting the licensees efforts to manage the accident by providing technical analysis and logistic support; (iii) keeping other Federal agencies and entities informed of the status of the incident; and (iv) keeping the media informed of the NRC's knowledge of the status of the incident.

Item 2: General description of the activity that would be required of the licensee or applicant in order to complete the backfit.

Response: All licensees or applicants would be required to install an NRC-supplied communication link, provide the necessary hardware from the in-plant computer to interface with the NRC-supplied communication link, provide support for periodic testing of the ERDS, and report any configuration changes to the licensee's ERDS-related hardware and software. Initially, the ERDS will be tested quarterly, unless otherwise determined by NRC based on demonstrated system performance.

Item 3: Potential change in the risk to the public from the accidental offsite release of radioactive material.

Response: The principal effect of ERDS will be a marked improvement in the availability, timeliness, and reliability of key information about what is taking place at the reactor during an accident, particularly during the critical early hours before the NRC Site Team arrives. Hence, ERDS will provide significant improvements in the NRC's ability to understand what is taking place during an emergency, and thereby more effectively perform its role of monitoring and advising the licensee. More importantly, the improvement in assessment performance will improve the NRC's ability to provide appropriate recommendations and advice to the State and local officials who are required to make the decisions regarding offsite protective actions which are necessary to protect the public.

Because the decisions made by the State and local authorities with regard to offsite protective actions could so significantly affect the public health consequences of a reactor accident, it is the judgment of the NRC that a significant improvement in the NRC's ability to provide the right recommendation at the right time provides a substantial improvement in the overall protection to the public. Because the ERDS will provide that significant improvement in the NRC's ability to provide the right recommendation at the right time, the proposed ERDS requirements are justified.

Item 4: Potential impact on radiological exposure of facility employees.

Response: The implementation of the proposed ERDS rule would have no effect on routine occupational radiological exposure and would not result in increased radiological exposure of facility employees.

Item 5: Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay.

Response: The cost impact of the rule was estimated to be approximately $153,000 for one nuclear power reactor

(one unit). This figure, expressed in 1990 dollars, represents the incremental worth of installing and operating ERDS for 30 years using a 5 percent discount rate. The overall industry cost of implementing the rule for 118 nuclear power reactor units was estimated at approximately $18 million. No downtime costs were considered in the cost impact estimates because the installation and operation of the ERDS should have no impact on the operation of a nuclear power plant.

Item 6: The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

Response: The ERDS rule should have little or no impact on the operational complexity of the nuclear power reactor units since the required modifications to the hardware and software are minor. The redirection in the labor burden provided by the automatic collection and transmission of selected reactor data would increase the efficiency and effectiveness of nuclear power plant operating personnel during an emergency. This rule is closely associated with Generic Letter 89-15 and complements the ENS that exists at every nuclear power reactor.

Item 7: The estimated resource burden on the NRC associated with the backfit and availability of such resources.

Response: The impact on the NRC resulting from the implementation of the ERDS rule is anticipated to be a one-time cost of about $200,000 for the current population of operational/licensed nuclear reactor units. This figure provides for initial reviews of licensees' implementation plan submittals. After implementation, the NRC cost is estimated to be approximately $4.4 million for 118 nuclear power reactor units. This figure represents the costs for periodic testing and configuration control expressed as the present worth in 1990 dollars and uses a 5 percent discount rate over 30 years.

Item 8: The potential impact of the differences in facility type, design, or age on the relevancy and practicality of the backfit.

Response: The rule is independent of the facility's type, design, or age. There are considerable variations in the instrumentation systems of the nuclear power plants, and the estimated cost impacts were based on an average value for current nuclear power plants to implement the ERDS. There will be no differences, however, in potential impacts between the various facilities on a yearly basis. The rule does not require that licensees monitor more parameters than are presently monitored at each facility.

Item 9: Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

Response: Implementation of the ERDS in accordance with the final rule will require that all licensees develop and submit an ERDS implementation plan to the NRC within 75 days of the publication of the final rule in the **Federal Register.** The implementation plan should provide a schedule which identifies the earliest possible time frame for ERDS implementation by the licensee as well as proposed alternate implementation dates. The NRC will establish an industry-wide ERDS implementation schedule which will take into account such factors as planned computer modifications and scheduled outages. The ERDS must be implemented within 18 months of the publication of the final rule in the **Federal Register.** Licensees that have submitted the required information under the voluntary implementation program will not be required to resubmit this information. However, they will be required to meet the implementation schedule of 18 months after the effective date of the final rule or before initial escalation to full power, whichever comes later. Licensees with currently operational ERDS interfaces approved under the voluntary ERDS implementation program will not be required to submit another implementation plan and will be considered to have met the requirements under this rule.

List of Subjects in 10 CFR Part 50

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

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

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844) Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 112, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46 (a) and (b), and 50.54(c) are issued under secs. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10(a)-(c), 50.34 (a) and (e), 50.44(a)-(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)-(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (a) (4) is redesignated as paragraph (a) (5) and a new paragraph (a) (4) is added to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

(a) * * *

(4) The licensee shall activate the Emergency Response Data System (ERDS) [5] as soon as possible but not later than one hour after declaring an emergency class of alert, site area emergency, or general emergency. The ERDS may also be activated by the licensee during emergency drills or exercises if the licensee's computer system has the capability to transmit the exercise data.

* * * * *

3. Appendix E to part 50 is amended by adding a new section VI, Emergency

[5] Requirements for ERDS are addressed in Appendix E, Section VI.

Response Data System, to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

VI. Emergency Response Data System

1. The Emergency Response Data System (ERDS) is a direct near real-time electronic data link between the licensee's onsite computer system and the NRC Operations Center that provides for the automated transmission of a limited data set of selected parameters. The ERDS supplements the existing voice transmission over the Emergency Notification System (ENS) by providing the NRC Operations Center with timely and accurate updates of a limited set of parameters from the licensee's installed onsite computer system in the event of an emergency. When selected plant data are not available on the licensee's onsite computer system, retrofitting of data points is not required. The licensee shall test the ERDS periodically to verify system availability and operability. The frequency of ERDS testing will be quarterly unless otherwise set by NRC based on demonstrated system performance.

2. Except for Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, onsite hardware shall be provided at each unit by the licensee to interface with the NRC receiving system. Software, which will be made available by the NRC, will assemble the data to be transmitted and transmit data from each unit via an output port on the appropriate data system. The hardware and software must have the following characteristics:

a. Data points, if resident in the in-plant computer systems, must be transmitted for four selected types of plant conditions: Reactor core and coolant system conditions; reactor containment conditions; radioactivity release rates; and plant meteorological tower data. A separate data feed is required for each reactor unit. While it is recognized that ERDS is not a safety system, it is conceivable that a licensee's ERDS interface could communicate with a safety system. In this case, appropriate isolation devices would be required at these interfaces.[6] The data points, identified in the following parameters will be transmitted:

(i) For pressurized water reactors (PWRs), the selected plant parameters are: (1) Primary coolant system: pressure, temperatures (hot leg, cold leg, and core exit thermocouples), subcooling margin, pressurizer level, reactor coolant charging/makeup flow, reactor vessel level, reactor coolant flow, and reactor power; (2) Secondary coolant system: Steam generator levels and pressures, main feedwater flows, and auxiliary and emergency feedwater flows; (3) Safety injection: High- and low-pressure safety injection flows, safety injection flows (Westinghouse), and borated water storage tank level; (4) Containment: pressure, temperatures, hydrogen concentration, and sump levels; (5) Radiation monitoring system: Reactor coolant radioactivity, containment radiation level, condenser air removal radiation level, effluent radiation monitors, and process radiation monitor levels; and (6) Meteorological data: wind speed, wind direction, and atmospheric stability.

(ii) For boiling water reactors (BWRs), the selected parameters are: (1) Reactor coolant system: Reactor pressure, reactor vessel level, feedwater flow, and reactor power; (2) Safety injection: Reactor core isolation cooling flow, high-pressure coolant injection/high-pressure core spray flow, core spray flow, low-pressure coolant injection flow, and condensate storage tank level; (3) Containment: drywell pressure, drywell temperatures, drywell sump levels, hydrogen and oxygen concentrations, suppression pool temperature, and suppression pool level; (4) Radiation monitoring system: Reactor coolant radioactivity level, primary containment radiation level, condenser off-gas radiation level, effluent radiation monitor, and process radiation levels; and (5) Meteorological data: Wind speed, wind direction, and atmospheric stability.

b. The system must be capable of transmitting all available ERDS parameters at time intervals of not less than 15 seconds or more than 60 seconds. Exceptions to this requirement will be considered on a case by case basis.

c. All link control and data transmission must be established in a format compatible with the NRC receiving system [7] as configured at the time of licensee implementation.

3. Maintaining Emergency Response Data System:

a. Any hardware and software changes that affect the transmitted data points identified in the ERDS Data Point Library [8] (site specific data base residing on the ERDS computer) must be submitted to the NRC within 30 days after the changes are completed.

b. Hardware and software changes, with the exception of data point modifications, that could affect the transmission format and computer communication protocol to the ERDS must be provided to the NRC as soon as practicable and at least 30 days prior to the modification.

c. In the event of a failure of the NRC supplied onsite modem, a replacement unit will be furnished by the NRC for licensee installation.

4. Implementing the Emergency Response Data System Program:

a. Each licensee shall develop and submit an ERDS implementation program plan to the NRC by October 28, 1991. To ensure compatibility with the guidance provided for the ERDS, the ERDS implementation program plan,[9] must include, but not be limited to, information on the licensee's computer system configuration (i.e., hardware and software), interface, and procedures.

b. Licensees must comply with appendix E to part 50, section V.

c. Licensees that have submitted the required information under the voluntary ERDS implementation program will not be required to resubmit this information. The licensee shall meet the implementation schedule of appendix E to Part 50, Section VI.4d.

d. Each licensee shall complete implementation of the ERDS by February 13, 1993, or before initial escalation to full power, whichever comes later. Licensees with currently operational ERDS interfaces approved under the voluntary ERDS implementation program [10] will not be required to submit another implementation plan and will be considered to have met the requirements for ERDS under appendix E to part 50, section VI.1 and 2 of this part.

