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Briefings on How To Use the Federal Register
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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 208, 209, and 274a

[INS No. 1347C-92; AG Order No. 1651-93]

RIN 1115-AC93

Fees for Processing Certain Asylee/Refugee Related Applications; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; correction of effective date.

SUMMARY: On March 3, 1993, the Immigration and Naturalization Service published at 58 FR 12146 a final rule entitled "Fees for Processing Certain Asylee/Refugee Related Applications". The effective date for that rule was incorrectly cited as March 18, 1993. The correct effective date is April 2, 1993.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Atherton, Chief, Fee Analysis and Operations Branch, Immigration and Naturalization Service, 425 I Street NW., room 6240, Washington, DC 20536, telephone (202) 514-2677.

Dated: March 11, 1993.

Stuart M. Gerson,

Acting Attorney General.

[FR Doc. 93-6113 Filed 3-12-93; 12:36 pm]

BILLING CODE 4410-10-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

Privacy Act of 1974; Implementation

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988 (Act), established a system to regulate the use of computer matching conducted by federal agencies. Specifically, the Act provides that computer matching involving federal data can be conducted only pursuant to matching agreements entered into by the agency providing the data to be matched and the agency receiving the data. Further, the Act provided authority for the establishment of a Data Integrity Board at each federal agency conducting or participating in a computer matching program. This rule implements the Act by incorporating, verbatim, the language of the statute into SBA's regulations.

DATES: This rule shall be effective March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Beverly K. Linden; Chief, Freedom of Information/Privacy Act; Office of Hearings and Appeals; U.S. Small Business Administration; Washington, DC 20416; (202) 653-6460.

SUPPLEMENTARY INFORMATION: The Act established a system to regulate the use of computer matching conducted by federal agencies. Computer matching is the computerized comparison of records for the purpose of establishing or verifying eligibility for a federal benefit program or for recouping payments or delinquent debts owed under such programs. However, matches performed for statistical, research, law enforcement, tax, and certain other purposes were not covered by Public Law 100-503. This rule implements the Act by incorporating, verbatim, the language of the statute into SBA's regulations.

Essentially, the Act, and this rule, provide that computer matching involving federal data can be conducted pursuant to matching agreements entered into by the agency providing the data to be matched and the agency receiving the data. Pursuant to Public Law 100-503, matching agreements must specify the purpose and legal authority for the matching program, describe the nature of the match and the expected results, include procedures for notifying individuals affected by the match and verifying the information matched, and the agreement must describe how the records will be protected. With respect to verification and notice, the Act makes clear that matching agreements state that information resulting from a computer matching program must be independently verified before any adverse action can be taken and that individuals must be given notice and an opportunity to contest any finding resulting from a computer match.

In addition, the Act requires that each federal agency involved in a computer matching program establish a Data Integrity Board made up of senior agency officials. The Board's purpose is to review and approve computer matching programs and matching agreements. Further, the Board will evaluate compliance of computer matching programs with both statutory and regulatory requirements, as well as file an annual report with the Office of Management and Budget.

In order to implement these statutory mandates, SBA is including the language of section 2 and 4 of the Act into its Privacy Act regulations. This language will be added as a new § 102.27 of title 13, Code of Federal Regulations.

Due to the fact that this rule simply inserts statutory language into the current regulation, SBA is not required to determine if it constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35). For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

SBA is publishing this regulation as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). SBA believes public comment on this rule to be unnecessary as the rule merely incorporates, verbatim, the language of a constitutionally enacted statute in its program regulations.

List of Subjects in 13 CFR Part 102

Privacy.

For the reasons set forth above, SBA is amending part 102 of title 13, Code of Federal Regulations, as follows.

PART 102—[AMENDED]

1. The authority citation for part 102 subpart B continues to read as follows:

Authority: Privacy Act of 1974 (Pub. L. 93-579), 88 Stat. 1896 (5 U.S.C. 552a).

§§ 102.27 through 102.36 [Redesignated as §§ 102.28 through 102.37]

2. Part 102 of Title 13, Code of Federal Regulations, is amended by redesignating §§ 102.27 through 102.36 as §§ 102.28 through 102.37, respectively, and by adding a new § 102.27 under undesignated center heading "Disclosures" to read as follows:

Disclosures

§ 102.27 Matching Program procedures.

(a) *Matching agreements.* SBA shall not disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between SBA and the recipient agency or non-Federal agency specifying:

(1) The purpose and legal authority for conducting the program;

(2) The justification for the purpose and the anticipated results, including a specific estimate of any savings;

(3) A description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(4) Procedures for providing individualized notice at the time of application, and periodically thereafter as directed by the Data Integrity Board, that any information provided by any of the above may be subject to verification through matching programs to:

(i) Applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) Applicants for and holders of positions as Federal personnel;

(5) Procedures for verifying information produced in such matching program as required by paragraph (c) of this section.

(6) Procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(7) Procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(8) Prohibitions on duplication and redisclosure of records provided by SBA within or outside the recipient agency or non-Federal agency, except where required by law or essential to the conduct of the matching program;

(9) Procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by SBA, including procedures governing return of the records to SBA or destruction of records used in such programs;

(10) Information on assessments that have been made on the accuracy of the records that will be used in such matching programs; and

(11) That the Comptroller General may have access to all records of a recipient agency or non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(b) *Agreement specifications.* A copy of each agreement entered into pursuant to paragraph (a) of this section shall be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Governmental Operations of the House of Representatives and be available upon request to the public.

(1) No such agreement shall be effective until 30 days after the date on which a copy is transmitted.

(2) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(3) Within three months prior to the expiration of such an agreement, the Data Integrity Board may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if:

(i) Such program will be conducted without any change; and

(ii) Each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(c) *Verification.* In order to protect any individual whose records are used in matching programs, SBA and any recipient agency or non-Federal agency may not suspend, terminate, reduce, or make a final denial of any financial assistance or payment under the Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until such information has been independently verified.

(1) Independent verification requires independent investigation and confirmation of any information used as a basis for an adverse action against an individual including, where applicable:

(i) The amount of the asset or income involved,

(ii) Whether such individual actually has or had access to such asset or income or such individual's own use, and

(iii) The period or periods when the individual actually had such asset or income.

(2) SBA and any recipient agency or non-Federal agency may not suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program, or take other adverse action as a result of information produced by a matching program,

(i) Unless such individual has received notice from such agency containing a statement of its findings and informing the individual of the opportunity to contest such findings, and

(ii) Until the subsequent expiration of any notice period provided by the program's law or regulations, or 30 days, whichever is later. Such opportunity to contest may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program. The exercise of any such rights shall not effect any rights available under the Privacy Act.

(3) SBA may take any appropriate action otherwise prohibited by the above if SBA determines that the public health safety may be adversely affected or significantly threatened during the notice period required by paragraph (c)(2)(ii) of this section.

(d) *Sanctions.* Notwithstanding any other provision of law, SBA may not disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if SBA has any reason to believe that the requirements of paragraph (c) of this section, or any matching agreement entered into pursuant to paragraph (b) of this section, or both, are not being met by such recipient agency.

(1) SBA shall not renew a matching agreement unless,

(i) The recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(ii) SBA has no reason to believe that the certification is inaccurate.

(e) *Data Integrity Boards.* SBA shall establish a Data Integrity Board to oversee and coordinate the implementation of the matching program. The Board shall consist of senior officials designated by the Administrator, to include the Inspector General (who shall not serve as Chairman), and the senior official

responsible for the implementation of the Privacy Act. The Board shall:

(1) Review, approve and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with paragraph (a) of this section and with all relevant statutes, regulations and guidance;

(2) Review all matching programs in which SBA has participated during the year, determine compliance with applicable laws, regulations, guidelines, and Agency agreements, and assess the costs and benefits of such programs;

(3) Review all recurring matching programs in which SBA has participated during the year, for continued justification for such disclosures;

(4) Compile an annual report, to be submitted to the Administrator and OMB and made available to the public on request, describing the matching activities of SBA, including—

(i) Matching programs in which SBA has participated;

(ii) Matching agreements proposed that were disapproved by the Board;

(iii) Any changes in membership or structure of the Board in the preceding year;

(iv) The reasons for any waiver of the requirement described below for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) Any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) Any other information required by OMB to be included in such report;

(5) Serve as clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(6) Provide interpretation and guidance to Agency components and personnel on the requirements for matching programs;

(7) Review Agency recordkeeping and disposal policies and practices for matching programs to assure compliance with the Privacy Act; and

(8) Review and report on any Agency activities that are not matching programs.

(f) *Cost-benefit analysis.* Except as provided in paragraphs (e) (2) and (3) of this section, the Data Integrity Board shall not approve any written agreement for a matching program unless SBA has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. The Board may waive these requirements if it determines, in writing, and in accordance with OMB guidelines, that a cost-benefit analysis is not required. Such an analysis also shall not be required prior to the initial approval of a written agreement for a matching program that is specifically required by statute.

(g) *Disapproval of matching agreements.* If a matching agreement is disapproved by the Data Integrity Board, any party to such agreement may appeal to OMB. Timely notice of the filing of such an appeal shall be provided by OMB to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(1) OMB may approve a matching agreement despite the disapproval of the Data Integrity Board if OMB determines that—

(i) The matching program will be consistent with all applicable legal, regulatory and policy requirements;

(ii) There is adequate evidence that the matching agreement will be cost-effective; and

(iii) The matching program is in the public interest.

(2) The decision of OMB to approve a matching agreement shall not take effect until 30 days after it is reported to the committees described in Subsection g above.

(3) If the Data Integrity Board and the OMB disapprove a matching program proposed by the Inspector General, the Inspector General may report the disapproval to the Administrator and to the Congress.

Dated: February 16, 1993.

Dayton J. Watkins,

Acting Administrator.

[FR Doc. 93-5580 Filed 3-15-93; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 102

Privacy Act of 1974; Implementation

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby amending its regulation concerning the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, SBA is making several technical corrections to the current regulation in order to conform the rules to administrative and procedural changes.

DATES: This rule shall be effective March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Beverly K. Linden; Chief, Freedom of Information/Privacy Act; Office of Hearings and Appeals; U.S. Small Business Administration; Washington, DC 20416; (202) 653-6460.

SUPPLEMENTARY INFORMATION: SBA is making several necessary technical amendments to its regulation implementing the Privacy Act of 1974. First, the rule states, in § 102.26, that SBA will report an accounting of disclosures biennially, rather than annually, to the Office of Management and Budget in order for such information to be included in the President's report to Congress. Next, this rule corrects SBA's address in § 102.30. Third, the rule revises § 102.33 by referencing the Office of Personnel Management as opposed to the former Civil Service Commission. The rule increases the fee waiver amount in § 102.34 to $15.00. Finally, the rule amends § 102.35 to reference the current system of record numbers, revised on February 26, 1991, 56 FR 8008, corresponding to the information which is exempted under the Privacy Act.

Due to the fact that this rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if it constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to do a Federalism Assessment pursuant to Executive Order 12612, or to determine if this rule imposes an annual recordkeeping or reporting requirement on 10 or more person under the Paperwork Reduction Act (44 U.S.C. ch. 35). For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

SBA is publishing this regulation governing agency organization, practice, and procedure as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 102

Privacy.

For the reasons set forth above, SBA is amending part 102 of title 13, Code of Federal Regulations, as follows.

PART 102—[AMENDED]

1. The authority citation for part 102, subpart B continues to read as follows:

Authority: Privacy Act of 1974 (Pub. L. 93-579), 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 102.26 is amended by revising paragraph (c) to read as follows:

§ 102.26 Accounting of disclosures.

* * * * *

(c) A biennial report will be prepared by the Privacy Officer, for submission to the Office of Management and Budget, disclosing statistics on all of the above. A copy of this report will be available in the Freedom of Information/Privacy Acts Office.

3. Section 102.30 is amended by revising paragraph (a) to read as follows:

§ 102.30 Requests for correction or amendment of record.

(a) Any individual may request the Agency to amend a record pertaining to him or her. The request should be made to the Systems Manager concerned or, if this individual is not known, to the Privacy Acts Officer, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

* * * * *

§ 102.33 [Amended]

4. Section 102.33(a) is amended by removing the words "Civil Service Commission" each time it appears and adding the words "Office of Personnel Management" in lieu thereof.

§ 102.34 [Amended]

5. Section 102.34(c) is amended by removing the term "$5" and adding the term "$15" in lieu thereof.

6. Section 102.36(a) is revised to read as follows:

§ 102.36 Specific exemptions.

(a) Systems of record subject to investigatory material exemption under 5 U.S.C. 552a(k)(2), or 5 U.S.C. 552a(k)(5), or both.

(1) Audit Report—SBA 015, a system containing investigations concerning the use of funds by recipients of disaster home loans;

(2) Litigations and Claims Files—SBA 070, a system containing information concerning recipients of disaster home loans and other individuals who are parties to lawsuits or claims involving SBA;

(3) Personnel Security Files—SBA 100, a system containing background information on active and inactive SBA employees;

(4) Security and Investigations Files—SBA 120, a system which contains information on individuals seeking or receiving SBA assistance, individuals involved in business or other organizations seeking or receiving such assistance, representatives or applicants for SBA assistance, members of Advisory Councils and SCORE/ACE volunteers;

(5) Office of Inspector General Referrals—SBA 125, a system containing information relating to referrals for investigation of possible misconduct by SBA employees, and individuals involved in seeking or obtaining SBA assistance;

(6) Investigations Division Management Information System—SBA 130, a system containing information on applicants, participants, contractors, grantees, and other governmental entities involved in SBA programs, SBA employees who have been investigated, members of Advisory Councils or SCORE/ACE volunteers; and

(7) Standards of Conduct—SBA 140, a system containing information concerning outside employment and financial interest of SBA employees, conduct of SBA employees, and related matters.

* * * * *

Dated: February 16, 1993.

Dayton J. Watkins,

Acting Administrator.

[FR Doc. 93-5581 Filed 3-15-93; 8:45 am]

BILLING CODE 8025-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 221

Israel Loan Guarantee Standard Terms and Conditions

AGENCY: Agency for International Development (A.I.D.).

ACTION: Final rule.

SUMMARY: Title 22 U.S.C. 2186 authorizes the issuance of guarantees against losses incurred in connection with loans to Israel made as a result of Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel. Pursuant thereto, the United States of America, acting through the Agency for International Development ("A.I.D."), may guarantee up to $10 billion in original principal amount of loans to Israel during the period beginning October 1, 1992 and ending September 30, 1998. The Standard Terms and Conditions set forth in this part shall apply to guarantees issued pursuant to title 22 U.S.C. 2186.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Michael G. Kitay, Assistant General Counsel, Agency for International Development, Washington DC 20523-0030, Telephone: 202/647/6504.

SUPPLEMENTARY INFORMATION: From time to time over the next six years, the Government of Israel will be seeking loans for the purposes set forth above. The loans will be guaranteed by A.I.D. with the full faith and credit of the United States Government pledged for the performance of such obligations. The purpose of these rules is to set forth the terms and conditions of the A.I.D. guarantee and the procedures to be followed to make claims under the A.I.D. guarantee. The publication of this rule will avoid a cumbersome repetitive procedure whereunder at each instance of borrowing, A.I.D. would enter into a separate Contract of Guarantee with each new lender. Once this rule becomes effective, a simple cross reference to the CFR rule in a guarantee legend signed on the back of each Eligible Note as defined will suffice to advise noteholders and their assignees of their contractual rights against A.I.D. as guarantor.

This rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory analysis under Executive Order 12291 because it involves a foreign affairs function of the United States.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3520) (1982) do not apply. An environmental impact statement is not required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 22 CFR Part 221

Foreign relations, Foreign aid, Guaranteed loans.

Accordingly, a new part 221 is added to title 22, Chapter II of the Code of Federal Regulations as follows:

PART 221—ISRAEL LOAN GUARANTEE STANDARD TERMS AND CONDITIONS

Subpart A—Definitions

Sec.
221.1 Definitions.

Subpart B—The Guarantee

221.11 The guarantee.
221.12 Guarantee eligibility.
221.13 Non-impairment of the guarantee.
221.14 Transferability of guarantee; note register.
221.15 Fiscal agent obligations.

Subpart C—Procedure for Obtaining Compensation

221.21 Event of default, application for compensation; payment.
221.22 No acceleration of eligible notes.
221.23 Payment to A.I.D. of excess. Received by a noteholder.
221.24 Subrogation of A.I.D.

Subpart D—Covenants

221.31 Prosecution of claims.
221.32 Change in agreements.

Subpart E—Administration

221.41 Arbitration.
221.42 Notice.
221.43 Governing law.

Appendix A to Part 221—Application for Compensation.

Authority: 22 U.S.C. 2186.

Subpart A—Definitions

§ 221.01 Definitions.

Wherever used in these standard terms and conditions:

(a) *A.I.D.* means the United States Agency for International Development or its successor with respect to the guarantee authorities contained in title III, chapter 2 of part I of the Foreign Assistance Act of 1961, as amended (the "Act").