Dated at Rockville, Maryland, this 23rd day of July, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-17895 Filed 8-12-91; 8:45 am]

BILLING CODE 7590-01-M

[6] See 10 CFR 50.55a(h) Protection Systems.

[7] Guidance is provided in NUREG-1394, Revision 1.

[8] See NUREG-1394, Revision 1, appendix C, Data Point Library.

[9] See NUREG-1394, Revision 1, section 3.

[10] See NUREG-1394, Revision 1.

federal register

Tuesday
August 13, 1991

Part VI

Department of Education

Rehabilitation Services Administration

Rehabilitation Short-Term Training; Final Priorities for FY 1991: Notice

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Rehabilitation Short-Term Training

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1991.

SUMMARY: The Secretary of Education announces final priorities for fiscal year 1991 for training activities to be supported under the Short-Term Training program of the Rehabilitation Services Administration (RSA).

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Richard Melia, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., room 3324 Switzer, Washington, DC 20202-2649. Telephone: (202) 732-1400. TDD users may contact the Program Specialist via the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: The Short-Term Training program is authorized by title III, section 304 of the Rehabilitation Act of 1973, as amended. Under this discretionary grant program, Federal support may be provided for special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

Eligible Applicants

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible to apply for assistance under the Rehabilitation Short-Term Training program.

On May 13, 1991, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (56 FR 22065). As a result of public comment, six changes have made been made in Priority 1. No changes were made to Priority 2.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the notice of proposed priorities, 20 parties submitted comments. An analysis of the comments and of the changes in the notice of proposed priorities follows.

Priority 1—Rehabilitation Short-Term Training—Implementation of the Americans With Disabilities Act (ADA)

Comments: One commenter suggested that the training include a focus on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities. Other commenters suggested that the training include a focus on the independent living philosophy and the attitudinal variables that prompted the passage of the ADA.

Discussion: The Secretary agrees that it is important for the training to include a focus on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities. This will provide background regarding the impetus for the ADA.

Changes: A change has been made to the priority to require that the training include information on the legislative and philosophic history of the independent living and civil rights movement for people with disabilities.

Comments: A commenter suggested that the priority include the requirement that persons with disabilities be involved in the development of this training.

Discussion: The Secretary agrees that the involvement of persons with disabilities in the development and provision of this training is an important factor.

Changes: A requirement has been added to the priority that individuals with disabilities be involved in the development and delivery of training under this priority.

Comments: One commenter suggested that it is confusing to require that the training address the legal and professional liabilities of vocational rehabilitation and independent living professionals in the provision of services and information regarding compliance with the requirements of the ADA.

Discussion. The Secretary agrees that this requirement may be confusing and misinterpreted. The intent was to provide training on the limits imposed by the ADA regarding the disclosure of information to a potential employer about an individual's disability. This information can be provided under the general training regarding the ADA and its implementing regulations.

Changes: This requirement has been removed from the priority.

Comments: Three commenters suggested that the audience for this training be expanded to include employers and trainers of employer personnel, and that the training address employers' skills in hiring, accommodating, and supervising employees with disabilities. Another commenter suggested that the intended audience include personnel from independent living centers. Other comments were received relating to the inclusion of personnel from rehabilitation facilities in the training audience.

Discussion: Rehabilitation Short-Term Training funds can only be used to train personnel that provide vocational, medical, social, and psychological rehabilitation services. The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) are required to train and provide technical assistance to employers on the employment-related and public accommodation provisions of the ADA. In addition, the National Institute on Disability and Rehabilitation Research (NIDRR) is planning training for employers on the ADA. This priority requires that the short-term training be coordinated with the ADA-related training to be funded by NIDRR. The training audience includes personnel from independent living centers, rehabilitation facilities, and other community-based rehabilitation programs.

Changes: None.

Comments: One commenter suggested that the training be conducted in a specific State since out-of-State travel may not be possible. Another commenter suggested that the training include a "network" approach so that national organizations can replicate the training for State chapters. A third commenter suggested that the project include a specific dissemination plan for the course material and outline. One commenter disagreed with the "train-the-trainer" approach and suggested that the priority include training of direct service providers and individuals with disabilities. The same commenters suggested that the training be competency-based and that participants be required to demonstrate their mastery in all training areas.

Discussion: The intent of the priority is a "train-the-trainer" approach so that the training can be replicated at the State and local levels. The Secretary believes that this approach is the most effective mechanism given the limited amount of funds available for this project. While the training may be conducted in one central location, training materials must be made available for dissemination to undergraduate and graduate

rehabilitation education programs and in-service and post-employment training programs funded under the Rehabilitation Act (Act) of 1973, as amended, for replication. A specific dissemination plan is not needed as the Department will disseminate the course material and outline to State vocational rehabilitation in-service programs, regional rehabilitation continuing education programs, and certain long-term training projects funded under section 304 of the Act. While no changes have been made to the priority concerning competency-based training, all projects under this priority will be required to submit an evaluation plan to assess the effectiveness of their training.

Changes: The priority has been revised to more clearly state that the project must produce a course outline and sample course materials for replication purposes.

Comments: A commenter suggested that the training on skills needed to assist employers in complying with the ADA include information on the use of rehabiliation technology and that the training focus on the capacities of individuals with disabilities.

Discussion: The Secretary agrees that the training can be enhanced by the inclusion of information on rehabilitation technology and the assessment of the capacities of individuals with disabilities.

Changes: Two changes have been made to the priority based upon these comments. First, the training must provide rehabilitation professionals with skills in the use of rehabilitation technology to assist employers in complying with the provisions of the ADA. Secondly, the training must provide vocational rehabilitation and independent living professionals with skills to assess the capacities, as well as the functional limitations, of individuals with disabilities in order to better assist employers to comply with the ADA.

Comments: One commenter suggested that the training provide information on the application of the ADA to specific disability groups.

Discussion: The training is intended to be national in scope. The inclusion of a focus on a specific disability group or groups would limit the applicability of this training at the national level.

Changes: None.

Comments: A commenter suggested that the priority include the requirement that the project develop and disseminate a listing of resources for trainees and others to utilize in the provision of technical assistance on the ADA.

Discussion: Both the EEOC and the DOJ are required to produce technical assistance manuals and other resource materials under section 506 of the ADA. The Department is working with both of these Federal agencies in the development of the resource materials that will become available to the public shortly after the publication of final regulations implementing the ADA. Including the development of resource listings in this priority would be a duplication of the requirement under the ADA.

Changes: None.

Priority 2—Rehabilitation Short-Term Training—Improving the Competency of Vocational Rehabilitation Counselors in Marketing of Vocational Rehabilitation Services, Providing Job Placement, and Assessing a Client's Job Skills That May Be Transferred to Other Occupational Opportunities

Comments: One commenter suggested the elimination of this priority. Another commenter suggested that this priority be replaced with one that focuses on rehabilitation technology.

Discussion: The 1989 National Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation by Pelavin Associates substantiates the need for this type of training for vocational rehabilitation counselors. In addition, several other comments received on the proposed priority noted the need for this type of training. The Secretary funds other long-term training projects that provide training at both the pre-service and post-employment levels regarding rehabilitation engineering and technology services.

Changes: None.

Comments: Several commenters suggested increasing the emphasis on marketing and encouraging employers to hire people with disabilities. One commenter suggested that the training include outreach to business and industry, the development of brochures and videos, and efforts to improve the placement skills of vocational rehabilitation counselors.

Discussion: The Secretary believes that the priority includes sufficient emphasis on the use of marketing strategies to increase competitive employment opportunities for individuals with disabilities. The priority is sufficiently broad to allow a project to address the areas suggested regarding outreach, materials development, and placement skills.

Changes: None.

Comments: One commenter suggested that the priority conflicts with the intent of the ADA by supporting training to match an individual's skills with employer demands.

Discussion: The Secretary believes that matching an individual's skills with employer demands is consistent with a marketing approach to job development and job placement and does not conflict with the tenets of the ADA. As stated in the priority, marketing strategies have proven to be quite successful in assisting individuals with disabilities to access competitive employment opportunities.

Changes: None.

Comments: One commenter suggested a regional-oriented training focus. Other commenters suggested revisions in the intended training audience to include rehabilitation facility personnel and upper management personnel.

Discussion: The priority does not specify the geographic focus of the training. Projects can address national, regional, State, or local areas. However, the priority requires that a manual and training protocol be developed so that the training can be replicated in other locations. The training is intended for vocational rehabilitation counselors and other rehabilitation professionals. This intended training audience is broad enough to include facility personnel and upper management personnel.

Changes: None.

Comments: Two commenters suggested that the proposed training is too ambitious and cannot be addressed in a short-term training format. On the other hand, several other commenters supported the short-term training approach.

Discussion: The Secretary believes that the short-term training approach is appropriate to upgrade the skills of vocational rehabilitation counselors and other personnel involved in the placement of individuals with disabilities into competitive employment. The Secretary also funds long-term training projects that provide more intensive skill development in the areas of job development and job placement services for individuals with disabilities.

Changes: None.

Comments: One commenter suggested that the training provide information that is tailored to the special needs of certain disability groups.

Discussion: The Secretary does not support focusing on a specific disability group or groups for this training. Marketing strategies and the assessment of job skills are generic in nature and should not be limited to a specific disability group or groups.

Changes: None.

Comments: A commenter suggested that the Department develop innovative project grants for replication of model programs that incorporate a marketing strategy.