(b) *Eligible Note(s)* means [a] Notes[s] meeting the eligibility criteria set out in § 221.12 hereof.

(c) *Noteholder* means the owner of an Eligible Note who is registered as such on the Note Register of Eligible Notes required to be maintained by the Fiscal Agent.

(d) *Borrower* means the Government of Israel, on behalf of the State of Israel.

(e) *Defaulted payment* means, as of any date,

(1) In respect of any current coupon Eligible Note, any interest amount and/or principal amount not paid when due, and

(2) In respect of any zero-coupon Eligible Note, any maturity amount not paid when due.

(f) *Further guaranteed payments* means the amount of any loss suffered by a Noteholder by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless a Noteholder from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Eligible Note in the country of the Borrower.

(g) *Loss of investment* respecting any Eligible Note means an amount in Dollars equal to the total of the:

(1) Defaulted Payment unpaid as of the Date of Application,

(2) Further Guaranteed Payments unpaid as of the Date of Application, and

(3) Interest accrued and unpaid at the rate(s) specified in the Eligible Note(s) on the Defaulted Payment and Further Guaranteed Payments, in each case from the date of default with respect to such payment to and including the date on which full payment thereof is made to the Noteholder.

(h) *Application for compensation* means an executed application in the form of Appendix A to this part which a Noteholder, or the Fiscal Agent on behalf of a Noteholder, files with A.I.D. pursuant to § 221.21 of this part.

(i) *Applicant* means a Noteholder who files an Application for Compensation with A.I.D., either directly or through the Fiscal Agent acting on behalf of a Noteholder.

(j) *Date of application* means the effective date of an Application for Compensation filed with A.I.D. pursuant to § 221.21 of this part.

(k) *Business day* means any day other than a day on which banks in New York, New York are closed or authorized to be closed or a day which is observed as a federal holiday in Washington, DC, by the United States Government.

(l) *Guarantee payment date* means a Business Day not more than three (3) Business Days after the related Date of Application.

(m) *Person* means any legal person, including any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Subpart B—The Guarantee

§ 221.11 The guarantee.

Subject to these terms and conditions, the United States of America, acting through A.I.D., agrees to pay to, or upon the instructions of, any Noteholder on each Guarantee Payment Date compensation in Dollars equal to such Noteholder's Loss of Investment under its Eligible Note; provided, however, that no such payment shall be made to any Noteholder, for any such loss arising out of fraud or misrepresentation for which such Noteholder is responsible or of which it had knowledge at the time it became such Noteholder.

This Guarantee shall apply to each Eligible Note registered on the Note Register required to be maintained by the Fiscal Agent.

§ 221.12 Guarantee eligibility.

(a) Eligible Notes only may be guaranteed hereunder. Notes in order to achieve Eligible Note status must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower; and they must contain a guarantee legend incorporating these Standard Terms and Conditions signed on behalf of A.I.D. by either a manual signature or a facsimile signature of an authorized representative of A.I.D., together with a certificate of authentication manually executed by a Fiscal Agent whose appointment by the Borrower is consented to by A.I.D. in a Fiscal Agency Agreement (the "Fiscal Agent").

(b) A.I.D. shall designate, in a certificate delivered to the Fiscal Agent, the Person(s) whose signature shall be binding on A.I.D. The certificate of authentication of the Fiscal Agent issued pursuant to the Fiscal Agency Agreement shall, when manually executed by the Fiscal Agent, be conclusive evidence binding on A.I.D. that a Note has been duly executed on behalf of the Borrower and delivered.

§ 221.13 Non-impairment of the guarantee.

The full faith and credit of the United States of America is pledged to the performance of this Guarantee. The Guarantee shall not be affected or impaired by any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by a Noteholder, A.I.D., the Fiscal Agent or the Borrower in connection with the transactions contemplated by this Guarantee. This non-impairment of the guarantee provision shall not, however, be operative with respect to any amount with respect to any loss arising out of fraud or misrepresentation for which the claiming Noteholder, is responsible or of which it had knowledge at the time it became a Noteholder.

§ 221.14 Transferability of guarantee; Note register.

A Noteholder may assign, transfer or pledge an Eligible Note to any Person. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Noteholder is entered on the Note Register required to be maintained by the Fiscal Agent pursuant to the Fiscal Agency Agreement. A.I.D. shall be entitled to treat the Persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guarantee and A.I.D. shall not be affected by notice to the contrary.

§ 221.15 Fiscal agent obligations.

Failure of the Fiscal Agent to perform any of its obligations pursuant to the Fiscal Agency Agreement shall not impair any Noteholder's rights under this Guarantee, but may be the subject of action for damages against the Fiscal Agent by A.I.D. as a result of such failure or neglect. A Noteholder may appoint the Fiscal Agent to make

demand for payment on its behalf under this Guarantee.

Subpart C—Procedure for Obtaining Compensation

§ 221.21 Event of default; application for compensation; payment.

At any time after an Event of Default, as this term is defined in an Eligible Note, any Noteholder hereunder, or the Fiscal Agent on behalf of a Noteholder hereunder, may file with A.I.D. an Application for Compensation in the form provided in Exhibit A. A.I.D. shall pay or cause to be paid to any such Applicant any compensation specified in such Application for Compensation that is due to the Applicant pursuant to the Guarantee as a Loss of Investment not later than three (3) Business Days after the Date of Application. In the event that A.I.D. receives any other notice of an Event of Default, A.I.D. may pay any compensation that is due to any Noteholder pursuant to a Guarantee, whether or not such Noteholder has filed with A.I.D. an Application for Compensation in respect of such amount.

§ 221.22 No acceleration of Eligible Notes.

Eligible Notes shall not be subject to acceleration by A.I.D., the Noteholder or any other party.

§ 221.23 Payment to A.I.D. of excess amounts received by a Noteholder.

If a Noteholder shall, as a result of A.I.D. paying compensation under this Guarantee, receive an excess payment, it shall refund the excess to A.I.D.

§ 221.24 Subrogation of A.I.D.

In the event of payment by A.I.D. to a Noteholder under this Guarantee, A.I.D. shall be subrogated to the extent of such payment to all of the rights of such Noteholder against the Borrower under the related Note.

Subpart D—Covenants

§ 221.31 Prosecution of claims.

After payment by A.I.D. to an Applicant pursuant to § 221.21, A.I.D. shall have exclusive power to prosecute all claims related to rights to receive payments under the Eligible Notes to which it is thereby subrogated. If a Noteholder continues to have an interest in the outstanding Eligible Notes, such a Noteholder and A.I.D. shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 221.32 Change in agreements.

No Noteholder will consent to any change or waiver of any provision of any document contemplated by this Guarantee without the prior written consent of A.I.D.

Subpart E—Administration

§ 221.41 Arbitration.

Any controversy or claim between A.I.D. and any noteholder arising out of this Guarantee shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 221.42 Notice.

Any communication to A.I.D. pursuant to this Guarantee shall be in writing in the English language, shall refer to the Israel Loan Guarantee Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by A.I.D. at the Office of Housing and Urban Programs, Bureau for Private Enterprise, Agency for International Development, Washington, DC 20523–0030. Other addresses may be substituted for the above upon the giving of notice of such substitution to each Noteholder by first class mail at the address set forth in the Note Register.

§ 221.43 Governing law.

This Guarantee shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Appendix A to Part 221—Application for Compensation

[_____]

Agency for International Development, International Development Cooperation Agency, Washington, DC 20523.
Ref: Guarantee dated as of _____, 19____:
Gentlemen:

You are hereby advised that payment of $_____(consisting of $_____of principal, $_____of interest and $_____in Further Guaranteed Payments, as defined in § 221.01(f) of the Standard Terms and Conditions of the above-mentioned Guarantee) [(consisting of $_____maturity amount and $_____in Further Guaranteed Payments, as defined in § 221.01(f) of the Standard Terms and Conditions of the above-mentioned Guarantee)] [1] was due on _____, 19____, on $_____principal [maturity] [1] amount of Notes held by the undersigned of the Government of Israel, on behalf of the State of Israel (the "Borrower"). Of such amount $_____was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guarantee, the undersigned hereby applies, under § 221.21 of said Guarantee, for payment of $_____, representing $_____, the principal amount of the presently outstanding Note(s) of the Borrower held by the undersigned that was due and payable on _____and that remains unpaid, and $_____, the interest amount on such Note(s) that was due and payable by the Borrower on _____and that remains unpaid, [$_____, the maturity amount of such Note that was due and payable on _____and that remains unpaid] [2] and $_____in Further Guaranteed Payments,[3] plus accrued and unpaid interest thereon from the date of default with respect to such payments to and including the date payment in full is made by you pursuant to said Guarantee, at the rate of _____% per annum, being the rate for such interest accrual specified in such Note. Such payment is to be made at [state payment instructions of Noteholder.]

[Name of Applicant]
By _____
Name _____
Title _____
Dated _____

Dated: March 11, 1993.

Peter M. Kimm,

Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 93–6026 Filed 3–15–93; 8:45 am]

BILLING CODE 6116–01–M

[1] Alternate language for zero-coupon Eligible Notes.

[2] Alternate language for zero-coupon Eligible Notes.

[3] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8357]

RIN 1545–AI79

Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations (T.D. 8357), which were published Thursday, August 15, 1991 (56 FR 40507), relating to certain cash or deferred arrangements (CODAs) and employee and matching contributions under employee plans.

EFFECTIVE DATE: August 15, 1992.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez, 202–622–6030, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction replaces all of the 1988 proposed and final regulations on these subjects, and the amendments to regulations under section 401 (k) and (m) of the Internal Revenue Code of 1986, issued on May 14, 1990.

The correction contained in paragraph 13 of the corrections to final regulations published on March 25, 1992 (57 FR 10289) and the correcting amendment published on Thursday, December 17, 1992 (57 FR 59915) contain inaccurate corrections. This document supersedes those corrections and reflects the intended correction to provisions under regulation § 1.401(k)–1(f)(3)(ii) as published on August 15, 1991.

Need for Correction

As published, T.D. 8357 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects for 26 CFR 1.401–0 through 1.419A–2T

Bonds, Employee benefit plans, Income taxes, Pensions, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

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

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

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

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

Par. 2. In § 1.401(k)–1(f)(3)(ii), the first and second sentences in the concluding text are revised to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

Recharacterized excess contributions continue to be treated as employer contributions that are elective contributions for all other purposes under the Code, including sections 401(a) (other than 401(a)(4) and 401(m)), 404, 409, 411, 412, 415, 416, and 417. Thus for example, recharacterized excess contributions remain subject to the requirements of paragraph (c) of this section; must be deducted under section 404; and are treated as employer contributions described in section 415(c)(2)(A) and § 1.415–6(b). * * *

* * * * *

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–5890 Filed 3–15–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 93–005]

Safety Zone: Providence River, Providence, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Providence River. This action is necessary to protect the maritime community from the hazards to navigation associated with the extreme shoaling that has taken place within the Providence River channel.

EFFECTIVE DATE: This regulation becomes effective at 8 a.m., February 19, 1993 and terminates at 12:01 a.m. December 31, 1993 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Petig of Marine Safety Office Providence at (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation were Lieutenant W. Petig, Project Manager for the Coast Guard, Captain of the Port Providence; and Lieutenant Commander J. Stieb, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards. The Captain of the Port, Providence, intends to submit for publication a final rule which would impose a Regulated Navigation Area (RNA) over the Providence River. Because the RNA requires considerable time to implement, this safety zone is necessary to safeguard users of this waterway from the hazards involved with heavy shoaling. When the RNA becomes effective this safety zone will be cancelled.

Background and Purpose

On February 2, 1993 the Captain of the Port, Providence, received a copy of a letter addressed to Governor Bruce Sundlun, Governor of Rhode Island, from the Navigation Division of the New England Division of the Army Corps of Engineers. Accompanying the letter were the results of a hydrographic survey of the Providence River Federal navigation channel conducted during the summer and fall months of 1992 and completed in January of 1993. This survey shows that mid-channel shoaling of 3 to 8 feet is taking place in the northern section of the channel. The northern section of the channel is also experiencing shoaling along the outer edges. In this area the shoaling is from 6 to 10 feet and is significantly narrowing the available channel for deep draft vessels. This extreme shoaling is a hazard to navigation for deep draft commercial traffic entering and leaving the Port of Providence. This temporary rule is initiated to offset the inherent risks imposed on safe navigation due to shoaling and to allow commercial navigation to continue. This rule is designed to protect the Port of Providence from any deep draft vessel casualty due to shoaling that may result in a grounding or associated casualty leading to loss of life, injury, property loss, oil or hazardous material discharge, blockage of the channel or other such related disastrous effects.

Discussion of Comments and Changes

A comment period will be opened starting with the publication of this rule in the **Federal Register** and continuing for a period of 30 days. Comments should be mailed to Captain of the Port, Providence, John O. Pastore Federal Building, Providence, RI 02903–1790 or may be delivered to the above address between 8 a.m. and 4 p.m. Monday thru Friday except Federal holidays. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 93–005) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self addressed postcard or envelope. The Coast Guard plans no public hearing. The Coast Guard will consider all comments received during the

comment period. It may amend the Safety Zone based on the comments received and will consider all comments in drafting the RNA.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The regulations enacted do not preclude commercial operators from utilizing the Port of Providence. The volume of commercial traffic utilizing this waterway is such that the costs incurred due to delays because of one-way traffic are considered minimal.

Small Entities

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of his rule to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule did not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulations

For the reasons set out in the preamble, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A new section 165.T01–005 is added to read as follows:

§ 165.T01–005 Safety Zone: Providence River, Providence, RI.

(a) Location: The following area has been declared a safety zone: All waters of the Providence River Channel from Conimicut Light (LLNR 16835) to Fuller Rock Light (Channel Light 42, LLNR 17120).

(b) Effective Date: This regulation becomes effective at 8 a.m., February 19, 1993 and terminates at 12:01 a.m., December 31, 1993, unless sooner by the Captain of the Port.

(c) Regulations: (1) All commercial vessels transiting the Providence River Channel shall be limited to maximum draft of 35 feet at average mean low water. Vessels with drafts between 35 feet and 38 feet may transit the Providence River Channel at times other than mean low water provided there is sufficient depth under the keel to prevent the possibility of grounding. Any commercial vessel with a draft in excess of 38 feet will require specific permission of the Captain of the Port, Providence. For vessels requiring this permission, advance notification must be made to, and approval received from, the Captain of the Port, Providence, 48 hours in advance of the scheduled transit time.

(2) Commercial vessels over 65 feet in length are prohibited from passing, meeting, or overtaking in the Providence River Channel from Gaspee Point (Providence River Channel Lighted buoys 25 and 26, LLNR 16955 and 16960) to Fuller Rock Light (Channel Light 42, LLNR 17120).

(3) Commercial vessels over 65 feet in length are prohibited from passing, meeting, or overtaking in Conimicut Point Reach (Conimicut Light, LLNR 16835 to Channel Lighted Buoys 19 and 20, LLNR 16860 and 16865).

(4) Commercial vessels over 65 feet in length inbound for berths up the Providence River Channel planning to transit this safety zone are required to make Securite calls on VHF channels 13 and 16 at the following geographic locations: Pilot's Station, Abeam of Castle Hill, Approaching the Newport bridge, South of Prudence Island, Abeam of Sandy Point, Abeam of Popasquash Point, Approaching the Southern End of Rumstick Neck Reach, Abeam of Conimicut Point Light (LLNR 16835), Abeam of Gaspee Point, and Abeam of Sabin's Point (harbor limit).

(5) Commercial vessels over 65 feet in length outbound for sea down the Providence River Channel transiting through this safety zone are required to make Securite calls on VHF channels 13 and 16 at the following geographic locations: one half hour prior to departure of the berth, at departure from the berth, Abeam of Sabin's Point (harbor limit), Abeam of Gaspee Point, Abeam of Conimicut Light (LLNR 16835), Approaching the Southern End of Rumstick Neck Reach, Abeam of Popasquash Point, Abeam of Sandy Point, South of Prudence Island, Approaching the Newport Bridge, and Abeam of Castle Hill.

(6) Commercial vessels under 65 feet in length and all recreational vessels when meeting within the Providence River Safety Zone shall keep out of the way of oncoming deep draft commercial vessel traffic.

(7) The Captain of the Port, Providence, may authorize a deviation from any of these regulations if it is found that the proposed operation can safely be conducted.

(d) Enforcement: Violations of these Safety Zone Regulations should be report to the Captain of the Port, Providence, at (401) 528–5335. Persons in violation of these regulations will be subject to civil penalty under 33 CFR 165.23(d).