Discussion: The Rehabilitation Short-Term Training program cannot be used to fund projects that provide direct services. The Secretary funds other categories of grants that provide direct services to individuals with disabilities. The Department has also identified exemplary programs and projects that increase competitive employment opportunities for individuals with disabilities and has disseminated information on these exemplary programs to encourage replication in other locations.

Changes: None.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary sets aside funds and gives an absolute preference to applications that respond to these final priorities described in this notice for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing a project or projects that meet the priorities.

Priority 1—Rehabilitation Short-Term Training—Implementation of the Americans with Disabilities Act (ADA)

The purpose of the Rehabilitation Act of 1973, as amended, is to develop and implement, through research, training, and services, comprehensive and coordinated programs of vocational rehabilitation and independent living for individuals with disabilities in order to maximize their employability, independence, and integration into the workplace and the community. The Americans with Disabilities Act (P.L. 101-336), signed into law on July 26, 1990, guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

In order to assist in the implementation of the national policy of equal opportunity for individuals with disabilities mandated by the ADA in a manner consistent with Rehabilitation Act of 1973, as amended, priority will be given to projects that provide a short-term training course for pre-service educators and post-employment trainers of personnel working in State vocational rehabilitation agencies, centers for independent living, client assistance programs, rehabilitation facilities, and community-based programs for individuals with disabilities. Projects must include individuals with disabilities in the development and delivery of training under this priority.

The short-term training must be national in scope and conducted after the publication of final regulations to implement the employment and public accommodation provisions under Titles I and III of the ADA. These regulations were promulgated by the Equal Employment Opportunity Commission and the Department of Justice and were scheduled to be published by July 26, 1991.

The short-term training must provide educators and trainers with the following: (1) The legislative and philosophic background of the independent living and civil rights movements for people with disabilities. (2) An understanding of the ADA and any regulations implementing the ADA. (3) Specific vocational rehabilitation and independent living skills and knowledge of services needed for assisting employers in complying with the requirements of the ADA, including, but not limited to, accessibility surveys, job accommodation, worksite modifications, reasonable accommodations, the use of rehabilitation technology at the worksite, and assessment of functional limitations and the capacities of individuals with disabilities to perform the job. (4) A course outline and sample course materials that can be incorporated into undergraduate and graduate rehabilitation education programs and in-service training programs for rehabilitation agencies or programs, including regional rehabilitation continuing education programs (RRCEP), State vocational rehabilitation agency in-service training programs, and long-term training programs under section 304 of the Rehabilitation Act.

To avoid duplication, the project must coordinate training efforts with those activities to be funded by the National Institute on Disability and Rehabilitation Research that relate to training and technical assistance for the Americans with Disabilities Act.

Priority 2—Rehabilitation Short-Term Training—Improving the Competency of Vocational Rehabilitation Counselors in Marketing of Vocational Rehabilitation Services, Providing Job Placement, and Assessing a Client's Job Skills That May Be Transferred to Other Occupational Opportunities

Survey research findings published by the University of Wisconsin-Stout Research and Training Center (Inservice and Continuing Education Needs of Rehabilitation Facility Personnel, 1990), as well as the 1989 National Survey of Personnel Shortages and Training Needs in Vocational Rehabilitation by Pelavin Associates (September, 1989), indicate a significant shortage of qualified personnel with rehabilitation job development and job placement skills. In addition, the Secretary wishes to emphasize marketing strategies as a mechanism to encourage employers to hire and retain employees with disabilities. The impact of the Americans with Disabilities Act on business and industry will also create the need for job development and placement staff to provide technical assistance to employers on hiring and retaining employees with disabilities.

The Secretary believes that these specialized needs for staff development in the areas of job development and job placement may be met through a concentrated training program of short duration that focuses on placement, marketing, and transferability of job skills.

The training must be designed to provide personnel in State vocational rehabilitation agencies and other rehabilitation professionals with—(1) The ability to better match client skills with employer demands in order to increase placements; (2) The knowledge to assess an individual's job skills that may be transferred to other occupational opportunities; (3) The skills to apply national and State occupational information, e.g., the information from the National Occupational Information Coordinating Council (NOICC) and State Occupational Information Coordinating Councils (SOICC), to facilitate competitive employment opportunities for individuals with disabilities; (4) The skills to develop marketing programs for the services of vocational rehabilitation agencies that will lead to improved placement outcomes of individuals with disabilities in private industry; and (5) The ability to assist private industries in the initiation of disability management programs.

The project must demonstrate potential for replication in other locations through the dissemination of training materials and protocols. After a project is funded, a manual must be produced that contains a course outline and training materials focused on the five areas listed above.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Authority: 29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.246, Rehabiltation Short-Term Training)

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-19198 Filed 8-12-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
August 13, 1991

Part VII

Department of Education

34 CFR Part 347

Technology-Related Assistance for Individuals With Disabilities: Training and Public Awareness Projects of National Significance; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 347

RIN 1820-AA93

Technology-Related Assistance for Individuals with Disabilities: Training and Public Awareness Projects of National Significance

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary announces final regulations to implement the Training and Public Awareness Projects of National Significance under the Technology-Related Assistance for Individuals with Disabilities Program. The regulations implement part C of title II of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100-407). The regulations describe the purposes of the program, the types of activities that may be supported, how the Secretary establishes priorities under the program, application requirements, the selection criteria by which the Secretary evaluates applications, and the requirements that must be met by those applicants that receive awards under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Cohen; Telephone: (202) 732-5607; deaf or hearing-impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732-5316.

SUPPLEMENTARY INFORMATION: The Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100-407) was enacted on August 19, 1988. In the Act, the Congress noted that there have been major advances in technology during the past decade. The Congress found that the provision of assistive technology devices and services can enable some persons with disabilities to have greater control over their own lives, increase their participation in education, employment, family, and community activities, interact to a greater extent with individuals who do not have disabilities, and otherwise benefit from opportunities that are commonly available to individuals who do not have disabilities. On August 9, 1989, the Secretary published final regulations to implement title I of the Act, the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. That program provides funds to States, on a competitive basis, to develop consumer-responsive comprehensive statewide programs of technology-related assistance for individuals of all ages who have disabilities. On August 23, 1990, the Secretary published final regulations to implement part D of title II of the Act—Demonstration and Innovation Projects. These regulations implement part C of title II of the Act.

These regulations describe the activities that may be supported under each of the three project types and state the priorities that may be applied to each of them. From time to time, the Secretary will publish a notice in the **Federal Register** requesting applications for awards under this program; the notice may specify particular priorities under one or more of the project types.

In the Act, the Congress specified that the Secretary should seek public input in the development of the priorities under this program, and should publish in the **Federal Register** a description of how the priorities were derived. In order to develop these priorities, NIDRR held a public hearing on September 28, 1990 in Washington, DC. This meeting was announced in the **Federal Register** and NIDRR mailed copies of the meeting announcement along with invitations to testify to an extensive list of organizations and individuals who had expressed interest in technology assistance in the past. Thirty-three organizations presented oral testimony. NIDRR also accepted and considered written comments, for one month after the hearing. In all, over one hundred comments and letters of recommendation were received. On the basis of an analysis of the testimony and written comments, NIDRR developed the priorities contained in this document. As provided by § 75.102 of the Education Department General Administrative Regulations (EDGAR), the Secretary may elect to establish other priorities in the future by proposing additional priorities for public comment.

On May 21, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** at 56 FR 23352. After careful review of the public comments, the Secretary decided that, while many of them contained helpful suggestions to the Department for the operation of the program, none of the comments required substantive changes in the regulations that would affect the fiscal year 1991 competition. However, on the basis of public comments, the Secretary has made five changes in the final regulations. These changes revise § 347.2(a) to include the same target populations specified in § 347.1(a); add the development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for special education professionals (§ 347.11(a)(15)) and for therapeutic recreation specialists and other recreation professionals (§ 347.11(a)(16); and add the development of curricula to ensure competency in the provision of assistive technology for both special education professionals (§ 347.12(a)(5)) and therapeutic recreation specialists and other recreation professionals (§ 347.12(a)(6)).

Analysis of Comments and Responses

In response to the Secretary's invitation in the NPRM, fourteen parties submitted comments on the proposed regulations. An analysis of the comments and the responses follows:

Comments: Six commenters requested that special educators be added as one of the specific professions for which annual training priorities could be announced.

Discussion: The Secretary agrees that it is important to train special education professionals in the use of assistive technology.

Changes: Special education professionals have been added as a possible priority target for training in § 347.11(a)(15) and for curriculum development in § 347.12(a)(5).

Comment: One of these commenters suggested that the term "assistive technology" be defined to include all instructional and rehabilitation uses.

Discussion: The definition for the term "Technology-Related Assistance" is included in the statute for Technology-Related Assistance for Persons with Disabilities Act of 1988.

Changes: None.

Comment: One commenter suggested that as there are limited funds available for Public Awareness projects that the successful grantees be familiar with Public Awareness projects.

Discussion: The Secretary agrees that potential grantees should have the expertise needed to implement these types of campaigns. Thus the selection criteria for grants in § 347.33(d)(6) include the resources, experiences, and capabilities of the institution or organization.

Changes: None.

Comment: One commenter suggested that the priorities should include

training for therapeutic recreation specialists and other recreation professionals.

Changes: The Secretary has added a priority in § 347.11(a)(16) to address the development, evaluation, implementation, and dissemination of in-service training programs for therapeutic recreation specialists and other recreation professionals in assistive technology. The Secretary also has added a priority under § 347.12(a)(6) to address the development of curricula to ensure competency in assistive technology for therapeutic recreation specialists and other recreation professionals.

Comment: One commenter noted that § 347.1(a) and § 347.2(a) do not include the same target populations for training and recommended that § 347.2(a) be revised to include the broader spectrum of trainees.

Discussion: The Secretary agrees that the two categories should be identical.