Dated: February 17, 1993.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 93–6001 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AB47

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends subparts G and H of the Student Assistance General Provisions to add the Office of Management and Budget (OMB) control numbers to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective on March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Fred J. Marinucci, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4083, Washington, DC 20202. Telephone (202) 401-2732. Deaf and hearing impaired individuals may call 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: On December 17, 1992, final regulations for the Student Assistance General Provisions were published in the **Federal Register** at 57 FR 60032. The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB approved the information collection requirements in the regulations on January 26, 1993.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: March 9, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

§ 668.90 [Amended]

2. Section 668.90 is amended by revising the OMB control number following the section to read as follows:

* * * * *

(Approved by the Office of Management and Budget under control number 1801-0003)

* * * * *

§ 668.98 [Amended]

§ 668.124 [Amended]

3. Sections 668.98 and 668.124 are amended by adding the OMB control number at the end of these sections to read as follows:

* * * * *

(Approved by the Office of Management and Budget under control number 1801-0003)

* * * * *

[FR Doc. 93-5929 Filed 3-15-93; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA18-1-5657; A-1-FRL-4558-6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Logan Airport and East Boston Parking Freeze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. The intent of the SIP revision is to reduce vehicular emissions of carbon monoxide, hydrocarbons and nitrogen oxides. These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This SIP revision amends the Logan Airport Parking Freeze by regulating employee spaces as well as commercial spaces, by promoting transportation control measures, by increasing the permitted number of commercial spaces by 2,000 spaces, and by allowing the number of commercial spaces to increase in direct proportion to the number of employee parking spaces permanently removed from use at the airport. The SIP revision also establishes a new parking freeze area to include parts of East Boston adjacent to Logan Airport. The provisions of the East Boston Parking Freeze cap the numbers of "Rental Motor Vehicle" parking spaces and of "Park and Fly" parking spaces at 1989 levels, and encourage the transfer of such parking spaces from East Boston to Logan Airport.

This action approves the changes to the Massachusetts SIP. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on April 15, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert Judge, (617) 565-3233.

SUPPLEMENTARY INFORMATION: On November 6, 1990 (55 FR 46684), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of a revision to the Massachusetts Department of Environmental Protection (DEP) State Implementation Plan (SIP) amending the Logan Airport Parking Freeze, 310 CMR 7.30, and inserting provisions for an East Boston Parking Freeze at 310 CMR 7.31. The formal SIP revision was submitted by Massachusetts on August 4, 1989, December 6, 1989 and March 23, 1990.

Background

The Logan Airport Parking Freeze program was established on June 12, 1975 when EPA promulgated an amendment to the transportation control plan regulations for the Metropolitan Boston Intrastate Air Quality Control Region (40 FR 25152). The parking freeze was developed as one part of a comprehensive strategy to reduce air pollution caused by automobile emissions. The Boston Metropolitan Planning Organization (MPO) submitted to Massachusetts DEP the Logan Airport Parking Freeze program to be incorporated in the 1979 SIP (45 FR 61293) and again in the 1982 SIP (48 FR 51480). The Massachusetts Port Authority (Massport) was delegated the authority to implement the Logan Airport Parking Freeze by the Commonwealth of Massachusetts on October 8, 1975. Since the delegation, Massport has operated the program and submitted reports to EPA describing the implementation of the parking freeze.

The proposed SIP revision was submitted by the Boston MPO to the Massachusetts DEP in November of 1988. DEP proposed regulations in July of 1989 and held a hearing in August of 1989. A technical amendment regarding the boundary of the East Boston freeze area was proposed in December of 1989 and a hearing was held in January of 1990. In submittals to EPA dated August 4, 1989, December 6, 1989 and March 23, 1990, the Massachusetts DEP proposed the revision to its SIP.

Summary of SIP Revision

Types of Parking Spaces Included in the Freeze

The SIP revision affects commercial and employee parking spaces at Logan Airport, and Park and Fly and Rental Motor Vehicle parking spaces in most of East Boston. By contrast, the 1982 SIP parking freeze regulated only commercial parking spaces at Logan Airport. Because each motor vehicle generates air pollution regardless of the type of parking space it uses, it is appropriate to regulate a greater array of airport-related parking uses.

Numbers of Parking Spaces

This SIP revision limits the number of commercial and employee parking spaces at Logan Airport to 19,315. Of these, no more than 7,100 spaces may be used as employee spaces (defined as parking spaces provided for use by employees of Massport and Massport tenants). The SIP revision increases the number of commercial parking spaces (defined as parking spaces provided for a fee) previously allowed at Logan Airport by 2,000, for a total of 12,215. The SIP revision also encourages Massport to eliminate employee spaces at the airport by relocating them outside the Logan Airport freeze area, and/or by promoting the use of alternate transportation by employees. Massport is required to develop and implement a plan targeting the elimination of 2,000 employee parking spaces. The number of commercial spaces at Logan Airport can be increased beyond 12,215 by a number equal to the number of permanently eliminated employee parking spaces. In addition, the SIP revision creates a category of restricted use parking spaces. These spaces can only be made available free of charge to Logan Airport travellers and visitors, for a maximum of ten days per calendar year during extreme peak travel periods. Each year, Massport must report on the use of restricted use parking spaces by dates, locations and numbers. If restricted use parking spaces are used on more than ten days in a calendar year, Massport must submit a plan and schedule for initiating actions to eliminate the future need for restricted parking spaces.

In the East Boston Parking Freeze area, the SIP revision will freeze the number of Park and Fly parking spaces (defined as privately owned and operating off-street parking spaces provided for use by Logan Airport travelers and visitors) and Rental Motor Vehicle spaces (off-street parking spaces for rental/leased passenger motor vehicles at a facility owned, operated, and/or leased by a motor vehicle rental company). The number of permitted Park and Fly and Rental Motor Vehicle spaces is frozen as of November 24, 1989, and documented by an inventory prepared by the City of Boston and submitted to Massachusetts DEP. The SIP revision also encourages the transfer of Park and Fly and Rental Motor Vehicle spaces from East Boston onto Logan Airport.

Parking Freeze Areas

The original parking freeze area encompassing Logan Airport has been maintained. The SIP revision also establishes a new parking freeze area covering all of East Boston, excepting two northern parcels. The 1982 SIP only included Logan Airport in the airport-related parking freeze area. As a result, airport-related parking activities have developed in East Boston outside of Logan Airport, increasing traffic congestion and air pollution.

Transportation Management Programs

The 1982 SIP included limited transportation control measures for Logan Airport. Over the past several years, Massport has voluntarily implemented several transportation management programs, such as the water shuttle to Boston and bus service to remote lots south and west of Boston. The SIP revision requires Massport to make all reasonable efforts to identify, analyze and implement specific transportation management programs which discourage vehicle travel to Logan Airport. These measures and programs include fringe parking lots, water shuttle service, mass transit improvements and pricing strategies. (The provisions of 310 C.M.R. 7.30(8)(a) are not included in the SIP revision.) Each year, Massport will submit a status report on the transportation management programs to the City of Boston, the Boston Metropolitan Planning Organization, Massachusetts DEP and EPA.

Air Quality Impacts

The SIP revision is designed to reduce vehicle miles of travel (VMT) by restricting the numbers of certain types of parking spaces serving Logan Airport and by encouraging alternative means of travel to Logan Airport. Employees and travelers will be encouraged to use alternative transportation to Logan Airport, leading to reduced VMT in the area. Reduced local and regional VMT will improve traffic flow. And reductions in carbon monoxide and ozone levels should be achieved.

In particular, improvements in air quality may be expected to result from the following measures. First, the limitation on employee parking spaces at Logan Airport will restrict the growth of employee-related VMT. Second, the slight increase in the number of commercial spaces at Logan can be expected to ease the "drop-off/pick-up" phenomenon. Third, the expanded geographic area of the parking freeze will limit the proliferation of rental and Park and Fly lots at the airport's borders in East Boston. Finally, the transportation management programs will require Massport to continue to encourage alternative modes of travel to Logan Airport.

The SIP revision caps the number of employee parking spaces at Logan Airport, and allows Massport to exchange employee spaces at Logan Airport for commercial spaces. Traffic studies by Massport have revealed that employee spaces generate more vehicle trips to and from Logan Airport per day than commercial spaces. Capping and reducing the number of such spaces therefore limits VMT. In addition, the existing parking freeze has had the unanticipated effect of vastly increasing passenger drop-off and pick-up, resulting in twice as many vehicle trips as would occur if each passenger drove to the airport. The increase of 2000 commercial spaces at the airport, coupled with the program for exchanging employee spaces for commercial spaces and with continuing improvements in alternate means of access to the airport, should lessen the drop-off/pick-up phenomenon.

Capping rental and Park and Fly spaces in East Boston will limit the availability of commercial airport parking in East Boston and of rental cars, and thereby tend to encourage airport passengers to use public transportation to and from the airport. This is expected to lead to a reduction in VMT. And the implementation of improved transportation management programs will tend to ensure that alternative, effective, and affordable

modes of transportation to Logan Airport will be available. Convenient and reliable transportation other than automobiles is essential to minimizing airport-related VMT.

Based on its review of the Commonwealth's submissions and the comments received, EPA concludes that this SIP revision meets the requirements of the Clean Air Act. EPA is therefore approving the Massachusetts SIP revision for the Logan Airport Parking Freeze and the East Boston Parking Freeze.

Public Comment

EPA received four letters of public comment on the proposed approval of the revision to the Massachusetts State Implementation Plan published in the **Federal Register** on November 6, 1990 (55 FR 46684). A summary of the comments and EPA's responses can be found below. A memorandum summarizing these comments and EPA's responses is available at the addresses listed above.

Comments: Massport and CLF fully support the Logan revision as submitted and urge EPA to swiftly adopt the proposed regulation.

Response: EPA concurs with the comments.

Comments: Mayor Raymond L. Flynn comments that the parking freeze area should be expanded to include the Suffolk Downs and DeMatteo properties.

Response: As EPA has stated in previous comments, it would be beneficial to expand the freeze and we will encourage DEP to do so in the future. However, the existing freeze will have benefits not withstanding its limited scope. EPA believes that the establishment of the freeze on privately owned Park and Fly lots and rental lots in the East Boston area as described in the Notice of Proposed Rulemaking will be beneficial to air quality compared to the existing freeze. While the addition of the Suffolk Downs and the DeMatteo properties would have a slightly beneficial impact on air quality, the revision as submitted will reduce overall Vehicle Miles Traveled and therefore have a direct improvement on air quality.

Comments: The following comments were submitted by Park N Fly, Inc.:

1. The revision has no rational basis.
2. The revision cannot accomplish the air quality benefits that it is intended to produce.
3. The revision will allow Massport to establish "remote" lots in East Boston, Suffolk Downs and Revere.
4. The revision failed to consider alternative uses of the PNF site. Combined with an increase in air traveler parking spaces and the transfer of employee parking spaces this will result in the degradation of CO air quality and may result in the violation of the CO ambient air quality standard.
5. The revision will increase the "drop-off/pick-up" phenomenon.
6. The revision is not legally enforceable because it lacks statutory authority and goes beyond a "freeze."
7. The revision fails to meet EPA requirements for completeness.
8. The proposed transfer of PNF spaces to Logan effects a taking of property without just compensation, and depresses the value of the land for the purpose of lowering the eminent domain compensation to be paid by the Commonwealth for a portion of the affected property.
9. The revision violates MEPA by allowing increased commercial parking, which is part of a planned expansion of the airport subject to MEPA.
10. Subsection (5) and (6) of § 7.30 and subsections (4) and (5) of § 7.31 of the revision are void for vagueness in that they do not describe in detail the procedures for the transfer of Park and Fly and Motor Vehicle Rental spaces from East Boston to Logan Airport.
11. The SIP revision usurps the City of Boston's zoning powers, since it is a land use restriction rather than a parking "freeze."

Response: 1. The inclusion of employee parking in the Logan Airport freeze and the capping of Park and Fly and Rental Motor Vehicle parking in East Boston are measures reasonably calculated to reduce VMT. The effects required of Massport to develop and promote public transportation management programs will also help divert travellers and visitors from private vehicles toward alternate modes of access. The absence of reliable air quality modeling by Massport and the Department of Environmental Protection does not undermine EPA's belief that these measures will produce some level of benefit. Finally, the air quality assessment submitted by the commenter is limited in scope and does not provide a sufficient basis to negate the anticipated benefits of the proposed measures.

Response: 2. Air quality improvements can be achieved by the proposed SIP revision for the following reasons. First, the inclusion of all airport-related parking spaces will impose a limit on the number of parking spaces available. Second, the area of the parking freeze will be expanded. Finally, the transportation management programs will provide alternative modes of travel to Logan Airport.

The proposed SIP revision encourages the transfer of employee spaces at Logan Airport to commercial spaces. Traffic studies have revealed that employee spaces generate more vehicle trips to and from Logan Airport than commercial spaces, therefore, a reduction in VMT would be associated with such a transfer. In addition, the implementation of transportation management programs will ensure that alternative modes of transportation to Logan Airport are available. Convenient and reliable transportation, other than automobiles, is essential to minimizing VMT.

This action will have a beneficial effect on air quality by reducing vehicle travel and emissions of carbon monoxide, hydrocarbons and nitrogen oxides in the Boston urbanized area. The relocation of commercial spaces onto Logan is a direct transfer with employee parking spaces, not an increase. In addition, these transferred spaces will then be subjected to the cap, along with the new cap imposed on employee spaces. The net impact should be air quality benefits. Although no air quality modeling analysis was completed by DEP, the capping of employee and commercial spaces within Logan and the capping of Park and Fly and Rentals in East Boston strongly suggests overall reductions in VMT, based on traffic data taken from a Logan Ground Access study. This reduction in VMT is directly associated with a benefit to air quality.

The revision caps two kinds of parking uses within the East Boston area: privately owned Park and Fly lots and Rental lots. This stabilizes congestion within the East Boston area. In addition, the revision does not cap Rental spaces within Logan. This will encourage Rental spaces to relocate to Logan, which will in turn generate less VMT and hence benefit air quality.

Response: 3. EPA believes that if Massport establishes "remote" lots in East Boston, Suffolk Downs and Revere, employees who live north of Logan will be encouraged to use these lots due to the cap on employee spaces within Logan. This will reduce VMT in three ways: (1) Employees will be traveling a shorter distance; (2) the employee spaces that are converted to commercial spaces on Logan will generate less daily VMT, and the additional parking will attract drop-off/pick-up travelers to commercial spaces; and (3) fewer employees driving all the way into Logan will reduce congestion in and around Logan.

Massport reports that if the EZ access & DeMatteo lots are used for employee parking, at 750 spaces first shift, 500

2nd shift, 0 3rd shift, there will be a 4% reduction in Rt. 1–A S. daily traffic and a 4% reduction in Rt. 1–A N. traffic. This will reduce daily VMT by 5,232. This results in a predicted HC reduction of 9.5 KG/D and a CO reduction of 133 KG/D.

The Mass. MPO states that for each employee space converted to commercial use, there is an average reduction of 15 VMT/D. Therefore, the conversion of 1000 spaces yields a 15,000 VMT/D reduction. This equals a 27 KG/D HC reduction. For every 1000 spaces converted, a reduction of 400 vehicles at the Sumner Tunnel during an 8-hr period is realized. This will reduce queuing, and therefore a 0.1–0.3 ppm CO reduction for 8-hr levels.

Response: 4. PNF's microscale air quality analysis prepared by Engineering-Science, Inc. consists of six different scenarios for the year 2010. The first three assume the Central Artery/Third Harbor Tunnel is constructed, the last three assume it is not.

Scenario 1 assumes that the Park and Fly operation remains on Bremen St. Scenario 2 assumes that Park and Fly spaces are relocated to the airport and airport employee parking is relocated to Suffolk Downs. It then assumes that a commuter parking lot will be located on the Park and Fly property on Bremen St. as an alternate use of the existing facility. Scenario 3 assumes that Park and Fly spaces are relocated to the airport and airport employee parking is relocated to Suffolk Downs. It then assumes that 522,500 gross square feet of retail development is constructed on the Park and Fly property on Bremen St. as an alternate use of the existing facility.

EPA considers this analysis to be of limited utility for analyzing the proposed revision, because it is based on various hypothetical land uses that may never occur. Based on the analysis data, even if such alternatives did take place, only one receptor out of twelve indicated a significant negative change in air quality (scenario 3).

Response: 5. EPA believes that a slight increase in commercial parking spaces at Logan, the availability of restricted use parking on up to ten days per year, the exchange of employee parking spaces for commercial spaces that have a lower daily turnover rate, and the encouragement of alternative transportation management programs, will address the drop-off/pick-up phenomenon. As to the travel survey submitted by Rizzo Assoc., Inc., a one day, dual location, survey of 234 people is not likely to represent the behavior of the majority of air travelers using Logan.

Response: 6. The Clean Air Act does not prohibit the Commonwealth from attempting to phase out certain types of parking spaces in East Boston in addition to freezing the number of such spaces. It is within the Commonwealth's statutory authority to do so under State law and under the Clean Air Act. Furthermore, EPA has concluded that the various provisions of the SIP revision will contribute to the Clean Air Act's goals of ozone and carbon monoxide attainment.

Response: 7. EPA has determined that the Commonwealth's submittal of the SIP revision is complete and complies with paragraph 2.2 of appendix V, 40 CFR part 51.

Response: 8. Restrictions on an owner's use of land do not effect an impermissible taking of property without just compensation if viable economic uses of the land remain. Under these circumstances, the land will have many remaining viable economic uses after the transfer of Park and Fly spaces to Logan. Furthermore, air pollution regulations promulgated to protect the public health, safety, and welfare are appropriate exercises of the police power and do not effect an impermissible taking.

Finally, compensation paid by the Commonwealth for a taking by eminent domain will establish that the property has remaining financial value.

Response: 9. EPA has no evidence to indicate that the SIP revision is part of an airport expansion plan subject to MEPA. This comment would appropriately be directed to the Massachusetts Executive Office of Environmental Affairs under the MEPA process.

Response: 10. The SIP revision provides that the Boston Air Pollution Control Commission (BAPCC) and Massport must develop and implement a plan for the relocation of Park and Fly spaces and Rental Motor Vehicle spaces from East Boston to Logan Airport. Further, the BAPCC was charged with submitting such a plan to the Department of Environmental Protection, the Boston Metropolitan Planning Organization, Massport, and to EPA by June 30, 1990. Subsequently, by December 31, 1990, the BAPCC was required to amend the "Procedures and Criteria for Issuance of Parking Freeze Permits" required by 40 CFR 52.1135(f) to delineate the procedures for the transfer of spaces to Logan Airport. Accordingly, the SIP revision provides specific and adequate procedures for the development of a program for the transfer of spaces.

Response: 11. The East Boston Parking Freeze provisions of the SIP revision are directed at reducing emissions from mobile sources of air pollution. They may have similar effects in practice to certain types of zoning, but these similarities are incidental. Both EPA and the Commonwealth of Massachusetts have the statutory authority to promulgate such air pollution regulations.

Final Action

EPA is approving the Logan Airport Parking Freeze and the East Boston Parking Freeze as a revision to the Massachusetts SIP. Today's action makes final the action proposed on November 6, 1990 (55 FR 46684).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

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

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

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

relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 17, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 21, 1993.

Paul Keough,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(94) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(94) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on August 4, 1989, December 6, 1989 and March 23, 1990.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated August 4, 1989, December 6, 1989 and March 23, 1990 submitting a revision to the Massachusetts State Implementation Plan.

(B) Massachusetts' Air Pollution Control Regulations 310 CMR 7.30 (excluding 310 CMR 7.30(8)(a)), and 310 CMR 7.31 entitled, "MB Massport/Logan Airport Parking Freeze" and "MB City of Boston/East Boston Parking Freeze" respectively, effective in the State of Massachusetts on 11/24/89, and technical amendments to that regulation submitted by the Massachusetts Department of Environmental Protection on March 23, 1990, effective 3/30/90.

(ii) Additional materials.

(A) Appendix 5D, Baseline and Future Case CO Compliance Modeling, dated June 1986.

(B) Policy Statement Regarding the Proposed Amendment to the Logan Airport Parking Freeze, dated November 14, 1988.

For the State of Massachusetts:

3. In § 52.1167, table 52.1167 is amended by adding new state citations for 310 CMR 7.30 and 310 CMR 7.31 to read as follows:

§ 52.1167 EPA-approved Massachusetts state regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.30	Massport/Logan Airport Parking Freeze.	8/04/89, 12/6/89, 3/23/90.	March 16, 1993	[Insert *FR* citation from published date].	94	Applies to the parking of motor vehicles on Massport property.
*	*	*	*	*	*	*
310 CMR 7.31	City of Boston/East Boston Parking Freeze.	8/04/89, 12/6/89, 3/23/90.	March 16, 1993	[Insert *FR* citation from published date].	94	Applies to the parking of motor vehicles within the area of East Boston.
*	*	*	*	*	*	*

[FR Doc. 93–5912 Filed 3–15–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 55

[FRL–4604–1]

Codification of Corresponding Onshore Area Designations and Notice of Convening Proceeding for Reconsideration of Certain Corresponding Onshore Area Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Codification and convening proceeding for reconsideration.

SUMMARY: This action announces that EPA is convening a reconsideration proceeding under section 307(d) of the Clean Air Act ("the Act"), regarding the COA designations for OCS platforms Habitat, Henry, Hillhouse, Houchin, Hogan and Union A, B, and C. The COA for these platforms is currently the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD). The reconsideration proceeding will determine whether this COA designation should be changed. The effectiveness of these COA designations will not be stayed in the interim, however. The affected OCS sources will therefore be required to comply with the OCS rules for the Santa Barbara County APCD, according to the deadlines set forth in section 328(a) of the Clean Air Act. In addition, this document codifies final action taken by the Administrator designating corresponding onshore areas ("COAs") for all existing OCS sources. This action was taken concurrent with the final rulemaking promulgating the Outer Continental Shelf ("OCS") Air Regulations, and was published in the preamble to that rule on September 4, 1992.

EFFECTIVE DATE: September 4, 1993.

ADDRESSES: Material relevant to the COA designations for the OCS Platforms listed above can be found in EPA docket A-91-76. This docket is available for public inspection and copying at the following locations: (1) U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA, 94105, and (2) U.S. Environmental Protection Agency, 401 M Street SW. Washington, DC, 20460. These locations are open to the public Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, (415) 744-1195, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background Information

On September 4, 1992, EPA promulgated the OCS rule (40 CFR part 55) in the **Federal Register** (57 FR 40792). The rule was promulgated pursuant to Section 328 of the Clean Air Act, and established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. The rule applies to all OCS sources located offshore of the states except for those located in the Gulf of Mexico west of 87.5 degrees longitude.

Section 328 requires that for such sources located within 25 miles of a state's seaward boundary, the requirements must be the same as would be applicable if the sources were located in the COA. The COA is defined in the Act as with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of title I. Section 328(a)(4)(B). The Act requires new sources (as defined in Section 111(a) of the Act) to comply with the OCS rule immediately upon promulgation, and existing sources to comply 24 months thereafter, or by September 4, 1994.

The Administrator designated the COAs for all existing and proposed OCS sources offshore of California in the preamble to the final rule. 57 FR 40796-40797. Union Oil Company of California, Pacific Operators, Inc. d.b.a. Pacific Operators Offshore, Inc. and Texaco Exploration and Production Inc. (collectively, "Unocal") and Ventura County have filed petitions for reconsideration with EPA, asking EPA to reconsider the COA designations for OCS Platforms Habitat, Henry, Hillhouse, Houchin, Hogan and Union A, B and C. Ventura and Unocal have also filed petitions for review in the D.C. and Ninth Circuits, but these cases have been stayed for 90 days pending EPA's review of their petitions for reconsideration. *Ventura County Air Pollution Control District* v. *U.S. EPA*, No. 92-1572 (D.C. Cir. November 3, 1992); *Ventura County Air Pollution Control District* v. U.S. EPA, No. 92-70730 (9th Cir. Nov. 3, 1992); *Union Oil Co.* v. *U.S. EPA*, No. 92-1570 (D.C. Cir. Nov. 2, 1992); *Union Oil Co.* v. *U.S. EPA, No. 70727 (9th Cir. Nov. 3, 1992.* In addition, Santa Barbara County has filed a petition for review of the OCS rule in the D.C. Circuit, *Santa Barbara County Air Pollution Control District* v. *EPA*, No. 92-1569 (Nov. 2, 1992), and has intervened in the Unocal and Ventura actions.

II. Final Action To Be Codified

In the preamble to the proposed OCS rule, 56 FR 63774, 63780 (December 5, 1991), EPA proposed that the nearest onshore area ("NOA") be the COA for all existing and proposed OCS sources offshore of California, including the eight platforms listed above. EPA stated that it planned to finalize these designations on the date of promulgation of the OCS rule, so that sources would "have adequate time to determine the applicable requirements, install necessary controls, and receive the required permits, and the proposed sources will be given early notice of the requirements with which they must comply." *Id.*

EPA finalized these designations in the preamble to the final rule. 57 FR 40797. EPA found that although some comments had been submitted during the comment period, none contained a stringency analysis, which EPA found to be a "key criterion for requesting COA designation," *id.*, because Section 328 allows EPA to designate an area other than the NOA as the COA only if the other area has more stringent requirements for the control of air pollution than the NOA. EPA neglected, however, to include these designations in part 55. EPA therefore is now codifying the final action taken on these designations in a new section 55.15, which is attached to this notice.

III. Final Action To Be Reconsidered

On November 2 and 3, 1992, Ventura County and Unocal, respectively, filed petitions for reconsideration of the COA designations for the eight platforms listed above. Although petitioners cite the Administrative Procedures Act, 5 U.S.C. Sec. 553(e), as the basis for their right to petition for reconsideration, the final action at issue here was taken concurrently with the OCS rulemaking, which the Administrator determined to be subject to the requirements of section 307(d) of the Clean Air Act. 56 FR 63774.

Section 307(d)(7)(B) provides that if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed * * *. Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months. Petitioners argue that they did not have enough time to comment on the COA designation within the comment period, that Ventura did eventually submit a letter which included all the necessary information showing that Ventura should have been designated the COA for the platforms in question, and that EPA should in any event have designated Ventura as the COA because it has more stringent requirements than Santa Barbara.

EPA acknowledges that Ventura eventually submitted the documentation to EPA, although not within the comment period and not in time for EPA to give the materials consideration before taking final action on the COA designations. (Ventura's papers were submitted the day before EPA went to closure on the OCS package.) EPA finds, however, that it was impracticable for Ventura and Unocal to raise fully their objections within the comment period of the proposed rule. EPA makes this finding in large part because these were the first COA designations made by

EPA, and they were made according to a new statutory provision and a new rule. Moreover, they were made at the same time as the OCS rule was promulgated, so that the parties involved had not only to comment on the designations but also on the rule. EPA expects, however, in the future that parties seeking a COA designation of an area that is not the NOA will make their requests and demonstrations within the times set forth in § 55.5 of the OCS rule. As stated in the rule, if these deadlines are not met the NOA will automatically become the COA. Moreover, EPA does not intend to extend the thirty-day period for comment on proposed designations under § 55.5(f). EPA believes such time to be ample, especially since any proposed designation will already be 60 days after the COA demonstration.

In addition, EPA finds that Ventura's and Unocal's concerns are of central relevance to EPA's action, since if EPA finds their arguments on the merits to be persuasive EPA will revise its COA designations for the OCS sources in question.

EPA, therefore, is today convening a proceeding for reconsideration of its COA designation for the eight OCS platforms identified above because they were the first COA designations. EPA will examine the material submitted by Ventura County Air Pollution Control District, Union Oil, and Santa Barbara County Air Pollution Control District in evaluating its determination as to the COA designation of these platforms. EPA will follow the notice and comment procedures of section 307(d) of the Clean Air Act and will publish a proposed decision on reconsideration and consider comment before taking appropriate final action. If the reconsideration results in a change in the COA designation for any of the sources, EPA will revise 40 CFR 55.15 accordingly.

EPA will not, however, stay the effectiveness of the current COA designation pending a decision on reconsideration. Consequently, the OCS sources in question here will remain subject to the Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources, unless and until EPA changes the COA designation. EPA views this position as essential to ensure that the OCS sources in question will not go unregulated. At the same time, EPA believes that this position will not cause undue hardship to the sources, especially because they have themselves indicated a willingness to face a short delay in the designation of the appropriate COA, both by filing petitions for reconsideration of EPA's designation and by requesting a delay of that designation in their comments on the proposed rule. See 57 FR 40797. Regardless of the outcome of this reconsideration proceeding as to the COA designation, sources are required to be in compliance by September 4, 1994 as provided in the statute. 42 U.S.C. 7627(a).

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Outer Continental Shelf, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and Recordkeeping requirements, Permits.

Dated: March 5, 1993.

Carol M. Browner,

Administrator.

Part 55 of title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, et seq.) as amended by Pub. L. 101–549.

2. Part 55 is amended by adding § 55.15 to read as follows:

§ 55.15 Specific designation of corresponding onshore areas.

(a) California.

(1) The South Coast Air Quality Management District is designated as the COA for the following OCS facilities: Edith, Ellen, Elly, and Eureka.

(2) The Ventura County Air Pollution Control District is designated as the COA for the following OCS facilities: Grace, Gilda, Gail and Gina.

(3) The Santa Barbara County Air Pollution Control District is designated as the COA for the following OCS facilities: Habitat, Hacienda, Harmony, Harvest, Heather, Henry, Heritage, Hermosa, Hidalgo, Hillhouse, Hogan, Houchin, Hondo, Irene, Independence (formerly Iris), the OS and T, and Union A, B, and C.

(b) [Reserved]

[FR Doc. 93–5869 Filed 3–15–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7566]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
South Dakota: Humboldt, town of Minnehaha County.	460118	Feb. 1, 1993	
Tennessee: McEwen, city of Humphreys County	470308	.....do	July 2, 1976.
Ohio: Fayette County, unincorporated areas	390164	Feb. 17, 1993	Dec. 9, 1977.
Illinois: Deer Park, village of Lake County	171028	.....do	
New Eligibles—Regular Program			
Florida: Crestview, City of Okaloosa County [1]	120597	Feb. 3, 1993	
Missouri:			
Foristell, city of St. Charles and Warren Counties.	290902	Feb. 24, 1993	Dec. 15, 1992.
Laclede County, unincorporated areas.	290811	.....do	Apr. 17, 1985.
Reinstatements—Regular Program			
Pennsylvania: Jessup, township of Susquehanna County.	422084	Jan. 22, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; February 10, 1993, Rein.	May 17, 1989.
Mississippi: Lauderdale County unincorporated areas.	280224	May 28, 1975, Emerg.; Sept. 29, 1989, Reg.; May 4, 1992, Susp.; Feb. 10, 1993, Rein.	Aug. 29, 1989.
Oklahoma: Delaware Tribe of Western Oklahoma, Caddo County..	400512	Oct. 18, 1985, Emerg.; Jan. 18, 1988, Reg.; Dec. 16, 1992, Susp.; Feb. 18, 1993, Rein.	Sept. 27, 1991.
South Carolina: Union, city of Union County	450186	June 19, 1975, Emerg.; July 16, 1981, Reg.; July 16, 1981, Susp.; February 18, 1993, Rein.	July 16, 1981.
New York:			
Ausable, town of Clinton County	360165	Feb. 24, 1977, Emerg.; May 15, 1985, Reg.; Nov. 4, 1992, Susp.; Feb. 19, 1993, Rein.	May 15, 1985.
Brunswick, town of Rensselaer County	361130	Aug. 26, 1977, Emerg.; June 4, 1980, Reg.; Nov. 4, 1992, Susp.; Feb. 19, 1993, Rein.	June 4, 1980.
Diana, town of Lewis County	360364	June 13, 1983, Emerg.; Sept. 24, 1984, Rein.; Nov. 4, 1992, Susp.; Feb. 19, 1993, Rein.	Sept. 24, 1984.
Franklin, town of Franklin County	361397	June 18, 1982, Emerg.; Sept. 24, 1984, Rein.; Nov. 4, 1992, Susp.; Feb. 19, 1993, Rein.	Do.
Harrisville, village of Lewis County	361451	May 16, 1983, Emerg.; Sept. 24, 1984, Rein.; Nov. 4, 1992, Susp.; Feb. 19, 1993, Rein.	Do.
Regular Program Conversions			
Region IV			
North Carolina: Mecklenburg County, unincorporated areas.	370158	Feb. 3, 1993, suspension withdrawn	Feb. 3, 1993.
Region V			
Illinois:			
Aroma Park, village of Kankakee County	170740	.....do	Do.
Kankakee County, unincorporated areas	170336	.....do	Do.
Kankakee, city of Kankakee County	170339	.....do	Do.
Momence, city of Kankakee County	170340	.....do	Do.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Sun River Terrace, village of Kankakee County.	171015	.....do	Do.
Indiana: Warrick County, unincorporated areas ..	180418	.....do	Do.
Michigan:			
Greenbush, township of Alconia County	260001	.....do	Do.
Pinconning, township of Bay County	260025	.....do	Do.
Sims, township of Arenac County	260015	.....do	Do.
Region VI			
Texas: San Diego, city of Duval and Jim Wells Counties.	481199	.....do	Do.
Region VII			
Kansas: St. George, city of Pottawatomi County	200274	.....do	Do.
Region IV			
Georgia: Chattooga County, unincorporated areas.	130036	Feb. 17, 1993, suspension withdrawn	Feb. 17, 1993.
Region V			
Michigan: Alpena, township of Alpena County ...	260011	.....do	Do.
Wisconsin:			
Biron, village of Wood County	555545	.....do	Do.
Nekoosa, city of Wood County	550516	.....do	Do.
Port Edwards, village of Wood County	555572	.....do	Do.