Changes: The Secretary has amended § 347.2(a) to include the training of individuals with disabilities, their family members, or representatives, employers, insurers, and persons providing services to or otherwise having contact with persons with disabilities, regarding the provision of technology-related assistance.

Comment: One commenter noted the need to stimulate private-sector support and involvement with individuals with disabilities, State agencies, and providers to improve access to assistive technology.

Discussion: The Secretary agrees that private-sector involvement is important and believes that this program will facilitate that involvement through making awards to private nonprofit and for-profit agencies and through priorities that involve manufacturers, insurers, adaptations of mass market technologies, market analysis, public awareness, and training for community-based organizations.

Changes: None.

Comment: One commenter stressed the importance of not duplicating personnel training and career development efforts of the Rehabilitation Services Administration.

Discussion: The Secretary agrees that this program must be coordinated with the programs of the Rehabilitation Services Administration and the Office of Special Education Programs.

Changes: None.

Comment: A commenter suggested that eligibility for awards under § 347.1 (a) and (c) should not be limited to private for-profit and nonprofit entities.

Discussion: The eligibility requirements for this program are established by statute.

Changes: None.

Comment: One commenter recommended a new priority for technology training programs addressing the Americans With Disabilities Act (ADA).

Discussion: NIDRR is establishing a technical assistance initiative to facilitate the implementation of the ADA, and the Secretary believes that a new training priority addressing the ADA would duplicate the activities under that initiative, which will include training and technical assistance on a broad range of issues, including assistive technology.

Changes: None.

Comment: Several commenters suggested that the Secretary select certain priorities for funding this year.

Discussion: The Secretary has selected priorities for funding based upon the needs of the field and the interests of individuals with disabilities, as expressed at the NIDRR public hearings on the subject in September, 1990, and other input from the field over the course of the past two years.

Changes: None.

Comment: One commenter suggested that potential grantees be allowed to seek additional funding sources to supplement Federal funds.

Discussion: The Secretary agrees and encourages prospective grantees to seek additional sources of funding to enhance their activities. There is no restriction on this practice under the statute or regulations.

Changes: None.

Comment: One commenter recommended adding "and technologists" after "and other engineers" in § 347.11(a)(14).

Discussion: The Secretary believes that the term "technologists" is not defined and is too broad to be meaningful.

Changes: None.

Executive Order

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program excluded from the intergovernmental review provisions of section 204 of the Demonstration Cities and Metropolitan Development Act because these are demonstration projects of national significance and do not directly affect State and local governments.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Only a small number of discretionary awards would be made under this program. Although small entities could apply for these grants, the grants would not have a significant economic impact on the recipients nor any impact on most small entities. (44 U.S.C. 3504(h))

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 347

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.236, National Institute on Disability and Rehabilitation Research)

Dated: August 2, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 347 to read as follows:

PART 347—TRAINING AND PUBLIC AWARENESS PROJECTS OF NATIONAL SIGNIFICANCE IN TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

347.1 What is the training and public awareness projects program?
347.2 What are the purposes of the training and public awareness projects program?
347.3 Who is eligible for assistance under this program?
347.4 What regulations apply to this program?
347.5 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

347.10 What types of projects may be supported under this program?
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Subpart E—What Conditions Must Be Met After an Award?

347.40 What are the requirements of a grantee for coordination and information sharing?
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Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

Subpart A—General

§ 347.1 What is the training and public awareness projects program?

(a) The technology training program provides awards to nonprofit or for-profit entities to develop, demonstrate, disseminate, and evaluate curricula, materials, and methods used to train individuals with disabilities, their family members or representatives, employers, insurers, and persons providing services to or otherwise having contact with persons with disabilities, regarding the provision of technology-related assistance. This program also supports the conduct of training sessions related to technology-related assistance for these entities.

(b) The technology careers program provides support to institutions of higher education to prepare personnel for careers relating to the provision of technology-related assistance to individuals with disabilities.

(c) The public awareness program provides awards to for-profit and nonprofit entities, to carry out national projects that recognize and build awareness of the importance and efficacy of assistive technology devices and assistive technology services for individuals of all ages with disabilities functioning in various settings in daily life.

(Authority: 29 U.S.C. 2251 and 2252)

§ 347.2 What are the purposes of the training and public awareness projects program?

(a) The purposes of technology training projects are to develop and test curricula, materials, and techniques, and to conduct projects to train individuals with disabilities, their family members or representatives, employers, insurers, and persons providing services to or otherwise having contact with persons with disabilities, on the uses and benefits of technology-related assistance.

(b) The purpose of technology careers projects is to prepare individuals for careers relating to the provision of technology-related assistance to individuals with disabilities through undergraduate and graduate level education, continuing education, and in-service training.

(c) The purpose of public awareness projects is to build awareness of the importance and efficacy of assistive technology devices and services for individuals of all ages with disabilities functioning in various settings of daily life.

(Authority: 29 U.S.C. 2251–2252)

§ 347.3 Who is eligible for assistance under this program?

(a) Nonprofit and for-profit entities are eligible to receive awards under the technology training program. Public agencies are not eligible to receive awards under the technology training program.

(b) Institutions of higher education are eligible to receive awards under the technology careers program.

(c) Nonprofit and for-profit entities are eligible to receive awards under the public awareness projects program. Public agencies are not eligible to receive awards under the public awareness projects program.

(Authority: 29 U.S.C. 2251 and 2252)

§ 347.4 What regulations apply to this program?

The following regulations apply to the Training and Public Awareness Projects program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 347.

(Authority: 29 U.S.C. 2201–2253)

§ 347.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant	Grant period
Application	Nonprofit
Award	Nonpublic
Department	Private
EDGAR	Project
Fiscal year	Project Period
Grant	Public

(b) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.* The following terms used in this part are defined in section 3 of the Act.

Assistive technology device	Institution of higher education
Assistive technology service	Secretary
Individual with disabilities	Technology-related assistance
	Underserved group

(c) *Other Definitions.* As used in this part, *Act* means the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407).

(Authority: 29 U.S.C. 2201–2271)

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 347.10 What types of projects may be supported under this program?

Under this program, the Secretary awards funds to support the following types of projects:

(a) Technology training projects that may include—

(1) Development, demonstration, delivery, evaluation, or dissemination of training modules on the use of technology-related assistance for consumer organizations, individuals with disabilities or their families or representatives, and advocates;

(2) In-service training for individuals who provide services to or representation for individuals with disabilities, including in-service training for health care workers, teachers, rehabilitation engineers, and other rehabilitation workers;

(3) Training for policymakers and administrators in public and private agencies that have contact with or impact on individuals with disabilities; and

(4) Training regarding the provision of technology-related assistance for employers, manufacturers, and insurers,

including training related to product use, financing, and marketing.

(b) Technology career development projects that may include undergraduate and graduate level instructional courses, curriculum development, traineeships, or fellowships and other educational stipends or allowances to prepare personnel for careers relating to the provision of technology-related assistance to individuals with disabilities, especially projects that will train individuals who will provide technical assistance, administer programs, or prepare personnel necessary to support the development and implementation of consumer-responsive, statewide programs of technology-related assistance for individuals with disabilities.

(c) Public awareness projects of a national scope that use: general or specialized media to disseminate information on the benefits and availability of technology-related assistance; techniques to prepare and disseminate analyses of the efficacy of technology-related assistance; national or regional conferences to promote knowledge and interest in technology-related assistance; and award and recognition programs to promote public credit for sustained outstanding effort in the development and use of technology-related assistance.

(Authority: 29 U.S.C. 2251–2253)

§ 347.11 What are the priorities under the technology training program?

(a) Each year the Secretary may establish priorities to support training for individuals with disabilities, their families or representatives, service providers, and other relevant parties, including projects in one or more of the following areas:

(1) Development and implementation of training programs for the purpose of informing consumers and their families about assistive technology services and devices, including training in self-advocacy, funding sources, and policy development.

(2) Development and dissemination of instructional materials for consumers and their families, including self-instruction and multimedia materials, on a range of available technologies and technology information resources, using a variety of accessible formats.

(3) Development and evaluation of training programs that include use of telecommunications, TDD, computer conferences, and other available technologies to instruct consumers and their families about assistive technology.

(4) Development, testing, and dissemination of models for consumers to evaluate different approaches to assistive technology training, including consumer training.

(5) Development, evaluation, and dissemination of models using consumers and their families to train other consumers and their families about the availability and utility of assistive technology.

(6) Development and implementation of approaches to involve manufacturers of assistive technology in improved training of consumers and their families in the use of assistive technology.

(7) Development and implementation of methods for training consumers in rural areas in the use of assistive technology.

(8) Conduct of in-service training for rehabilitation counselors in the provision of assistive technology.

(9) Development, evaluation, implementation, and dissemination of training for representatives of business, industry, and employers on the availability and value of assistive technology for persons with disabilities in employment and in work settings.

(10) Development and implementation of training programs for private insurers and other third party payment representatives on the availability and benefits of assistive technology.

(11) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for persons with disabilities for physical therapists.

(12) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for persons with disabilities for speech-language pathologists.

(13) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for persons with disabilities for occupational therapists.

(14) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology and application of technology for persons with disabilities for rehabilitation engineers and other engineers who have contact with persons with disabilities in the provision of assistive technology.

(15) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for individuals with disabilities for special education professionals.

(16) Development, evaluation, implementation, and dissemination of in-service training programs on assistive technology for individuals with disabilities for therapeutic recreation specialists and other recreation professionals.

(17) Development, evaluation, implementation, and dissemination of models for training low-incidence disability groups on the uses and benefits of assistive technology.

(18) Development, evaluation, implementation, and dissemination of training programs for underserved populations, including economically disadvantaged populations, in the uses of assistive technology.

(19) Development, evaluation, implementation, and dissemination of training modules for older Americans with disabilities who can benefit from assistive technology.

(20) Development, evaluation, implementation, and dissemination of training programs on the use and adaption of commercially available, mass-marketed technologies that have application for persons with disabilities.