[1] The City of Crestview has adopted Okaloosa County's (#120173) Flood Insurance Study and Flood Insurance Rate Map that became effective on July 15, 1985 for flood insurance purposes.

Code for reading third column: Energ.-Emergency; Reg.-Regular; Susp.-Suspension, Rein.-Reinstatement.

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

Issued: March 10, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-5995 Filed 3-15-93; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[DA 93-228]

Declaratory Ruling Concerning Arrangements Between Applicants for the Interactive Video and Data Service

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: The Private Radio Bureau has adopted a Memorandum, Opinion and Order to deny the request for a declaratory ruling filed by Mr. Marcos Rodriguez, Jr. (Rodriguez motion) on January 29, 1993. The Rodriguez motion sought a declaration approving the proposed formation of a business organization by and between applicants to operate an Interactive Video and Data Service (IVDS) system in the Dallas, Texas, market. IVDS is a personal radio service in which licensees may provide a variety of radio-based interactive services to the public.

EFFECTIVE DATE: April 15, 1993.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632-6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Private Radio Bureau's Memorandum, Opinion and Order, DA 93-228, adopted February 24, 1993; and released March 4, 1993. The full text of this Memorandum, Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 337-1433.

Summary of Memorandum, Opinion and Order

1. Mr. Marcos Rodriguez, Jr. is an applicant for an IVDS system license in, among other areas, the Dallas, Texas, market. The Rodriguez motion for a declaratory ruling concerned the following proposed private agreement or contract: certain parties that have individually applied for an IVDS system license in the Dallas, Texas, market would enter in an agreement which binds them to form a new legal entity if one of the parties to the contract is made a tentative selectee by an IVDS lottery. Under the agreement, the party to the contract that is selected by an IVDS lottery would retain control of the license while the other parties would acquire an ownership interest therein on a pro rata basis. Further, the Rodriguez motion states that the agreement would not permit any party to hold an interest in more than one IVDS system license in the same market. Mr. Rodriguez queried whether his proposed agreement is permissible under the established IVDS rules and policies.

2. It is not the policy or past practice of the Private Radio Bureau to issue declaratory rulings on the acceptability of particular private management contracts. Nevertheless, because of the potential negative impact that confusion in this area could have on implementation of IVDS, the Bureau addressed this issue.

3. At issue was whether it is permissible for the IVDS applicants to enter into a contract or agreement whereby if one of the parties to the agreement becomes a tentative selectee, the other parties to the agreement would acquire an ownership interest in the IVDS license. In developing rules and policies for IVDS we were guided by our experience in other radio services where licenses generally are decided by lottery. Our experience in these cases has been that (1) there is a growing problem with the filing of speculative applications, (2) agreements such as the one proposed Mr. Rodriguez makes filing applications more attractive to those who wish only to speculate and (3) the usefulness of settlement agreements in situations where there is a high volume of applications is far outweighed by the problems they cause.

4. In the R&O establishing IVDS the Commission noted the importance of minimizing speculative applications and adopted criteria to achieve this end. Three of the criteria applied here. First, the Commission stated in the text of the R&O that "[a]n [IVDS] applicant may not have any interest in another pending application for the same service area." Second, it adopted a rule that a licensee may have no ownership interest in, financial interest in, or exercise *de facto* control over, both frequency segments in the same service area. Third, it adopted a rule prohibiting the transfer of an IVDS license until the system construction benchmarks were met. Mr. Rodriguez's agreement is clearly at variance with the policy articulated in the R&O against applicants having an interest in another pending application in the same IVDS service area. Further, despite the claim of the Rodriguez motion, the agreement has the potential to violate the rule against any party holding an interest in more than one IVDS frequency segment in the same area. Finally, under Mr. Rodriguez's proposal, a new legal entity would be created. This would appear to violate the intent of the rule prohibiting license transfer before construction benchmarks are met.

5. Accordingly, the Bureau has concluded that Mr. Rodriguez's proposal as described herein for the IVDS service is not permitted. This position is consistent with the Commission's approach to other private radio services and the Multipoint Distribution Service (MDS), a point-to-multipoint service, where there has been an emphasis on reducing speculative applications. Therefore, it is ordered that the request for a declaratory ruling filed by Mr. Marcos Rodriguez, Jr. is denied, effective thirty days after publication in the **Federal Register.**

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93-5899 Filed 3-15-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06, Notice No. 21]

RIN 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection, to provide procedures for conducting quasi-static tests of the strength of certain doors on light trucks, multipurpose passenger vehicles (MPV) and buses with a gross vehicle weight rating (GVWR) of 4,545 kilograms (kg) (10,000 pounds) or less. The particular types of doors addressed by this notice are doors with contoured lower edges, doors with decorative or protective molding attached, double cargo doors, and doors which have no windows. The changes in this notice are intended to ensure that the weaker parts of these doors are tested without interference from the pillars or door frames.

DATES: This rule is effective September 1, 1994. Any petitions for reconsideration of this rule must be received by NHTSA not later than April 15, 1993.

ADDRESSES: Any petition for reconsideration should refer to Docket Number 88-06, Notice 21, and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4924.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection, currently applicable only to passenger cars, specifies quasi-static side door strength requirements to minimize occupant injuries that occur as a result of a vehicle's side structure being pushed into the passenger compartment during a side impact crash. Standard No. 214 requires each door to resist a crush force that is applied inward against the door's outside surface in a laboratory test. This force is applied by means of a piston-driven vertical steel cylinder or semi-cylinder (hereinafter referred to as cylinder or loading cylinder) that is aligned with the middle of the door.

The standard fixes the position of the cylinder in relation to the front and rear edges of a door by specifying that the cylinder's longitudinal axis is to be located opposite the midpoint of a horizontal line drawn across the span of the door, 127 millimeters (mm) (5 inches) above the lowest point of the door. The bottom of the cylinder is to be aligned with the line drawn 127 mm (5 inches) above the door's lowest point, and the top of the cylinder is to extend above the bottom edge of the window opening by at least 13 mm (0.5 inches). These procedures are intended to ensure that the loading cylinder is positioned as near as possible to the center of the door panel.

There are several reasons for locating the loading cylinder in the center of the door panel. First, the center of the door panel is the weakest region and therefore where the greatest intrusion into the passenger compartment in a side impact crash is most likely to occur. The standard seeks to ensure an adequate level of crush strength and thereby limit intrusion at the door's midpoint so that, if an impact occurs elsewhere on the door panel, the door's strength will be at least as great in that off-center location. Second, the standard specifies this positioning of the cylinder to ensure that the cylinder is positioned sufficiently far from the door frame and vehicle structures, such as the pillars, located next to the edges of the door to prevent those components from distorting the test results.

To meet the door strength requirements of Standard No. 214, manufacturers customarily reinforce a car's side doors with horizontal metal beams. The door beams are designed to transmit crash forces through the door's hinges and lock mechanism to the pillar structures located fore and aft of each door in most body styles and vehicle types.

On June 14, 1991, NHTSA issued a final rule extending the quasi-static test requirements for side door strength to trucks, buses and MPVs with a GVWR of 4,545 kilograms (kg) (10,000 pounds) or less (LTVs), except walk-in vans (56 FR 27427; June 14, 1991). That final rule, which established an effective date of September 1, 1993, specified that LTV side door strength be tested

according to the same test procedure that currently applies to cars.

The final rule did not resolve questions which commenters on the proposal preceding the June 1991 final rule raised regarding the appropriateness of using the car test procedure for testing certain types of LTV side doors. Specifically, some manufacturers expressed concern about how to test four types of doors: Doors with contoured lower edges (i.e., doors whose straight bottom edges are unusually small), double cargo doors, doors with no windows, and doors with decorative or protective molding. The primary concern was that in testing such doors, following the car test procedures would not ensure that the loading cylinder would be located at the weakest part of contoured doors. Further, passenger car door test procedures as applied to double cargo doors, doors with decorative or protective molding, and doors without windows, were not specified.

To provide the public with an opportunity to comment on the agency's tentative resolution of those issues, NHTSA issued an NPRM on January 15, 1992 (57 FR 1716) (hereinafter NPRM), proposing to amend the quasi-static side door strength test procedures for the four types of doors.

Summary of the Proposal

In the NPRM, NHTSA proposed to amend Standard 214 to address these four types of doors.

(1) Contoured Doors

For contoured doors, as well as all other car and LTV doors other than double cargo doors, NHTSA proposed to align the loading cylinder so that the longitudinal axis of the cylinder would be aligned with the midpoint of a horizontal line drawn across the widest portion of the door. For all contoured doors, as well as all other doors, the agency proposed that the bottom of the cylinder be located in the lowest horizontal plane such that the lateral projection of the bottom of the cylinder would be at least 127 mm (5 inches) from any edge of the door panel. These procedures were intended to ensure that the cylinder would be positioned in the approximate center of such doors.

(2) Double Cargo Doors

Such doors were defined in the NPRM as "a pair of hinged doors with the lock and latch mechanisms located where the door lips overlap." NHTSA proposed to treat such doors as a single system so that the doors would be tested simultaneously. NHTSA proposed to position the loading cylinder so that its longitudinal axis would be positioned laterally opposite the midpoint of a horizontal line drawn across the two doors at their widest point. As already noted, the cylinder would also be located such that every point on the lateral projection of the bottom surface of the cylinder would be at least 127 mm (5 inches) from the bottom edge of the door panels, exclusive of any decorative or protective moldings.

(3) Windowless Doors

The current procedures are premised on there being a window in each door. They provide that the upper edge of the loading cylinder is to extend at least 13 mm (0.5 inches) above the bottom edge of the window opening. To accommodate doors that have no windows, NHTSA proposed that the upper edge of the cylinder would be positioned for those doors at the same height above the ground as the cylinder would be positioned in testing the front side door with windows, of the same vehicle.

(4) Doors With Decorative or Protective Moldings

Currently, Standard 214 provides that the bottom edge of the loading cylinder is to be aligned at the midpoint of a horizontal line drawn across the door, 127 mm (5 inches) above the lowest point of the door. In addition to proposing a new procedure for locating the bottom of the cylinder, NHTSA proposed also to provide that the lowest point of a vehicle's door would be the lowest point on the outer door panel itself, exclusive of any decorative or protective molding extending below the door panel's bottom edge.

Summary of Comments

Fourteen comments were received from motor vehicle manufacturers and public interest groups in response to the NPRM. Twelve were submitted by vehicle manufacturers, one by a trade association, and one by a public interest organization. Ten of the vehicle manufacturers opposed the new testing procedures for contoured doors, primarily because they were concerned that in its new position, the cylinder would miss the door beam and frame structure in some of their cars and LTVs. They said that this would necessitate raising the door beam, which would in turn necessitate relocation of the latch and hinge mechanisms, and possibly even require redesign of the doors. Such relocations/redesigns could call for the use of additional materials which could result in added weight and increased costs. Commenters were also concerned that the new position of the cylinder would jeopardize their efforts to comply with the new dynamic strength requirements for cars as well as compliance with other safety standards. Two commenters asserted that NHTSA had not conclusively proven that such changes are necessary. Further, five stated that if these new procedures were adopted, additional lead time ranging from three to four years would be needed to implement the new procedures.

Commenters generally concurred with the balance of the proposal, i.e., the proposed test procedures for double cargo doors, windowless doors, and doors with decorative or protective molding. However, three commenters suggested that decorative or protective molding be included in determining the lowest point of a door.

Notice Delaying Effective Date

On July 13, 1992, NHTSA responded to a petition by General Motors for the reconsideration of the June 1991 final rule by publishing a new final rule delaying the effective date for the extension of the quasi-static side impact protection requirements to LTVs (57 FR 30917). The agency had specified in the June 1991 final rule that all LTVs comply with those requirements as of September 1, 1993. In the July 1992 final rule, the agency amended the effective date to phase-in compliance over a two-year period. Ninety percent of each manufacturer's LTVs produced on or after September 1, 1993, but before September 1, 1994, must comply with those requirements. Further, the agency excluded from the requirements certain doors on LTVs manufactured during that one year period: All double cargo doors, all windowless doors and certain contoured doors. Effective September 1, 1994, all side doors on all LTVs must comply.

Summary of the Final Rule

After careful consideration of all comments on the January 1992 NPRM and other available information, NHTSA has decided to proceed with specifying test procedures for unusual or odd-shaped doors. One of the most significant differences between the final rule and the NPRM is that the final rule retains, for cars, the existing procedures for aligning the longitudinal axis of the cylinder and for determining the location of the bottom of the cylinder. The final rule also revises the new procedures regarding the location of the longitudinal axis and bottom of the cylinder so that the positioning of the cylinder for contoured doors in LTVs will be unchanged in many instances. For contoured LTV doors that are

relatively wide at their bases and for double cargo doors, the same procedures specified for cars will be applicable. For LTV contoured doors that are relatively narrow, the longitudinal axis of the loading cylinder will be positioned as follows: If the horizontal line drawn 127 mm (5 inches) above the bottom edge of the door panel measures less than 559 mm (22 inches) long, the line is moved vertically up the side of the door panel until the line measures at least 559 mm (22 inches). The longitudinal axis of the loading cylinder will then be placed at the midpoint of that line. The agency has adopted without change the new test procedures for windowless doors. The proposed revision of Figure 1 showing the cylinder positioning for cars has not been adopted since the existing test procedures have been retained for cars.

The effective date of the new test procedures is September 1, 1994. That date was selected because it coincides with the date that the provisions of Standard 214 become applicable to LTVs having these specially shaped doors.

Contoured Doors

The issue of the test procedure as applied to contoured doors was originally raised by Mitsubishi Motors Corporation (Mitsubishi) in a July 1989 letter to this agency. That company inquired about the appropriate positioning of the loading cylinder in testing doors whose lower edges are not at all points parallel to the door sill. Mitsubishi specifically had in mind the front door of a forward control van. The lower edge of that door is curved upward to accommodate the front wheel well. Mitsubishi pointed out that under the current procedure, when the straight portion of the bottom edge of a door across which the horizontal line is drawn (127 mm (5 inches) above the lowest point of the door) is relatively narrow, the loading cylinder would be positioned too close to the front or rear edge of the door. Indeed, in some cases, the straight portion of the bottom edge of the door might be so narrow that its width is nearly the same as the diameter of the loading cylinder.

NHTSA tentatively concluded that this result was undesirable because the main purpose of the quasi-static door strength test is to use the loading cylinder to evaluate the crush strength of the door panel without the cylinder's engaging the door frame or the vehicle structures next to or behind the door edge, thereby distorting the test results. Accordingly, NHTSA proposed, for contoured doors, as well as all other car and LTV doors except double cargo doors, that the loading cylinder be aligned so that its longitudinal axis would be opposite the midpoint of a horizontal line drawn across the widest portion of the door. For contoured doors, as well as all other doors, the agency proposed that the bottom of the cylinder would be positioned such that the lateral projection of the bottom of the cylinder on the door would be at least 127 mm (5 inches) from any edge of the door panel, including any point on the contoured edge. These proposed new procedures were intended to ensure that the cylinder would be positioned to test the weakest part of the door.

Chrysler Corporation (Chrysler), American Suzuki Motor Corporation (Suzuki), Mitsubishi, Ford Motor Company (Ford), Rover Group North American Engineering Office (Rover), Honda Motor Company, Inc. (Honda), Nissan Research & Development, Inc. (Nissan), Toyota Motor Corporate Services of North America, Inc., (Toyota), General Motors Corporation (GM), and Fiat Automotive R&D, USA (Fiat) opposed the proposed new procedures on the basis that changing the position of the loading cylinder as proposed would cause the cylinder to miss the side door beam in some car and LTV doors. Therefore, in order to maintain compliance of their vehicles with the existing side door strength requirements for cars and the future requirements for LTVs, it would be necessary to relocate the beam upward in space currently occupied by window, latch, and hinge mechanisms. In some cases, they said that it would be necessary to redesign the affected doors, with consequent increase in design, tooling, materials, testing, and certification costs as well as an increase in weight.

The proposed procedure was not intended to result in the cylinder's being placed so high that it would miss door beams during the testing of side doors. Such results in the case of cars are inappropriate since the potential problem of mislocation of the cylinder is limited to LTV door designs. To ensure that this result does not occur, the agency has decided to limit the applicability of the new procedure to LTVs only. NHTSA has decided to limit further the applicability of the new procedure by applying it to only those contoured LTV doors with relatively narrow bottoms. The new procedure will apply to those doors only if the horizontal line 127 mm (5 inches) above the bottom of the door is less than 559 mm (22 inches) long.

The reason for choosing 559 mm (22 inches) as the break point is explained below. NHTSA considers it essential that the edges of the loading cylinder be positioned a minimum of 127 mm away from any edge of the door being tested in order to avoid contacting any reinforcing structures that could distort the test results. Since paragraph S4(b) specifies that the loading cylinder is to be 305 mm (12 inches) in diameter, the horizontal line across the door on which the bottom edge of the cylinder is to be placed must measure at least 559 mm (22 inches) (the sum of the loading cylinder's 305 mm (12 inch) diameter, plus 127 mm (5 inches) of clearance on either side of the cylinder).

If the line 127 mm (5 inches) above the bottom edge of the door is not at least 559 mm long (22 inches), the line is moved vertically up the side of the door panel to the first height at which the line reaches a length of 559 mm (22 inches). The cylinder is positioned so that its longitudinal axis is opposite the midpoint of that line.

The bottom of the cylinder is placed in the lowest horizontal plane such that every point of the lateral projection of the cylinder on the door is at least 127 mm (5 inches), horizontally and vertically, from any edge of the door.

With the cylinder positioned in this manner, there should be very little, if any, necessity for manufacturers to relocate door beams in LTVs. If any door beam relocation is necessary, it would be necessary in only a very few vehicle models and would be very slight. It would not interfere with the latch, window, or hinger mechanisms or hardware.

Thus, the concerns expressed by commenters regarding such matters as extensive beam relocation and strengthening and door redesign in cars and LTVs will not be realized.

Chrysler, Suzuki, GM, Toyota, Nissan, Fiat and Mercedes-Benz of North America, Inc. (Mercedes) commented that repositioning of the loading cylinder would require relocation of the door beam upward, thereby placing it near the thorax impact area, increasing the chance of injury. They contended that this relocation would be especially counterproductive to developing protection to comply with the new dynamic side impact strength requirements for cars and may jeopardize compliance with other safety requirements, such as those relating to frontal crash performance.

The new dynamic side impact requirements were added to Standard No. 214 by a final rule published in the **Federal Register** on October 30, 1990 (55 FR 45722). They become effective

September 1, 1996. These requirements specify that a passenger car must provide protection in a crash test in which the target car is struck in either side by a moving deformable barrier, simulating another vehicle. Instrumented test dummies are placed in the front and rear outboard seating positions on the struck side of the car to measure the potential for injuries to the thorax and pelvis of occupants.

The agency reiterates that this final rule does not apply the new test procedure to passenger car doors, but only to certain LTV doors. Accordingly, the new test procedure announced in this final rule will not interfere with efforts to comply with the dynamic side impact protection requirements of Standard 214. Further, NHTSA believes that the new procedures will not interfere with any other safety requirements currently in effect.

Suzuki and GM commented that NHTSA was incorrect in assuming that the weakest region of the door is at the midpoint of a horizontal line drawn across the widest part of the door. Suzuki contended that the actual weakest part of the door is at the midpoint between the hinge axis and the door latch mechanism. GM said that the weakest region should correspond with the center of the door opening.

NHTSA stated in the NPRM that the center of the door panel is the weakest region of the door. This statement logically followed from the assumption that the point farthest from any edge or supporting frame would be the weakest. While Suzuki and General Motors may be at least partially correct in their assertions, the locations they specify are both very close to the midpoint of the widest part of the door. Thus, positioning the loading cylinder at the center of the door panel would be appropriate for all the suggested locations for the weakest region. NHTSA believes that the positioning of the loading cylinder in the lowest horizontal plane such that the lateral projection of the cylinder's bottom is at least 127 mm (5 inches), vertically and horizontally, from the nearest door edge will ensure that the cylinder is located so that the weakest part of the door will be tested and an accurate evaluation of the strength of the door will be obtained. Testing that region will ensure that the rest of the door panel performs adequately. As previously stated, the new positioning of the loading cylinder announced in this notice would affect only a certain few LTV models. Most vehicles would continue to use the existing procedures.

Chrysler and General Motors commented that the new procedures would not take into account wheel houses, step wells, and other side door structures which they believed could be helpful in meeting side door strength requirements.

NHTSA understands that wheel houses, step wells, and other vehicle structures may have bracing and support structures which, theoretically, may be helpful in strengthening side door protection. NHTSA believes that it is appropriate to position the cylinder so as to allow some, but not all of these structures to affect the test results. The loading cylinder should be positioned so that the wheel house does not affect the results of the strength tests since, in many vehicles, people in the passenger compartment are located away from the wheel house. Step wells, on the other hand, are usually located in or near passenger compartment areas. Indeed, the step wells in some LTVs extend above the bottoms of the doors. In such cases, engaging the step wells is unavoidable when testing the doors. This is appropriate since a colliding vehicle would engage the same structures behind a side door. NHTSA believes that the procedure for determining the location of the bottom of the cylinder will ensure that the contribution of step wells is taken into account.

Ford and GM commented that NHTSA did not prove a safety need for amending the quasi-static side door strength test procedures, that any such amendments would be impractical and inappropriate, and that the new procedures would not relate to real-world collisions. Toyota suggested that if NHTSA has any accident data demonstrating a need for these amendments to Standard 214, the agency should make such data public.

NHTSA believes that these comments were premised on application of the new test procedures to cars and many LTVs. Since the procedures, as adopted in this final rule, have been substantially limited in their applicability, the agency believes that the comments are largely moot. Further, NHTSA believes that it abundantly demonstrated a safety need for and the practicability of extending the side door strength requirements of Standard 214 to LTVs in the June 1991 final rule (see especially Safety Need, at 56 FR 27428, *et seq.*). NHTSA also believes, however, that the test procedure must be correctly applied to all doors to ensure that the requirements of the standard are met.

Doors with Decorative or Protective Molding

The current test procedures in Standard 214 provide that the bottom edge of the loading cylinder is to be placed in the same horizontal plane containing the horizontal line drawn across the door panel, 127 mm (5 inches) above the "lowest point of the door." By letter to NHTSA dated August 8, 1990, Mazda Research & Development of North America, Inc. (Mazda) inquired whether, for purposes of positioning the loading cylinder as provided in S4(c)(2), the lowest point of the door would be the bottom of the door panel itself or whether it would include the bottom of any attached molding that extended below the bottom edge of the door. NHTSA responded that door molding is considered part of the door, therefore, the "lowest point of the door" would be measured from the lowest part of any attached door molding.

NHTSA was not comfortable with having to interpret the Standard in that way, however, because if molding extends below the bottom of the door panel, the line 127 mm (5 inches) above the lowest point would be less than 127 mm (5 inches) above the bottom of the door panel. In that position, the loading cylinder might be too low because it might engage the sill or floor structure and lead to distorted test results. In the NPRM, therefore, NHTSA proposed to amend S4(c)(2) to exclude any decorative or protective molding when making the measurement necessary to place the horizontal line 127 mm (5 inches) above the bottom edge of the door.

In its comments, Ford agreed that decorative and non-structural moldings should be excluded in determining loading cylinder placement. Ford said, however, that NHTSA should not disregard the possible use of structural moldings, that is, moldings that enhance structural support as well as being decorative. Ford foresees that such structural moldings could ultimately replace typical door beam designs currently in use and would be an integral part of the door strength in meeting both dynamic and quasi-static strength requirements. GM also agreed with NHTSA's proposals regarding molding, but asked whether all molding was to be removed before testing and whether the 127 mm (5 inch) measurement should be made from the bottom of the door's supporting frame.

NHTSA has concluded that moldings that are not an integral part of the door panel, i.e., are not permanently affixed thereto so as to become a part of the door panel, are to be removed from doors for the purpose of making the 127 mm (5 inch) measurement. An example of molding that is not permanently affixed is molding affixed only by clips or clamps. That will ensure that the

loading cylinder will be properly positioned for testing the doors. However, even if removed to make the measurement, the molding is to be in place during the testing since the agency believes that a door should be tested as it will exist in the real world.

Double Cargo Doors

In the NPRM, NHTSA proposed to test double cargo doors as a single system instead of testing each door individually. "Double cargo doors" refers to a pair of hinged doors with the lock and latch mechanisms located where the doors meet. The NPRM proposed that the longitudinal axis of the loading cylinder would be placed laterally opposite the midpoint of a horizontal line drawn across the widest part of the door system. Further, the cylinder would be located in the lowest horizontal plane such that every point on the lateral projection on the door panels of the bottom surface of the cylinder would be at least 127 mm (5 inches) from any edge of the door panels, exclusive of any decorative or protective molding.

The agency proposed to treat double cargo doors as a single system because the quasi-static door strength test should be conducted at the weakest region of the door system opening, i.e., where the greatest intrusion is likely to occur. NHTSA believed that, given the structures and the latching mechanisms found in cargo doors, the double cargo door system is weakest at its midpoint, regardless of whether the doors are equal in size and meet in the center of the door system opening.

Ford did not object to the NHTSA proposal to treat double cargo doors as a single system. Ford expressed concern, however, that certain models of its LTVs have step wells inside the vehicle that measure 216 mm (8½ inches) high for the front door and 241 mm (9½ inches) high for the back door. Thus, when the double opening cargo doors are subjected to the test procedure of Standard 214 where the bottom of the loading cylinder is placed 127 mm (5 inches) above the bottom of the door, the inside step is contacted before the loading cylinder has traveled the specified 457 mm (18 inches). To meet the requirements of Standard 214, therefore, Ford asserted it would be required to redesign both front and rear doors of the affected vehicles. Ford indicated, however, that contact with the floor step increases the side crush resistance of the door, thereby helping to reduce intrusion into the passenger compartment.

The agency proposed in the NPRM that in testing double cargo doors, the longitudinal axis of the loading cylinder would be positioned laterally opposite the midpoint of a horizontal line drawn across the span of the two doors at the widest point. Further, the cylinder would be located in the lowest horizontal plane such that every point on the lateral projection of the bottom surface of the cylinder on the door would be at least 127 mm (5 inches) from the bottom edge of the door panels, exclusive of any decorative or protective moldings. Given the width and rectangular shape of most double cargo doors, positioning a cylinder in accordance with this procedure would result in placing the bottom of the cylinder in the horizontal plane 127 mm (5 inches) above the bottom edge of the door.

In the interest of simplifying its regulatory language, the agency is specifying in the final rule that the bottom of the cylinder is to be in the same horizontal plane as a horizontal line drawn across the span of the two doors 127 mm (5 inches) above the bottom edge of the doors, exclusive of any decorative or protective molding that is not permanently affixed to the door panel. The same horizontal line is to be used in positioning the longitudinal axis of the loading cylinder. Given the rectangular shape of the cargo doors, use of the midpoint of that line is likely to produce a result very similar to that from using the midpoint of a line across the widest part of the doors. Accordingly, the cylinder is to be positioned opposite the midpoint of the line drawn horizontally 127 mm (5 inches) above the bottom edge of the doors.

Following this procedure will ensure that the lateral projection of the bottom surface of the cylinder on the doors is at least 127 mm (5 inches) from the bottom edge of the door panels. In that position, the loading cylinder will likely contact a step that is inside the door. As the agency has already indicated above, it believes that this is appropriate since a colliding vehicle would strike the same structures.

GM suggested that these double doors be referred to as "double side doors" instead of "double cargo doors." In its rulemaking regarding the application of Standard 214 to LTVs, NHTSA has been using the term "double cargo doors" in referring to LTV rear side doors, whether usable for cargo or passengers or both. GM said, however, that the term "double cargo doors" suggests that such doors are used exclusively for cargo. The agency did not intend that its term be interpreted in that way. It has decided, therefore, to adopt GM's suggestion and substitute the term "double side doors" for the term "double cargo doors."

Windowless Doors

Finally, the NPRM addressed the issue of positioning the loading cylinder with respect to side doors having no windows. Standard 214 currently requires that the upper end of the loading cylinder be placed at least 13 mm (0.5 inches) above the bottom edge of the window opening. No positioning is specified for doors without windows. NHTSA therefore proposed that, in such cases, the upper end of the loading cylinder be positioned at the same height above the ground as the cylinder would be positioned when testing a front door with a window in the same vehicle.

GM, the only commenter to address this proposal, concurred with it. Therefore, this provision has been adopted as proposed.

Other Comments from Manufacturers

Volkswagen (VW) had no specific comments concerning the proposals in the NPRM, but suggested that NHTSA review the overall fatality and injury reduction benefits of the dynamic side impact test to determine whether the quasi-static door strength test is still meaningful or necessary. VW suggested that removal of the quasi-static test would reduce redundancy in testing and reduce the economic burden of such testing.

In issuing the final rule for dynamic side impact protection in passenger cars, NHTSA stated it was retaining the quasi-static door strength requirement for cars since the protection resulting from the application of that requirement to cars is effective in single vehicle crashes against fixed objects. The agency believes that retention of the requirement is still appropriate for cars. The dynamic requirement will supplement the quasi-static requirement by improving the protection of occupants from serious thoracic injuries in multi-vehicle collisions.

The Recreation Vehicle Industry Association (RVIA) generally supported NHTSA's proposals, but believed that NHTSA did not go far enough. RVIA asked NHTSA to exclude vehicles modified to accommodate persons with disabilities and other multi-stage vehicles for which the final stage manufacturer is not able to "pass through" the chassis manufacturer's certification for the side door strength requirements. RVIA stated that having to comply with the current requirements of Standard 214 would make manufacturers of recreational vehicles unable to continue producing the wide

variety of vehicle configurations demanded by consumers. RVIA said that if NHTSA does not agree to exclude those vehicles, RVIA requested a one year extension of the effective date.

In its comment on the NPRM of December 22, 1989, which proposed to extend the side strength requirements of Standard 214 to LTVs, RVIA requested that NHTSA exclude motor homes, vans, and van conversions from those requirements. RVIA argued that occupants of such vehicles sit above the most likely points of initial side impact and that those vehicles are larger and structurally stronger than passenger cars, thus providing more side impact protection than passenger cars. NHTSA disagreed that motor homes, vans, and van conversions should be excluded and therefore included them in the final rule of June 4, 1991. NHTSA pointed out that LTVs have side impacts with poles and trees, that those objects are normally taller than LTVs and its occupants' seating heights and that the weight of a vehicle does not have a strong effect on the risk of injury to vehicle occupants in side impact crashes. NHTSA further noted that the types of LTVs specified by NHTSA use the same roads at the same times as other LTVs, and are therefore subject to the same safety risks as those other LTVs. NHTSA stated that it was not aware of any special design characteristics of the vehicles specified by RVIA that would reduce such risks, nor did RVIA or any other commenter identify any particular characteristics of such vehicles that would make it more difficult for them to meet the side door strength requirements than for any other LTVs. Finally, NHTSA noted that the cost of installing side door beams in those vehicles would not exceed the cost of installing beams in any other LTVs. Thus, NHTSA perceived no basis for excluding such vehicles from the side door strength requirements.

NHTSA believes that same rationale applies as well to vehicles modified to accommodate persons with disabilities and multistage vehicles, whether or not the final stage manufacturer is able to pass through the certification of the chassis manufacturer. RVIA submitted nothing indicating that these vehicles have any lesser safety need than any other LTVs. Further, NHTSA is unaware of any data indicating that is the case. NHTSA is also not aware of any reason why most, if not all, final stage manufacturers would not be able to pass through the certifications of the chassis manufacturers.

With regard to an extension of the effective date of the provisions of this final rule, many of the doors on the vehicles of concern to RVIA are the same as those for which NHTSA granted a delay in the effective date in the July 13, 1992, final rule. Further, as in the case of motor homes, van conversions, vehicles modified to accommodate the disabled, etc., only those vehicles with seating reference points that are within 254 mm (10 inches) of the vehicle doors are subject to the side strength requirements of Standard 214. Finally, on those very few vehicles that are not covered by the effective date delay and that have seating reference points within 254 mm (10 inches) of the doors, manufacturers still have the benefit of the phase-in for at least ten percent of their vehicle production which was also granted in the July 13, 1992 final rule. Accordingly, vehicles modified to accommodate persons with disabilities and multi-stage vehicles are included in the requirements of this final rule and the final rule of June 14, 1991. NHTSA believes that the vehicles of concern to RVIA are covered either by exclusion from Standard 214 requirements or by extension of the effective date previously granted in the final rule of July 13, 1992.

Advocates for Highway and Auto Safety (AHAS) had no specific comments on the NPRM, but suggested that the current dynamic test for passenger cars using the moving deformable barrier will not suffice for evaluation of door strength in violent intrusions that occur in pole and tree impacts. They said that NHTSA should conduct a full scale crash test for testing protection from intrusions by narrow fixed objects.

The issue raised by AHAS is not only beyond the scope of this rulemaking proceeding, but does not relate to the subject of this proceeding, the quasi-static requirement. The issue relates instead to the dynamic test which applies to passenger cars only and is intended to address vehicle-to-vehicle crashes. NHTSA notes that the quasi-static requirements, which will continue to apply to cars, already provide a certain amount of protection from intrusions by narrow fixed objects. NHTSA notes further that the issue of new requirements to address pole/tree intrusions was addressed in previous rulemaking. See ANPRM of August 19, 1988, 53 FR 31712).