(21) Development, evaluation, implementation, and dissemination of training programs about assistive technologies with special application for employment specifically for persons with disabilities who are preparing to enter the job market.

(b) The Secretary will announce the priorities, if any, in an application notice in the **Federal Register.**

(Authority: 29 U.S.C. 2201–2271)

§ 347.12 What are the priorities under the technology careers program?

(a) Each year the Secretary may establish priorities to support training for individuals with disabilities, their families or representatives, service providers, and other relevant parties, with special emphasis on training individuals who will administer programs, provide technical assistance to, or prepare personnel necessary to support the consumer-responsive, statewide programs of technology-related assistance for individuals with disabilities, including projects in one or more of the following areas:

(1) Development of curricula that will ensure competency in rehabilitation technology for engineers.

(2) Development of curricula for speech-language pathologists to ensure competency in the provision of assistive technology.

(3) Development of curricula for occupational therapists to ensure competency in the provision of assistive technology.

(4) Development of curricula for career training programs for physical therapists to ensure competency in the provision of assistive technology.

(5) Development of curricula for special education professionals to ensure competency in the provision of assistive technology.

(6) Development of curricula for therapeutic recreation specialists and other recreation professionals to ensure competency in the provision of assistive technology.

(7) Development of curricula to prepare personnel for assistive technology careers, including careers in program administration.

(8) Development of training curricula that focus on funding, policy, and advocacy of persons training to be involved in direct service delivery.

(9) Implementation of curricula involving classroom instruction and clinical experience in community-based and at-home settings for either physical therapists, occupational therapists, nurses, physicians in specialties relevant to disability, rehabilitation counselors, speech-language-hearing pathologists, or rehabilitation engineers.

(10) Development and implementation of technology career training programs for students from underserved population groups, including minorities, who are preparing to become service delivery professionals.

(11) Conduct of training programs for individuals preparing to become administrators of programs that provide technology-related assistance.

(12) Implementation of training programs for individuals who will prepare personnel for work in programs that provide technology-related assistance.

(13) Implementation of scholarships, fellowships, and traineeships for undergraduate or graduate students preparing for careers in the management or delivery of technology-related assistance to individuals with disabilities.

(b) The Secretary will announce the priorities, if any, in an application notice in the **Federal Register**.

(Authority: 29 U.S.C. 2201–2271)

§ 347.13 What are the priorities under the public awareness program?

(a) The Secretary may establish annual priorities for public awareness projects, including projects in one or more of the following areas:

(1) Development and implementation, with consumer involvement, of a multimedia public awareness campaign using national media such as radio, TV, newspapers, and other publications.

(2) Development and implementation of a model public awareness campaign using specialized media, including minority media, to reach previously underserved populations.

(3) Conduct of national or regional conferences that focus on public awareness of the benefits of assistive technology and that include manufacturers, industry representatives, and employers.

(4) Conduct of national or regional conferences for third party payers and private insurance representatives that focus on awareness of the benefits of assistive technology.

(5) Development and dissemination of useful marketing strategies to increase public awareness of assistive technology.

(6) Development of a series of videotapes on assistive technology designed to inform and change attitudes that could be used by medical practitioners and other clinical service providers.

(7) Development and dissemination of a course for training service providers and consumers to improve and foster public awareness.

(8) Development and dissemination of a public awareness campaign for use by general service organizations, professional associations, and other representational and information groups to increase public awareness of techniques for the provision of assistive technology.

(b) The Secretary will announce the priorities, if any, in an application notice in the **Federal Register**.

(Authority: 29 U.S.C. 2201–2271)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 347.30 How does the Secretary evaluate applications under this program?

(a) The Secretary evaluates each application—

(1) For a technology training project according to the selection criteria in § 347.31;

(2) For a technology careers project according to the criteria in § 347.32;

(3) For a public awareness project according to the criteria in § 347.33.

(b) The Secretary awards each application a value of zero to five (0–5) for each of the criteria listed in §§ 347.31, 347.32, and 347.33 respectively. These values are based on how well the application addresses each criterion, as follows: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1); or not addressed in the application (0). In this way, each criterion is judged according to a uniform scale.

(c) Because the Secretary considers certain criteria to be more important than others, the Secretary has weighted each criterion as indicated in §§ 347.31, 347.32, and 347.33 respectively. The value awarded to each criterion in an application is multiplied by the standard weight accorded to that criterion in §§ 347.31, 347.32, or 347.33 as appropriate.

(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2251)

§ 347.31 What selection criteria are used to evaluate applications for technology training projects under this program?

The Secretary reviews each application for a model technology training project award to determine the degree to which—

(a) *Importance and significance of proposed activity* (Weight: 3; Total Points: 15)

(1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The proposed activity addresses a significant need in the provision of technology-related training, and the development, dissemination, and evaluation of curricula, materials, and methods used to train individuals with disabilities, their families, and the professionals who work with persons with disabilities;

(3) The proposed project is likely to result in new, improved, and useful techniques for training individuals about assistive technology services, devices, and information resources;

(b) *Plan of activities* (Weight: 4; Total Points: 20)

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Is based on a sound conceptual and instructional model;

(3) Uses appropriate materials and populations;

(4) Provides appropriate review of literature and related activities and indicates a familiarity with state-of-the-art in assistive technology services, devices, and information; and

(5) Uses appropriate methodology for measurement and analysis of the effectiveness of the training program;

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20)

(1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the training program; and

(5) In the dissemination of training models and curricula;

(d) *Management plan* (Weight: 4; Total Points: 20)

(1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources, experience, and capabilities of the institution or organization to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10)

(1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model curricula, training programs, and informational materials, if successful, are likely to be replicable in other settings involving training in the use of technology-related assistance;

(3) Indicates with appropriate analysis and support the potential for program expansion, enhancement, and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the curricula;

(f) *Evaluation plan* (Weight: 3; Total Points: 15)

(1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Approved by the Office of Management and Budget under Control No. 1820-0585)

(Authority: 29 U.S.C. 2201-2271)

§ 347.32 What selection criteria are used to evaluate applications for technology career development projects under this program?

The Secretary reviews each application for a technology career development project award to determine the degree to which—

(a) *Importance and significance of proposed activities* (Weight: 3, Total Points: 15)

(1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The applicant proposes to develop or provide career training in an assistive-technology-related discipline or in an area of study in which there is a shortage of qualified and trained personnel, or to provide training to a trainee population in which there is a need for more qualified personnel; and

(3) The proposed project is likely to result in new, improved and useful programs for preparing personnel for careers relating to the provision of technology-related assistance for persons with disabilities;

(b) *Plan of activities* (Weight: 4; Total Points: 20)

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Is based on a sound conceptual and instructional model;

(3) Uses appropriate materials and populations; and

(4) Provides appropriate review of literature and related activities and indicates a familiarity with state-of-the-art in assistive technology, services, information, and related studies.

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20)

(1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the demonstration model; and

(5) In the dissemination of project findings and of replicable models;

(d) *Management plan* (Weight: 4; Total Points: 20)

(1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities.

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources experience, and capabilities of the institution to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10)

(1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model, if successful, is likely to be replicable in other settings involving training for careers in the provision of assistive technology services to persons with disabilities;

(3) Indicates with appropriate analysis and support the potential for program expansion, enhancement, and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the curricula;

(f) *Evaluation plan* (Weight: 3; Total Points: 15)

(1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Approved by the Office of Management and Budget under Control No. 1820-0585)

(Authority: 29 U.S.C. 2201-2271)

§ 347.33 What selection criteria are used to evaluate applications for public awareness projects under this program?

The Secretary reviews each application for a public awareness project award to determine the degree to which—

(a) *Importance and significance of proposed activities* (Weight: 3; Total Points: 15)

(1) The project responds adequately to all of the requirements of the announced priority, if any;

(2) The proposed activity addresses a significant problem not now being addressed or addresses problems in a new and different way;

(3) The applicant proposes to carry out projects that recognize and build awareness of the importance and efficacy of assistive technology devices and assistive technology services for individuals with disabilities; and

(4) The proposed project is likely to result in new, improved, and useful programs for informing individuals about assistive technology.

(b) *Plan of activities* (Weight: 4; Total Points: 20)

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives of the project;

(2) Uses appropriate media and materials and addresses appropriate target populations;

(3) Demonstrates a thorough knowledge of the statute and of the literature and related activities, and indicates a familiarity with state-of-the-art in consumer needs, assistive technology services, information, and related activities;

(4) Demonstrates familiarity with needs assessment research as it relates to public awareness about assistive technology services, devices, and information; and

(5) Indicates an awareness of and familiarity with various general and specialized media necessary to achieve the project's public awareness objectives;

(c) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; total Points: 20)

(1) In the development of the project, including the assessment of problems and needs;

(2) In the establishment of goals and objectives for the project;

(3) In the planning and implementation of the functions and activities to be carried out under the project grant;

(4) In the evaluation of activities under the grant and the assessment of the demonstration model; and

(5) In the dissemination of project findings and of replicable models;

(d) *Management Plan* (Weight: 4; Total Points: 20)

(1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities; and

(6) Details resources experience, and capabilities of the institution or organization to accomplish the goals and objectives proposed in the application;

(e) *Dissemination plan* (Weight: 2; Total Points: 10)

(1) Provides for the dissemination of findings and the documentation of the project for replication purposes;

(2) Provides indications that the model, if successful, is likely to be replicable or adaptable in other settings involving the provision of assistive technology services to persons with disabilities;

(3) Indicates, with appropriate analysis and support, the potential for program expansion, enhancement and replication of any special strategies or materials developed; and

(4) Provides mechanisms to assure the likely adoption and use of the model;

(f) *Evaluation plan* (Weight 3; Total Points: 15)

(1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies appropriate and feasible data sources and data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources including personnel, funds, and administrative priority, to the evaluation.

(Authority: 29 U.S.C. 2201-2271)

(Approved by the Office of Management and Budget under Control No. 1820-0585)

Subpart E—What Conditions Must Be Met After an Award?

§ 347.40 What are the requirements of a grantee for coordination and information sharing?

(a) The Secretary may require each grantee under this program to provide information, including data about program activities and results, to—

(1) Grantees under the State Grants for Technology-Related Assistance for Individuals with Disabilities Program;

(2) The entity providing technical assistance to the State Grants for Technology-Related Assistance for Individuals with Disabilities program as prescribed in section 106(b)(1) of the Act;

(3) Agencies designated by Governors to make application under the State Grants for Technology-Related Assistance for Individuals with Disabilities program;

(4) Entities conducting evaluations of the State Grants for Technology-Related Assistance for Individuals with Disabilities program for the Secretary;

(5) The Secretary; and

(6) Any other entity designated by the Secretary.

(b) Grantees receiving assistance under this program that are located in States with State Grants for Technology-Related Assistance for Individuals with Disabilities shall provide evidence of their efforts to coordinate activities with those grantees.

(c) Grantees must share information on project activities and findings with any technical assistance and information network designated by the Secretary if such a network is established.

(Approved by the Office of Management and Budget under Control No. 1820-0585)

(Authority: 29 U.S.C. 2211-2271)

§ 347.41 What are the reporting requirements for a grantee?

(a) Each grantee shall submit a copy of its final report to the National Rehabilitation Information Center.

(b) Each grantee shall submit to the Department a copy of any curriculum or training program that is developed or

implemented, as well as copies of any media materials, videotapes, audio-visual materials, scripts, or other training and public awareness materials developed under the grant.

(Approved by the Office of Management and Budget under Control No. 1820-0585)

(Authority: 29 U.S.C. 2211-2271)

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Part VIII

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50592; FRL-3884-3]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

EFFECTIVE DATES: This rule shall be promulgated for purposes of judicial review at 1 p.m. e.s.t. on August 27, 1991. The effective date of this rule is October 15, 1991. If EPA receives notice before September 12, 1991, that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50592 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit X. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concerns, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or

studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

The SNURs for the following PMN substances, P-90-1357, P-90-1454, P-90-1565, P-90-1635, and P-90-1642 through P-90-1649, regulate chemical substances subject to section 5(e) orders where the finding under TSCA is based solely on substantial production volume and significant or substantial human exposure or release to the environment in substantial quantities. In each of these cases there was limited or no toxicity data available for the PMN substance. In such cases EPA regulates new chemical substances under section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

PMN Number P-86-1602

Chemical name: 2-Propenamide, *N*-[3-dimethylamino)propyl]-.
CAS number: Not available.
Effective date of section 5(e) consent order: February 13, 1991.
Basis for section 5(e) consent order. The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: The PMN substance has been shown to cause neurotoxicity in test animals. Similar substances have been shown to cause carcinogenicity, genotoxicity, reproductive toxicity, and developmental toxicity in test animals. The PMN substance may be chronically toxic to fish at concentrations greater than 300 ppb.
Recommended testing: EPA has determined that glove permeability testing according to the American Society for Testing and Materials (ASTM) F739-85 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases", a 90-day dermal subchronic (40 CFR 798.2250), and a dominant lethal assay (40 CFR 798.5450) on the chemical substance are needed to help characterize the health effects of the substance. The consent order contains two production limits. The PMN submitter has agreed not to exceed the first production volume limit without performing a glove permeability test. The material used to make the gloves must subject them to the expected conditions of exposure, including the likely combinations of chemical substances to which the gloves may be exposed in the work area. There must be no permeation of the chemical substance greater than 10 $\mu g/cm^3$ after 8 hours of testing in accordance with ASTM F739-85. Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. The PMN submitter has also agreed not to exceed the second higher production limit without performing a 90-day subchronic and dominant lethal assay.
CFR citation: 40 CFR 721.1796.

PMN Number P-87-1553

Chemical name: (generic) Substituted triphenylmethane.
Basis for action: The PMN substance will be used as a water colorant in industrial, commercial, and consumer applications. Test data on analogues of the PMN substance indicated that it may cause cancer and developmental effects in humans. EPA determined that manufacture and use of the substance in a wet slurry form did not present an unreasonable risk because no inhalation exposures would result. EPA has determined that potential manufacture and processing in powder form could result in an unreasonable risk to human health. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: The Agency has determined that the results of the following toxicity testing would help characterize possible health effects of the substance: A two-species developmental toxicity study (40 CFR 798.4900) and a two-species rodent bioassay (40 CFR 798.3300).
CFR citation: 40 CFR 721.2198.

PMN Number P-88-0083

Chemical name: (generic) Bis(2,2,6,6-tetramethylpiperidinyl) ester of cycloalkyl spiroketal.
CAS number: Not available.
Effective date of section 5(e) consent order: February 13, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: The PMN substance has been shown in submitted test data to have the predominant adverse effect of a reduction in body weight gain in rats. From the data it was not clear whether the effect was attributable to the poor palatability of the test substance or the intrinsic toxicity of the substance. In addition, structurally similar substances have been shown to have adverse effects to the liver, blood, immune system, male reproductive system, and the gastrointestinal tract in test animals. Based on TSCA section 8(e) data on structurally analogous substances, the PMN substance may also cause toxicity to aquatic organisms.
Recommended testing: The Agency believes that the results of the following testing would help characterize possible health and environmental effects of the substance: A 90-day subchronic study (40 CFR 798.2650), administered by the gavage route, would allow EPA to better characterize health effects of the test substance. The study should place special emphasis on the hematology, lymphoid organ weights (spleen, thymus), and histology as well as the cellularity of the bone marrow, thymus, and spleen. In addition, the study should also include a histopathologic examination of the testes plus staging of sperm. The following studies would allow EPA to better characterize the aquatic toxicity effects of the PMN substance: Acute algal (40 CFR 797.1050) (static/nominal conditions), acute daphnid (40 CFR 797.1300) (flow-through/measured conditions), acute fish (40 CFR 797.1400) (flow-through/measured conditions). The PMN submitter is not required to submit the above information at any specified time or production volume.
CFR citation: 40 CFR 721.1890.

PMN Number P-88-894

Chemical name: Benzene, (1-methylethyl)(2-phenylethyl)-.
CAS number: 77851-17-3.
Effective date of section 5(e) consent order: October 10, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and both (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment, and section 5(e)(1)(A)(ii)(II) of TSCA based on a finding that the PMN substance will be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant or substantial human exposure to the substance.

Toxicity concerns: Similar chemicals have been shown to cause toxicity to aquatic organisms at concentrations as low as 1 ppb. The PMN substance itself has shown liver and kidney effects in test animals.
Recommended testing: EPA has determined that the results of a chronic 60-day early life stage toxicity test in rainbow trout (40 CFR 797.1600), a 21-day chronic daphnid toxicity test (40 CFR 797.1330), and a 96-h bioassay in algae (40 CFR 797.1050) would help characterize possible environmental effects of the substance. EPA has determined that the results of an *in vivo* mouse micronucleus test by the intraperitoneal route (40 CFR 798.5395) would help characterize possible human effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these four studies.
CFR citation: 40 CFR 721.466.

PMN Number P-90-142

Chemical name: (generic) Tris(disubstituted alkyl) heterocycle.
CAS number: Not available.
Effective date of section 5(e) consent order: February 19, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause liver toxicity, male reproductive effects, and carcinogenicity in test animals.
Recommended testing: EPA has determined that a two-generation oral reproductive study (40 CFR 798.4700) on the substance is needed to help characterize the possible reproductive effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing this test. In addition, a 2-year, two-species bioassay (40 CFR 798.3300) would help characterize the possible carcinogenic effect of the substance.
CFR citation: 40 CFR 721.1140.

PMN Number P-90-0226

Chemical name: Titanate [Ti_6O_{13} (2-)], dipotassium.
CAS number: 12056-51-8.
Effective date of section 5(e) consent order: February 20, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause lung cancer, mesothelioma, other cancers, and fibrosis in humans.
Recommended testing: EPA has determined that a 90-day subchronic toxicity test via inhalation in rats (40 CFR 798.2450) and a 2-year, two-species bioassay via inhalation (40 CFR 798.3300) will help characterize the potential for the PMN substance to cause lung cancer, mesothelioma, other cancers, and fibrosis in humans. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing a 90-day subchronic toxicity test via inhalation in rats (40 CFR 798.2450). The PMN submitter has also agreed not to exceed the second higher production volume limit without performing a 2-year, two-species bioassay via inhalation (40 CFR 798.3300) which may be required dependent on the results of the 90-day subchronic study.
CFR citation: 40 CFR 721.2184.

PMN Numbers P-90-404, P-90-405, and P-90-406.

Chemical name: (generic) Isocyanate terminated polyols.
CAS numbers: Not available.
Effective date of section 5(e) consent order: February 20, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concerns: Test data on a monomer contained in the PMN substances and test data on substances similar in structure to the PMN substances indicate that the PMN substances may cause skin and eye irritation, dermal and pulmonary sensitization, cross-sensitization responses, lung and other respiratory effects, and systemic effects in laboratory animals.
Recommended testing: EPA has determined that a dermal sensitization study (40 CFR 798.4100) and a pulmonary sensitization study (Karol method or equivalent) on P-90-406 will help characterize the sensitization potential of the PMN substances. The Agency has also determined that a 90-day inhalation subchronic study (40 CFR 798.2450) on P-90-406 will help characterize the lung effects and systemic toxicity of the PMN substances. The PMN submitter has agreed not to exceed the production limit without performing the two sensitization studies.
CFR citation: 40 CFR 721.1711.