August 1992 Letter from Rover Group

As indicated above, in response to a petition from GM for reconsideration of the June 1991 final rule, NHTSA published a final rule in July 1992 delaying the effective date for the extension of the side door strength requirements to LTVs. The delay applied to a percentage of all LTVs and to certain types of unusually configured doors on all LTVs. Among the doors affected by the delay were contoured doors for which the ratio of the width of the lowest portion of the door to the width of the door at its widest point is not greater than 0.5.

On August 12, 1992, Rover Group submitted a letter stating that the current Range Rover vehicle has contoured rear doors that have a ratio slightly greater than 0.5, thus were not included among the doors for which the effective date was delayed by the July 1992 final rule. Rover Group indicated that it has redesigned those contoured doors to meet the current Standard No. 214 requirements which become effective September 1, 1993. That company expressed concern that the application of any significantly different test procedures to these doors as a result of the proposals in the January 1992 NPRM could render its new design and tooling obsolete. Rover Group stated that if this occurred, it could have significant cost impacts on the company. Rover Group believed that different procedures might be applied to its doors if the January 1992 NPRM resulted in a final rule basing the applicability of the new test procedures on a new criterion which, unlike the 0.5 ratio of the July 1992 final rule, included instead of excluded the Rover doors.

NHTSA notes that the use of the 0.5 ratio in the July 1992 final rule was not intended as a signal concerning the final action the agency would take on the January 1992 NPRM. The existing Standard No. 214 test procedure only created problems for contoured doors which have a significant degree of contour. In order to delay the effective date for those doors and not ones that have only a small degree of contour, it was necessary to define which doors were subject to the delay. The agency selected the 0.5 ratio to ensure that the effective date was delayed for contoured doors which have a significant degree of contour.

While today's final rule will apply a different test procedure to the Range Rover's rear doors effective September 1, 1994, that does not necessarily mean that Rover Group will need to redesign those doors. Those new procedures differ significantly from the ones on which the Rover Group based its July 1992 letter. Under the procedure adopted today, the cylinder will likely be positioned closer to where it is positioned under the "current" procedure (the one that applies to the Range Rover's rear doors effective September 1, 1993 and the one for

which those doors have been redesigned) than where it would have been positioned under the procedure proposed in the January 1992 NPRM. As discussed above, the agency believes that, with the cylinder positioned in the manner specified in this final rule, there should be very little, if any, necessity for manufacturers to relocate door beams in most LTVs. The agency believes further that it is likely that Rover Group will either not have to redesign the door at all or, at most, make only a minor design change.

Effective Date

In its initial comment on the January 1992 NPRM, Rover Group suggested an effective date of not earlier than September 1, 1995 for these amendments. However, they also suggested that it would be appropriate to delay changes of this magnitude until the dynamic test procedures become effective for cars (September 1, 1996). GM and Mercedes suggested an effective date of September 1, 1996 (the NPRM proposed an effective date of September 1, 1993). Honda suggested an effective date four years after the date of publication of the final rule. Fiat requested that NHTSA reconsider the effective date, although they made no specific recommendation. Those commenters believed that they could not meet the September 1, 1993 effective date because the necessary beam relocations, door redesigns, and retesting could not be accomplished by then.

In the NPRM, NHTSA proposed an effective date of September 1, 1993, for the amendments in this final rule to coincide with the effective date of the final rule of June 14, 1991, making the quasi-static side impact requirements applicable to LTVs (56 FR 27427). However, as noted above, NHTSA responded to a petition for reconsideration from GM by establishing a brief phase-in period for those requirements and extended by one year, i.e., until September 1, 1994, the effective date of the requirements applicable to double side doors, windowless doors, and certain contoured doors (57 FR 30917). To be consistent with the effective date of those other related requirements, NHTSA establishes an effective date of September 1, 1994, for the new procedures specified in this final rule. NHTSA believes that this date is realistic and practicable. Comments suggesting that the effective date would be impracticable were premised on the application of the new procedure to passenger cars as well as LTVs and on significant changes being required in LTV doors. As noted above, the changes made in this final rule have removed the bases for those suggestions.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act), 15 U.S.C. 1392(d), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance applicable only to vehicles procured for the state's own use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impacts of this final rule and has determined that it is not major within the meaning of E.O. 12291. NHTSA has further determined that this rulemaking is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. This rule does not impose any new performance requirements. Instead, it simply specifies the details for testing certain LTVs with unusual door configurations for compliance with Standard No. 214's quasi-static test requirements for side door strength. Those requirements were extended to LTVs in a previous rulemaking. The agency notes that the special procedures for these unusually configured doors will not be any more expensive than the testing of normally configured doors. NHTSA believes that, as explained earlier in this preamble, the procedures specified in this notice will affect only a few LTV models. Further, the agency also believes that relocation of door beams will be necessary in only some of those few models. Even then, the necessary relocations should be slight. The manufacturers of those models should be able to make those relocations easily and without affecting any other hardware in the doors. Consequently, the agency has determined that the impact would be so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this final rule on small entities. Based on this evaluation, I certify that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities.

As stated above, the amendments promulgated by this final rule provide additional details concerning the quasi-static side door test procedures of Standard No. 214 as applied to LTVs with doors of unusual configurations. The new test procedures are not expected to have any significant effect on compliance costs since they affect only a limited number of LTVs and do not apply to passenger cars. Further, the new procedures should not significantly affect the efforts of manufacturers to develop means of ensuring that LTVs comply with the quasi-static side impact requirements by September 1, 1994. Finally, the amendments should not affect the purchase price of LTVs and thus should not significantly affect small organizations and governmental units. Accordingly, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Public Law 96–511, the agency notes that there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will have no significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegations of authority at 49 CFR 1.50.

§ 571.214 Standard No. 214, Side impact protection.

2. S2.1 as added at 56 FR 27437, June 14, 1991 and revised at 57 FR 30921 July 13, 1992, effective Sept. 1, 1993, is further revised to read as follows:

S2.1 *Definitions.*

Contoured means, with respect to a door, that the lower portion of its front or rear edge is curved upward, typically to conform to a wheel well.

Double side doors means a pair of hinged doors with the lock and latch mechanisms located where the door lips overlap.

Walk-in van means a van in which a person can enter the occupant compartment in an upright position.

3. S4 is amended by revising paragraphs (b) and (c) to read as follows:

S4. *Test Procedures.*

* * * * *

(b) Prepare a loading device consisting of a rigid steel cylinder or semicylinder 305 mm (12 inches) in diameter with an edge radius of 13 mm (½ inch). The length of the loading device shall be such that—

(1) For doors with windows, the top surface of the loading device is at least 13 mm (½ inch) above the bottom edge of the door window opening but not of a length that will cause contact with any structure above the bottom edge of the door window opening during the test.

(2) For doors without windows, the top surface of the loading device is at the same height above the ground as when the loading device is positioned in accordance with paragraph (b)(1) of this section for purposes of testing a front door with windows on the same vehicle.

(c) Locate the loading device as shown in Figure 1 (side view) of this section so that—

(1) Its longitudinal axis is vertical.

(2) Except as provided in paragraphs (c)(2) (i) and (ii) of this section, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the outer surface of the door 127 mm (5 inches) above the lowest point of the door, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(i) For contoured doors on trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,545 kg (10,000 pounds) or less, if the length of the horizontal line specified in (c)(2) is not equal to or greater than 559 mm (22 inches), the line is moved vertically up the side of the door to the point at which the line is 559 mm (22 inches) long. The longitudinal axis of the loading device is then located laterally opposite the midpoint of that line.

(ii) For double side doors on trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,545 kg (10,000 pounds) or less, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the outer surface of the double door span, 127 mm (5 inches) above the lowest point on the doors, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(3) Except as provided in paragraphs (c)(3) (i) and (ii) of this section, its bottom surface is in the same horizontal plane as the horizontal line drawn across the outer surface of the door 127 mm (5 inches) above the lowest point of the door, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(i) For contoured doors on trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,545 kg (10,000 pounds) or less, its bottom surface is in the lowest horizontal plane such that every point on the lateral projection of the bottom surface of the device on the door is at least 127 mm (5 inches), horizontally and vertically, from any edge of the door panel, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

(ii) For double side doors, its bottom surface is in the same horizontal plane as a horizontal line drawn across the outer surface of the double door span, 127 mm (5 inches) above the lowest point of the doors, exclusive of any decorative or protective molding that is not permanently affixed to the door panel.

* * * * *

Issued on March 8, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–5682 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List the Virgin Spinedace as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for two petitions to add the Virgin spinedace (*Lepidomeda mollispinis mollispinis*) to the List of Endangered and Threatened Wildlife. The Service finds that the petitioners presented substantial information indicating that the requested action to list the fish as endangered may be warranted.

DATES: The finding announced in this notice was made on March 4, 1993. Comments and materials need to be submitted by June 14, 1993, to be considered in the 12-month finding.

ADDRESSES: Information, comments, or questions concerning the Virgin spinedace petition may be submitted to the State Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, State Supervisor, at the above address, telephone 801/975–3630.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service also is required to promptly commence a review of the status of the involved species.

The Service announces a 90-day finding on two petitions requesting the Service to list as endangered the Virgin spinedace (*Lepidomeda mollispinis mollispinis*) throughout its range and initiates a status review.

A petition dated June 15, 1992, was received by the Service on July 13, 1992, from Mr. Mark Holden, President, Bonneville Chapter of the American Fisheries Society, to list the Virgin spinedace (*Lepidomeda mollispinis mollispinis*) as an endangered species throughout its range. Additionally, the petitioners requested that critical habitat be designated. The petitioners submitted information on the biology, distribution, and threats of the fish. The

petitioner's determination of the need to list the Virgin spinedace was based largely on the report by Valdez *et al.* (1990).

A second petition dated August 17, 1992, was received on August 19, 1992, from the Southern Utah Wilderness Alliance. It also requested the Service to list the Virgin spinedace as endangered and to designate critical habitat. The basis for their petition was the report by Valdez et al. (1990). No new biological information was presented.

The historical range of the Virgin spinedace extended from the East Fork of the Virgin River to at least Bunkerville, Nevada (Cross 1975). However, most of the historical habitat occurs within Utah. The species' distribution in Utah has declined by 40 percent from 233 kilometers (145 miles) to 140 kilometers (87 miles). The only population that still occurs outside of Utah is a small population in the Virgin River near Littlefield, Arizona (Valdez et al. 1990, 1992). In recent surveys of the Arizona portion of the Virgin River, only one Virgin spinedace was collected from the mainstem Virgin River (Michael Herder, Bureau of Land Management, pers. comm., 1992).

During the same survey, no Virgin spinedace were collected in Nevada (Donn Siebert, Bureau of Land Management, pers. comm., 1992).

The major factors that have contributed to the decline of the Virgin spinedace include flow depletion/dewatering, water diversion, habitat fragmentation, increased sedimentation, degraded water quality, and invasion by nonnative species.

After reviewing the petitions, reviewing references cited therein, and making personal contact with Bureau of Land Management personnel concerning results of ongoing surveys, the Service finds that the petitions to list the Virgin spinedace present substantial information indicating the requested action may be warranted. Within 1 year from the date the petitions were received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

In regard to the petitioners' request that critical habitat be designated, the designation of critical habitat is not a petitionable action under the Act. However, if the 12-month finding determines that the petitioned action to list the Virgin spinedace is warranted, then the designation of critical habitat would have to be addressed in the subsequent proposed rule to list the species.

References Cited

Cross, J.N. 1975. Ecological distribution of the fishes of the Virgin River (Utah, Arizona, Nevada). M.S. thesis, Univ. Nevada, Las Vegas. 114 pp.

Valdez, R.A., W.J. Masslich, R. Radant, and D. Knight. 1990. Status of the Virgin spinedace (*Lepidomeda mollispinis mollispinis*) in the Virgin River drainage, Utah. Project report prepared for the Utah Division of Wildlife Resources, Salt Lake City, Utah. Contract No. 90-0633, Amendment No. 1. BIO/WEST Report No. PR-197-1. 43 pp.

Valdez, R.A., W.J. Masslich, and R. Radant. 1992. Status of the Virgin spinedace (*Lepidomeda mollispinis mollispinis*) in the Virgin River drainage, Utah. Proceedings of the Desert Fishes Council, 23:14 (Abstract only).

Author

The primary author of this proposed rule is Robert D. Williams (see ADDRESSES above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

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

Dated: March 4, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-5964 Filed 3-15-93; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 611 and 685

[Docket No. 920942-3013]

RIN 0648-AF12

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule recommended by the Western Pacific Fishery Management Council (Council) to revise requirements for making and identification of gear used by operators of domestic and foreign pelagic longline fishing vessels operating under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The change requires operators of permitted longline vessels to mark all longline floats and buoys, whether deployed in the exclusive economic zone (EEZ) or possessed on board the vessel. The regulations previously required operators of permitted longline fishing vessels to mark floats and buoys only when attached to deployed longline gear; this limited the effectiveness of the regulations. The final rule also allows for the confiscation of unmarked longline gear that is found deployed in the EEZ. This will reduce the likelihood of abandoned gear impacting other fisheries or protected species.

EFFECTIVE DATE: April 15, 1993.

ADDRESSES: Copies of the documentation recommending this action by the Council and of the previous Environmental Assessments/Regulatory Impact Reviews for Amendments 2 and 3 to the FMP establishing the original longline permit and gear making requirements may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, at (310) 980-4034; or Alvin Z. Katekaru, NMFS, at (808) 955-8831.

SUPPLEMENTARY INFORMATION: Abandoned longline gear poses a threat to endangered and threatened species (primarily marine mammals and turtles), and increases the possibility of gear conflicts with other fisheries. The FMP prohibits longline fishermen from fishing in closed areas around the main Hawaiian Islands, the Northwestern Hawaiian Islands (NWHI), and Guam and its offshore banks. Operators of domestic longliners are presently required to mark each of their longline buoys and floats with the vessel's official number when the gear is deployed in the EEZ. Previous foreign fishing regulations require the marking of the terminal ends of deployed longline gear with the permitted vessel's international radio call sign; non-deployed and non-terminal deployed buoys and floats are not required to be marked. Concerned about the effective enforcement of closed areas under the regulations, representatives of enforcement agencies recommended that: (1) All buoys and floats on board a permitted longline vessel be marked, not only those deployed, thereby discouraging the use of unmarked gear; and (2) the official number be marked in a color that contrasts with the background material, making visual identification easier. The Council agreed with this recommendation and

requested that it be implemented through the rulemaking procedures of the FMP. This final rule implements those recommendations.

The Council recommended additional language in the rule to authorize the Secretary of Commerce (Secretary) or an authorized officer to dispose of any unmarked gear found deployed in the EEZ in violation of the FMP. This provision already exists for foreign gear that is unmarked or incorrectly identified, and is extended to domestic longline gear. The final regulations state that longline gear not marked in compliance with these regulations and found in the EEZ would be considered unclaimed or abandoned property and may be disposed of in the appropriate manner.

It is noted that operators of foreign longline fishing vessels that do not have permit authorization to engage in fishing in the EEZ must have all its fishing gear stowed while in transit through the EEZ under appendix L to subpart A of 50 CFR part 611.

The proposed rule was published in the **Federal Register** at 57 FR 47040 (October 14, 1992). No comments were received on the proposed rule. Only one change was made in the final rule. In 50 CFR part 685.12(a), the word "permitted" was inserted between "each" and "vessel" to make clear that the rule applies to operators of vessels which have longline fishing permits issued under this part. The rule is not intended to apply to all vessels that may have longline gear on board, e.g., cargo vessels or vessels merely in transit through the EEZ without longline-caught fish on board the vessel. It is also noted that 50 CFR part 611 has been amended under a separate action that was published in the **Federal Register** at 57 FR 48564 (October 27, 1992) since publication of the proposed rule. The heading for 50 CFR 611.81 appears in this final rule as revised by that action.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and effective management of the pelagic resources of the western Pacific region and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator has determined that the rule is categorically excluded from the requirements to prepared an environmental impact statement (EIS) or environmental assessment (EA) under 6.02c.3(f) of NOAA Administrative Order 216–6. EAs have been prepared for subsequent amendments to the FMP, including the amendment establishing permits, logbooks, gear marking, and other requirements for longline vessels. Since this action makes minor changes in regulations that already exist, there is no need for an EIS or an EA.

Biological Opinions and results of informal consultations under the Endangered Species Act pertaining to the pelagic longline fishery have concluded that, with the conservation and management measures in effect under the FMP, the fishery is not likely to jeopardize the continued existence of listed species or result in the adverse modification of critical habitat. This final rule may actually have a positive impact since there should be greater compliance with the area closures in the NWHI as well as a reduction in abandoned gear. Therefore, I have determined that additional consultations are not required for this action.

The Assistant Administrator determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

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

The Regional Director of the Southwest Region, NMFS, determined that this action will not affect the coastal zone of any state with an approved coastal zone management program. This determination was sent to the state agencies with coastal zone management responsibilities in Hawaii, Guam, American Samoa, and the Northern Mariana Islands. None of the agencies commented on the determination within the statutory time period.