PMN Number P-90-594

Chemical name: (generic) Substituted hydrazine.
CAS number: Not available.
Effective date of section 5(e) consent order: December 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concerns: Similar substances have been shown to be carcinogenic and mutagenic and to cause chronic effects to liver, kidney, and blood in test animals. Similar substances have also been shown to be toxic to aquatic species.
Recommended testing: A 90-day subchronic rat oral study (40 CFR 798.2650) and a 2-year, two-species oral bioassay (40 CFR 798.3300) are recommended to help characterize human health effects. In addition, acute aquatic toxicity tests (algae [40 CFR 797.1050], *Daphnia* [40 CFR 797.1300], and fish [40 CFR 797.1400]), conducted with flow-through conditions and measured concentrations are recommended to help characterize environmental effects.
CFR citation: 40 CFR 721.1233.

PMN Number P-90-1357

Chemical name: (generic) Glycol monobenzoate.
CAS number: Not available.
Effective date of section 5(e) consent order: November 26, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407), and a developmental toxicity study (40 CFR 798.4900) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.1100.

PMN Number P-90-1366

Chemical name: Benzenediazonium, 4-(dimethylamino)-, salt with 2-hydroxy-5-sulfobenzoic acid (1:1).
CAS number: 124737-31-1.

Effective date of section 5(e) consent order: February 8, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concerns: Test data on the PMN substance and test data on chemicals similar in structure to the PMN substance indicate that the PMN substance causes lethality via ocular exposure in laboratory animals. Similar substances have also been shown to cause toxicity in aquatic organisms. Specifically, based on QSAR on similar phenols, EPA predicts acute toxicity to aquatic organisms to occur at 80 ppb PMN substance in surface waters.
Recommended testing: EPA has determined that an acute oral study in rats (40 CFR 798.1175), an acute dermal study in rabbits (40 CFR 798.1100), an algae skeletoma study (40 CFR 797.1050), a mysid shrimp study (40 CFR 797.1930), and an acute fish study (40 CFR 797.1400) will help characterize the acute toxicity effects of the PMN substance to human health and to the environment. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.490.

PMN Number P-90-1454

Chemical name: (generic) Hydrogenated arylated polydecene.
CAS number: Not available.
Effective date of section 5(e) consent order: January 17, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The 28-day study shall include, for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050) with the highest dose set at 1,000 mg/kg. For the highest test dose group only, a histopathologic examination shall be extended to include testes/ovaries and lungs. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.1620.

PMN Number P-90-1535

Chemical name: Methanol, trichloro-, carbonate (2:1).
CAS number: 32315-10-9.
Effective date of section 5(e) consent order: December 28, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Phosgene gas, a hydrolysis product of the PMN substance, has been shown to cause neurotoxicity, irritation, and lung effects in test animals. Based on potential acylating activity, the PMN substance may also pose a risk of cancer.
Recommended testing: A 2-year, two-species bioassay (40 CFR 798.3300) to help characterize the potential irritation, respiratory, neurotoxicity, and cancer effects of the PMN substance.
CFR citation: 40 CFR 721.1298.

PMN Number P-90-1565

Chemical name: Glycol, polyethylene-, 3-sulfo-2-hydroxypropyl-*p*-(1,1,3,3,-tetramethylbutyl)phenyl ether, sodium salt.
CAS number: Not available.
Effective date of section 5(e) consent order: November 22, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance will be produced in substantial quantities, that there may be significant or substantial human exposures to the substance, and that the PMN substance may be anticipated to enter the environment in substantial quantities.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a 28-day repeated dose oral study in rats (OECD Guideline No. 407), a 96-h bioassay in algae (40 CFR 797.1050), a 48-h LC50 test in *Daphnia* (40 CFR 797.1300), and a 96-h LC50 test in fish (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1105.

PMN Number P-90-1624

Chemical name: (generic) Heterocyclic aldehyde imine.
CAS number: Not available.
Effective date of section 5(e) consent order: February 15, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concerns: Similar chemicals have been shown to cause acute and subchronic systemic toxicity, mutagenicity, and cancer in test animals. Similar substances have also been shown to be toxic to aquatic organisms.
Recommended testing: A concurrent set of two rodent 28-day subchronic studies by the oral (gavage) and dermal routes to help characterize the systemic effects and a 2-year, two-species rodent bioassay to help characterize the carcinogenic effects. The PMN submitter has agreed not to exceed the production volume limits without performing these tests. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the concurrent set of two 28-day subchronic studies (OECD Guideline 407 with histopathology). The PMN submitter has also agreed not to exceed the second higher production volume limit without performing the 2-year, two-species rodent bioassay (40 CFR 798.3300). Further, the submitter has agreed not to release the PMN substance to water pending aquatic toxicity testing. The tests required to determine the substance's aquatic toxicity include a 96-h bioassay in algae (40 CFR 797.1050), a 48-h LC50 test in *Daphnia* (40 CFR 797.1300), and a 96-h LC50 test in fish (40 CFR 797.1400).
CFR citation: 40 CFR 721.1245.

PMN Number P-90-1635

Chemical name: Benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C_{7-9} branched and linear alkyl esters.
CAS number: 127519-17-9e.
Effective date of section 5(e) consent order: January 2, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study

in rats (OECD Guideline No. 407) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production limit without performing these tests.
CFR citation: 40 CFR 721.500.

PMN Number P-90-1636

Chemical name: Hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked.
CAS number: Not available.
Effective date of section 5(e) consent order: January 30, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals.
Recommended testing: EPA has determined that a 2-year, two-species rodent bioassay (40 CFR 798.3300) would help characterize the possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.1204.

PMN Number P-90-1642 through 1649

Chemical name: (generic) Dialkyl phosphorodithioate phosphate compounds. 2-Propenamide, *N*-[3-dimethylamino)propyl]-
CAS number: Not available.
Effective date of section 5(e) consent order: November 26, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that these substances will be produced in substantial quantities and there may be significant and substantial human exposures.
Recommended testing: EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28-day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible effects of the substances. The 28-day study shall include, for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050) with the highest dose set in accordance with the results of a 5-10 day range finding study and not to exceed 1,000 mg/kg. For the highest test dose group only, histopathologic examination shall be extended to include testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400). The PMN submitter has agreed not to exceed the aggregate production volume limit for the combined volumes of PMNs P-90-1642 through P-90-1649 without performing these tests.
CFR citation: 40 CFR 721.1582.

PMN Number P-91-11

Chemical name: (generic) Polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: February 16, 1991.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals.
Recommended testing: A 2-year, two-species bioassay to help characterize cancer effects (40 CFR 798.3300).
CFR citation: 40 CFR 721.1643.

PMN Number P-91-100

Chemical name: (generic) α-Olefin sulfonate, potassium salt.
Basis for action: The PMN substance will be used as an additive in energy production. Its production volume is confidential. QSAR suggest that the PMN substance may be toxic to aquatic organisms. Based on this analysis EPA expects toxicity to aquatic organisms to occur at a concentration of 3 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an additive in energy production described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that potential use of the PMN substance as a detergent could result in releases to surface waters where the concentration of the PMN substance in surface waters could exceed 3 ppb. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050), daphnid (40 CFR 797.1300), and fish (40 CFR 797.1400). The algal test should be conducted under static, measured conditions, whereas the daphnid and fish tests should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.1898.

PMN Number P-91-151

Chemical name: (generic) Alcohol, alkali metal salt.
Basis for action: The PMN substance will be used as an alkoxylation catalyst. Test data on structurally similar linear alkyl sulfonates indicate that the PMN substance may cause toxicity to aquatic organisms. Based on these data, EPA expects toxicity to aquatic organisms to occur at a concentration of 5 ppb of the PMN substance in surface waters. EPA determined that use of the substance as an alkoxylation catalyst in the manner described in the PMN did not present an unreasonable risk because releases of the PMN substance to surface waters would not exceed the concentration of concern. EPA has determined that manufacture at alternative sites or potential other uses for the substance could result in releases to surface waters where the concentration of the PMN substance could be greater than 5 ppb, thereby creating an unreasonable risk of injury to aquatic organisms. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii).
Recommended testing: The Agency has determined that the results of the following acute aquatic toxicity testing would help characterize possible environmental effects of the substance: Algal (40 CFR 797.1050), daphnid (40 CFR 797.1300), and fish (40 CFR 797.1400). These tests should be conducted with flow-through conditions and measured concentrations.
CFR citation: 40 CFR 721.1261.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for all but three of the substances regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The bases for such findings are outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In each of the cases for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at § 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have

undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in §§ 721.160(c)(3) and 721.170(d)(4). In accordance with § 721.160(c)(3)(ii), this rule will be effective October 15, 1991, unless EPA receives a written notice by September 12, 1991, that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period. This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests. However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests which would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before exceeding the production limit. SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in § 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued in all but three cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the

uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 22 of the 29 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.As discussed at 55 FR 17376 (April 24, 1990), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS-50592).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50592). The record includes information considered by EPA in developing this rule. A public version of the record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. until noon and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at rm. NE-G004, 401 M St., SW., Washington, DC.

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any persons submitting comments claimed as confidential must prepare and submit a public version of the comments that EPA can place in the public file.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: August 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721, subpart E is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.466 to read as follows:

§ 721.466 Benzene, (1-methylethyl)(2-phenylethyl)-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, (1-methylethyl)(2-phenylethyl)-, (PMN P-88-894) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii),

(a)(2)(iv), (a)(3), (b) (concentration set at 1.0 percent), and (c). However, the personal protective clothing required in paragraph (a)(2)(iv) must be tested or evaluated under the requirements of paragraph (a)(3). Furthermore, the imperviousness of gloves required under paragraph (a)(2)(i) may not be demonstrated according paragraph (a)(3)(ii), but rather must be tested according to paragraph (a)(3)(i) with the following additional requirements: There must be no permeation of the PMN substance greater than 16 ppb after 8 hours of testing in accordance with the American Society for Testing and Materials (ASTM) F739–85 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids or Gases." Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(i) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). In addition, a significant use of the substance is any manner or method of manufacturing, processing, or use other than as an insulating oil for capacitors or transformers.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), (c)(1), (a)(2), (b)(2), (c)(2), (a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070–0012)

3. By adding new § 721.490 to read as follows:

§ 721.490 Benzenediazonium, 4-(dimethylamino)-, salt with 2-hydroxy-5-sulfobenzoic acid (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenediazonium, 4-(dimethylamino)-, salt with 2-hydroxy-5-sulfobenzoic acid (1:1) (CAS No. 124737–31–1) (P–90–1366) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (a)(6)(ii), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), and (g)(5). In addition, the following human health hazard statement shall appear on each label as specified at § 721.72(b) and the MSDS as specified at § 721.72(c). Additional statements may be included as long as they are true and do not alter the meaning of the required statement. Human health hazard statements: This substance may cause severe acute toxicity and death or serious neurotoxic effects.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 31,000 kg).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 80 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070–0012)

4. By adding new § 721.500 to read as follows:

§ 721.500 Benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C_{7-9}-branched and linear alkyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenepropanoic acid, 3-(2*H*-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, C_{7-9}-branched and linear alkyl esters (CAS No. 127519–17–9) (P–90–1635) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070–0012)

5. By adding new § 721.1100 to read as follows:

§ 721.1100 Glycol monobenzoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as generically as glycol monobenzoate (P–90–1357) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

6. By adding new § 721.1105 to read as follows:

§ 721.1105 Glycols, polyethylene-, 3-sulfo-2-hydroxypropyl-p-(1,1,3,3-tetramethylbutyl)phenyl ether, sodium salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as glycols, polyethylene-, 3-sulfo-2-hydroxypropyl-*p*-(1,1,3,3-tetramethyl butyl)phenyl ether, sodium salt (P-90-1565) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 1,115,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070-0012)

7. By adding new § 721.1140 to read as follows:

§ 721.1140 Tris(disubstituted alkyl) heterocycle.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tris(disubstituted alkyl) heterocycle (P-90-142) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(iv), (g)(5). The hazard communication requirements do not apply when the chemical substance is present in a plastic, an elastomer, a rubber matrix, or in a solution.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). Any amount of the PMN substance imported in a plastic, an elastomer, a rubber matrix, or in a solution, such that inhalation is precluded, shall not be included in the production limit calculations.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070-0012)

8. By adding new § 721.1204 to read as follows:

§ 721.1204 Hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified specifically as hexanedioic acid, polymer with 1,2-ethanediol and 1,6-diisocyanato-2,2,4(or 2,4,4)-trimethylhexane, 2-hydroxyethyl-acrylate-blocked (PMN P-90-1636) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i),

(a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

9. By adding new § 721.1233 to read as follows:

§ 721.1233 Substituted hydrazine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted hydrazine (PMN P-90-594) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2), (g)(3), (g)(4)(i), (g)(4)(iii), and (g)(5). In addition, the human health hazard statement shall include mutagenicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070-0012)

10. By adding new § 721.1245 to read as follows:

§ 721.1245 Heterocyclic aldehyde imine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a heterocyclic aldehyde imine (P-90-1624) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(iii), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), (g)(5). Health hazard warnings shall also include "mutagenicity".

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

11. By adding new § 721.1261 to read as follows:

§ 721.1261 Alcohol, alkali metal salt.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as alcohol, alkali metal salt (PMN P-91-151) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 5 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

12. By adding new § 721.1298 to read as follows:

§ 721.1298 Methanol, trichloro-, carbonate (2:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as methanol, trichloro-, carbonate (2:1) (CAS No. 32315-10-9) (PMN P-90-1535) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(5). The following additional human hazard precautionary statement shall appear on the label: This substance may react to form phosgene gas. When using this substance, handle with extreme caution.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (f), (g), and (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070-0012)

13. By adding new § 721.1582 to read as follows:

§ 721.1582 Dialkyl phosphorodithioate phosphate compounds.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as dialkyl phosphorodithioate phosphate compounds (P-90-1642 through 1649) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for these substances, the employer becomes aware that any of these substances may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before these substances are reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, these substances from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of these substances, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

14. By adding new § 721.1620 to read as follows:

§ 721.1620 Hydrogenated arylated polydecene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydrogenated arylated polydecene (P-90-1454) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described at § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described at § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070-0012)

15. By adding new § 721.1643 to read as follows:

§ 721.1643 Polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of isophorone diisocyanate, trimethylolpropane, polyalkylenepolyol, disubstituted alkanes and hydroxyethyl acrylate (PMN P-91-11) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(iii)(A).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

16. By adding new § 721.1711 to read as follows:

§ 721.1711 Isocyanate terminated polyols.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as isocyanate terminated polyols (P-90-404, P-90-405, and P-90-406) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(ii), (b)

(concentration set at 1.0 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5). The following additional human health hazard statements shall appear on each label and MSDS required by this paragraph: The substance may cause eye irritation, lung effects, dermal sensitization, pulmonary sensitization, or systemic effects.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 245,000 kg; aggregate manufacture and import volume for PMNs P-90-404, P-90-405, and P-90-406 combined).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under control number 2070-0012)

17. By adding new § 721.1796 to read as follows:

§ 721.1796 2-Propenamide, N-[3-dimethylamino)propyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenamide, *N*-[3-dimethylamino)propyl]- (PMN P-86-1602) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (a)(6)(ii), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(v), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(v), (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 300 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i) and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070-0012)

18. By adding new § 721.1896 to read as follows:

§ 721.1896 Bis(2,2,6,6-tetramethylpiperidinyl) ester of cycloalkyl spiroketal.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis(2,2,6,6-tetramethyl piperidinyl) ester of cycloalkyl spiroketal (PMN P-88-0083) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* For the manufacturing workers only, requirements as specified in § 721.63(a)(4), (a)(5)(i), (a)(6)(i), and (b) (concentration set at 1.0 percent). For the processing/use workers only, requirements as specified in § 721.63 (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1.0 per cent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(vi), (g)(1)(viii), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(3)(ii), (g)(4)(iii), and (g)(5). The following additional human health hazard statements shall appear on each label and MSDS required by this paragraph: This substance may cause: systemic effects, eye irritation.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070-0012)

19. By adding new § 721.1898 to read as follows:

§ 721.1898 α-Olefin sulfonate, potassium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as an α-olefin sulfonate, potassium salt (PMN P-91-100) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB Control Number 2070-0012)

20. By adding new § 721.2184 to read as follows:

§ 721.2184 Titanate [Ti_6O_{13} (2-)], dipotassium.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as titanate [Ti_6O_{13} (2-)], dipotassium (CAS No. 12056-51-8) (PMN P-90-0226) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(1)(ii), (g)(1)(vii), (g)(2)(ii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (l), and (q). In addition, a significant new use of the substance is importation of the PMN substance if:

(A) Manufactured by other than the method described in premanufacture notice P-90-226.

(B) The bulk density measurements of the PMN substance in the pure form are less than 0.4 g/cm³ or greater than 0.6 g/cm³. The bulk density of each shipment must be verified, by lot, prior to clearing U.S. customs.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125(a), (b), (c), (f), (g), (h), and (i). In addition, records shall be kept identifying the foreign supplier and documenting, by lot, for each shipment, the method of manufacture and bulk density measurements.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under control number 2070-0012)

21. By adding new § 721.2198 to subpart E to read as follows:

§ 721.2198 Substituted triphenylmethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted triphenylmethane (PMN P-87-1553) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), (x)(1) and (y)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under control number 2070-0012)

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federal register

Tuesday
August 13, 1991

Part IX

Office of the United States Trade Representative

Negotiation of a North American Free Trade Agreement; Notice of Public Hearings

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Negotiation of a North American Free Trade Agreement (NAFTA)

AGENCY: Office of the U.S. Trade Representative.

ACTION: Trade Policy Staff Committee (TPSC) Public Hearings: Notification of locations and times.

SUMMARY: A Notice was published in the **Federal Register** on July 16, 1991 (Vol. 56, No. 136, page 32454) announcing TPSC public hearings to be held in San Diego, CA; Houston, TX; Atlanta, GA; Washington, DC; Cleveland, OH; and Boston, MA. That notice invited oral testimony and/or written comments of interested parties on the desirability, the scope, and the economic effects of a North American Free Trade Agreement (NAFTA). This notice announces the specific times and locations for the hearings in each city.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and/or public hearings contact Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395-7210. All other questions concerning the negotiations should be directed to Robert Fisher, Director of Mexican Affairs, Office of North American Affairs, Office of the United States Trade Representative, (202-395-3412).

SUPPLEMENTARY INFORMATION: All hearings will begin at 9:30 a.m.

Following receipt of requests to testify, witnesses will be notified directly of their scheduled date and time to appear. The exact locations of the hearings are as follows:

San Diego, August 21 (and 22, if necessary):
- San Diego City Administration Building, City Council Chamber, 12th Floor, 202 "C" Street, San Diego, CA.

Houston, August 26 (and 27, if necessary):
- Julia Ideson Building (Auditorium), Houston Public Library, 500 McKinney Street, Houston, TX.

Atlanta, August 29 (and 30, if necessary):
- Georgia State University, Veterans Memorial Conference Center, Alumni Hall, 30 Courtland Avenue, Atlanta, GA.

Washington, September 3 (through 6 if necessary):
- U.S. International Trade Commission, 500 E Street SW., Washington, DC.

Cleveland, September 9 (and 10, if necessary):
- Location of hearing will be announced at a later date.

Boston, September 11 (and 12, if necessary):
- Gardner Auditorium, State House, Bowdoin or Beacon Street Entrance, Boston, MA.

All deadlines remain the same as stated in the previous notice.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91-19393 Filed 8-12-91; 10:55 am]

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