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

The final rule may have a positive effect on the conservation of marine mammals in the NWHI to the extent that there is greater compliance with area closures in the NWHI as well as a reduction in abandoned gear.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, National Mariana Islands.

Dated: March 9, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR parts 611 and 685 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.81, paragraph (d) is revised to read as follows:

§ 611.81 Pacific pelagic species fishery.

* * * * *

(d) *Vessel and gear identification.* (1) The operator of each FFV must comply with the vessel and gear identification requirements of § 611.5.

(2) Longline gear identification. In addition to the gear marking requirements contained in § 611.5(c),

(i) The operator of each FFV must ensure that the vessel's international radio call sign be affixed to each of the vessel's longline buoys and floats, whether attached to a deployed longline or possessed on board the vessel; and

(ii) Markings must be legible and permanent, and must be of a color that contrasts with the background material.

* * * * *

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

3. The authority citation for part 685 continues to read as follows:

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

4. Section 685.12 is revised to read as follows:

§ 685.12 Longline gear identification.

(a) *Identification.* The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings must be legible and permanent, and must be of a color that contrasts with the background material.

(b) *Enforcement action.* Longline gear not marked in compliance with paragraph (a) of this section and found

deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer.

[FR Doc. 93-5908 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911215-2328]

RIN 0648-AD50

Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Correction

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

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule by correcting an erroneous citation and by correcting regulatory text to clarify that fishing for Community Development Quota (CDQ) pollock by vessels that would otherwise be considered part of the offshore component will be allowed in the Catcher Vessel Operational Area (CVOA) when directed fishing for pollock by the offshore component is prohibited.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: David Ham, Fishery Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary of Commerce (Secretary) in accordance with the BSAI Fishery Management Plan (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR 611.93 and for the U.S. fishery at 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Regulations implementing Amendment 18 to the BSAI FMP (57 FR 23321, June 3, 1992) established the CVOA during the pollock nonroe (or "B") season in the BSAI from June 1 through December 31, 1992. The purpose of establishing the CVOA was to reduce the preemption of the inshore catcher vessel fleet in the CVOA by the catcher/processor fleet.

On November 23, 1992 (57 FR 54936), NMFS published final regulations implementing the pollock CDQ program for 1992 through 1995. Public comment 2 on page 54938 of the final rule proposed that the CDQ regulations allow the harvesting of CDQ pollock within the CVOA. NMFS concurred with this comment because it would not interfere with the purpose of the CVOA, and would enhance the benefits of the CDQ program. Accordingly, the regulations at § 675.22(g), promulgated under Amendment 18, were revised in the CDQ final regulations to allow fishing for CDQ pollock in the CVOA by vessels that would otherwise be considered part of the offshore component at times when directed fishing by the offshore component is prohibited. This provision was applicable only until December 31, 1992, because Amendment 18 established the CVOA through December 31, 1992.

Regulations implementing revised Amendment 18 (57 FR 61326, December 24, 1992) continued the "B" season CVOA provision through December 31, 1995, for preemption purposes. However, due to a drafting oversight, the provision to allow CDQ fishing in the CVOA was not included. Therefore, this document corrects § 675.22(g) to allow CDQ fishing in the CVOA, as intended, when directed fishing for pollock by the offshore component is prohibited.

The final rule implementing revised Amendment 18 also contained an error in a citation in the § 675.22(g) introductory text. The existing language states that the second seasonal allowance of pollock is defined in paragraph (a)(2)(ii) of § 675.22. However, this definition is not contained in § 675.22(a)(2)(ii), but in § 675.20(a)(2)(ii). This error is corrected in this document. For clarity, § 675.22(g) is set out in its entirety.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

In rule document 92-31210 beginning on page 61326 in the issue of Thursday, December 24, 1992, make the following correction:

1. The authority citation for 50 CFR part 675 continues to read as follows:

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

2. On page 61341, in the third column, under amendatory instruction 9, paragraph (g) of § 675.22 is corrected to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1995).* Processor vessels in the "offshore component", defined at § 675.2 of this part, may not catch pollock in excess of the directed fishing standard for pollock during the second seasonal allowance of pollock, defined in § 675.20(a)(2)(ii) of this part, in the Bering Sea subarea south of 56°00′ N. latitude, and between 163°00′ and 168°00′ W. longitude.

(1) Processor vessels in the "offshore component" that do not catch groundfish but process pollock that is caught in a directed fishery for pollock by catcher vessels, may operate within this area to process the second seasonal allowance of pollock.

(2) Offshore processor vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within this area.

(3) Offshore processor vessels that catch or process pollock may conduct directed fishing for pollock in this area if such directed fishing is performed pursuant to a CDP approved by the Secretary, and if such directed fishing is otherwise prohibited to these vessels in the Bering Sea subarea.

Dated: March 10, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 93-5943 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 921185-3021]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS announces that amounts of the reserve are apportioned to the fishery for pollock in the Aleutian Islands subarea (AI), and to the fisheries for Pacific cod and Atka mackerel in the Bering Sea and Aleutian Island management area (BSAI). This action is necessary to allow harvest of the total allowable catch (TAC) of the above species.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), March 11, 1993, through 12 midnight, A.l.t., December 31, 1993. Comments must be received by March 31, 1993.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal

Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director of the Alaska Region, NMFS, has determined that the initial TACs specified for pollock in the AI, and Pacific cod and Atka mackerel in the BSAI, need to be supplemented from the non-specific reserve in order to continue operations. Therefore, in accordance with § 675.20(b), NMFS apportions: 3,870 metric tons (mt) from the reserve to the pollock TAC in the AI, resulting in a revised AI pollock TAC of 47,730 mt; 24,675 mt from the reserve to the Pacific cod TAC in the BSAI, resulting in a revised BSAI Pacific cod TAC of 164,500 mt; and 4,800 mt from the reserve to the Atka mackerel TAC in the BSAI, resulting in a revised Atka mackerel TAC of 32,000 mt. The revised apportionments of pollock to the inshore and offshore components in the AI are 16,706 mt to the inshore component and 31,024 mt to the offshore component pursuant to § 675.20(a)(2)(iii).

These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category, as the revised TACs are equal to or less than specifications of acceptable biological catch.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment as well as delaying the effective date of this action is impracticable and contrary to the public interest. NMFS expects to reach the TAC for pollock in the AI, and Pacific cod and Atka mackerel in the BSAI, within the next 30 days. Without this apportionment, U.S. groundfish fishermen would have to discard bycatches of groundfish resulting in needless economic waste of valuable fishery resources. Under § 675.20(b)(2), interested persons are invited to submit written comments on this apportionment to the above address until March 31, 1993.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 11, 1993.

David S. Crestin,

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

[FR Doc. 93–5941 Filed 3–11–93; 1:46 pm]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 921185–3021]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Atka mackerel total allowable catch (TAC) in the BSAI.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t), March 11, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2) the Atka mackerel initial TAC for the BSAI was established by the final notice of groundfish specifications (58 FR 8703, February 17, 1993) as 27,200 metric tons (mt) and later increased by apportionment from the non-specific reserve to 32,000 mt.

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC in the BSAI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 31,000 mt, with consideration that 1,000 mt will be taken as incidental catch in directed fishing for other species in the BSAI. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the BSAI, effective from 12 noon, A.l.t., March 11, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 11, 1993.

David S. Crestin,

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

[FR Doc. 93–5942 Filed 3–11–93; 1:47 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 49
Tuesday, March 16, 1993

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Beans

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the United States Standards for Beans are currently under review. The Federal Grain Inspection Service (FGIS) believes these standards are meeting the needs of producers, warehouse managers, shippers, and all others who handle or market beans. No changes to these standards are planned at this time. Public comments are being requested before a final decision is made.

DATES: Comments must be received by May 17, 1993.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, Room 0632 South Building, P.O. Box 96454, Washington, DC 20090-6454; FAX (202) 720-4628.

All comments received will be made available for public inspection in room 0632 USDA South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION: The review of the United States Standards for Beans, found at 7 CFR 68.101 through 68.142, is being conducted according to the requirements of Executive Order 12291.

On January 22, 1992, FGIS published in the **Federal Register** (57 FR 2482) a request for public comment on the review of the United States Standards for Beans. Interested parties were invited to submit written comments and/or recommendations concerning official standards and whether to establish criteria for thresher-run beans. During the 90-day comment period, four comments were received from National and State bean marketing and inspection associations. Three commenters did not support establishing criteria for inspecting thresher-run beans or changing the standards. The fourth commenter did not address the subject of the notice. No changes to these standards are planned. Comments including data, views, and arguments concerning this review are solicited from interested persons.

Authority: Secs. 202-208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: February 25, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93-5791 Filed 3-15-93; 8:45 am]

BILLING CODE 3410-EN-M

[1]The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92-196-1]

Change in Disease Status of France Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare France free of rinderpest and foot-and-mouth disease (FMD). There have been no outbreaks of FMD in France since 1981, and we have determined that rinderpest has not existed there since 1870. We are also proposing to add France to a list of countries that, although declared free of rinderpest and FMD, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed revision would remove the prohibition on the importation into the United States, from France, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from France, of milk and milk products from ruminants.

France is not declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the importation from France of swine and fresh, chilled, and frozen meat from swine would continue to be restricted because of these diseases. Similarly, certain restrictions on the importation, from France, of ruminant meat and edible products from ruminants would remain in effect because bovine spongiform encephalopathy exists in France. We are also proposing to add France to the list of countries from which the importation into the United States of llamas and alpacas is restricted.

DATES: Consideration will be given only to comments received on or before April 15, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-196-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202-690-2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy (BSE), African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of both diseases. We are proposing to add France to that list.

We will consider declaring a country to be free of rinderpest and FMD if there have been no reported cases of the diseases in that country for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period. In the case of France, rinderpest has not existed since 1870, there have been no outbreaks of FMD since 1981, and vaccinations for FMD were discounted in 1990.

France has applied to the U.S. Department of Agriculture (USDA) to be recognized as free of rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the government of France in support of its request. In addition, a team of APHIS officials recently conducted an on-site evaluation of the animal health program in France in regard to the FMD situation in that country. The evaluation consisted of a review of the capability of France's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction of FMD into France through the importation of animals, meat, and animal products. The APHIS officials conducting the on-site evaluation concluded that France is free of FMD. Details concerning the on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the information discussed above, we believe that France qualifies for listing in § 94.1(a)(2) of the regulations as a country declared free of rinderpest and FMD. This action would remove the prohibition on the importation, from France, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from France, of milk and milk products from ruminants. Importations, from France, of swine and fresh, chilled, or frozen meat from swine would continue to be restricted under 9 CFR part 94 because France has not been declared free of hog cholera and SVD. Similarly, the importation, from France, of ruminant meat and edible products from ruminants would continue to be restricted under § 94.18 because BSE exists in France.

Special Restrictions

We also propose to add France to the list in § 94.11(a) of countries declared to be free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they:

(1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designed in § 94.1(a) as infected with rinderpest or FMD;

(2) Have a common land border with countries designated as infected with rinderpest or FMD; or

(3) Import ruminants or swine from countries designated as infected with rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

France supplements its national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. In addition, France has common land borders with Belgium, Germany, Italy, and Switzerland, which are designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. Further, France imports live ruminants and swine from countries not recognized as free of FMD under conditions less restrictive than would be acceptable for importation into the United States. As a result, even though France appears to qualify for designation as a country free of rinderpest and FMD, the meat and other animal products produced in France may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from France be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of title 9, chapter III. The special restrictions placed on meat and meat products of ruminants and swine in § 94.11 generally require that the meat be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) Accompanied by an additional certificate, issued by an animal health official of the national government of the country declared free of the disease, assuring that the meat and meat products have not been commingled with or exposed to meat or other meat products originating in, imported from, or transported through a country infected with rinderpest or FMD, and are otherwise handled in accordance with the requirements of § 94.11.

We also propose to add France to the list in § 94.1(d)(1) of countries in which rinderpest or FMD had been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990. All countries in which rinderpest or FMD has been known to exist that have been declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. Adding France to this list would restrict the importation of llamas and alpacas from France into the United States, unless in accordance with 9 CFR 92.435.

Miscellaneous

In addition to the proposed changes set forth above, we would also revise § 94.1(a)(2) so that the countries listed in that paragraph are set forth in alphabetical order. This proposed change would make the list easier to read and remove the potential for confusion. In addition, this proposed change would make the list consistent with similar lists in part 94, which are currently set forth in alphabetical order As part of this proposed revision, we would list the country of Trinidad and Tobago, which is incorrectly listed as two separate entities in the current regulations, as a single country. Similarly, The Bahamas is currently listed incorrectly as "Bahama Islands" in §§ 94.1, 94.11, 94.12, and 94.13, so we would correct the error in each of those sections.

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 proposed rule, if adopted, 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.

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

This proposed rule, if adopted, would add France to the list in part 94 of countries declared to be free of rinderpest and FMD. This action would remove the prohibition on the importation into the United States, from France, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from France, of milk and milk products from ruminants. This action would not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine from France because France is still considered to be affected with hog cholera and SVD. Similarly, this action would not relieve certain restrictions on the importation, from France, of ruminant meat and edible products from ruminants because BSE exists in France.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from France into the United States as a result of this proposed rule.

The value of total U.S. imports of cattle in 1991 was $951.6 million, and the value of total U.S. imports of sheep in 1991 was about $1.6 million. The United States did not import any cattle or sheep from France during 1991. In fact, no cattle or sheep were imported into the United States from any country in Western Europe during 1991 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Clearly, Western Europe is not a source of ruminants for the United States, and it is unlikely that declaring France free of rinderpest and FMD would have any effect on the existing trade patterns.

In 1991, only 0.0002 percent of all beef and veal imported into the United States was imported from France (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Overall, France is a net importer of fresh, chilled, and frozen meat and meat extracts (Food and Agriculture Organization, "Trade Yearbook," 1990). Given France's general excess demand for meat products and the small percentage of its meat exports that we anticipate would be sent to the United States, it is unlikely that declaring France free of rinderpest and FMD would significantly change existing patterns of trade. Therefore, any effect on domestic meat prices or supplies would be insignificant.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from France into the United States as a result of this proposed rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer has applied for and obtained written permission from the Administrator. The eight APHIS-approved producers of casein in France provided approximately 7 percent of the casein imported into the United States from France in 1991 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Declaring France free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from France because the current restrictions do not substantially impede imports.

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.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted and approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

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

Accordingly, we propose to amend 9 CFR part 94 as follows:

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

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

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

2. § 94.1, paragraph (a)(2) would be revised to read as follows:

§ 94.1 Countries where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) * * *

(2) The following countries are declared to be free of both rinderpest and foot-and-mouth disease: Australia, The Bahamas, Barbados, Bermuda, British Honduras (Belize), Canada, Channel Islands, Chile, Costa Rica, Denmark, Dominican Republic, El Salvador, Fiji, Finland, France, Great Britain (England, Scotland, Wales, and Isle of Man), Greenland, Guatemala, Haiti, Honduras, Iceland, Ireland, Jamaica, Japan, Mexico, New Zealand, Nicaragua, Northern Ireland, Norway, Panama, Panama Canal Zone, Papua New Guinea, Poland, Territory of St. Pierre and Miquelon, Sweden, Trinidad and Tobago, and Trust Territory of the Pacific Islands.

* * * * *

§ 94.1 [Amended]

3. In § 94.1, paragraph (d)(1) would be amended by adding "and France" immediately after "Chile".

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence would be amended by removing "Bahama Islands," and adding, in its place, "The Bahamas," and by adding "France," immediately after "Finland,".

§ 94.12 [Amended]

5. In § 94.12, paragraph (a), the first sentence would be amended by removing "Bahama Islands," and adding, in its place, "The Bahamas,".

§ 94.13 [Amended]

6. In § 94.13, the introductory text, the first sentence would be amended by removing "Bahama Islands," and adding, it its place, "The Bahamas,".

Done in Washington, DC, this 10th day of March 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-5986 Filed 3-15-93; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 92-030P]

Fee Increase for Inspection Services

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 and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fee increase would reflect the increased costs of providing these services due primarily to the increase in salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

DATES: Comments must be received on or before March 31, 1993.

ADDRESSES: Send written comments to the Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. Oral comments as provided under the Poultry Products Inspection Act should be directed to Mr. William L. West, (202) 720-3367. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700, (202) 720-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases reflect a small increase in costs to establishments that elect to utilize certain inspection services.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted. Under the Federal Meat and Poultry Products Inspection Acts, the administrative procedures are set forth in 7 CFR part 1.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action 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). The fees provided for in this document reflect only a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. West so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and 1:30 to 4 p.m., Monday through Friday.

Background

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products; and the ordinary costs of it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs which are not a part of the mandatory inspection service are recoverable by the Government.

Section 307.5 (9 CFR 307.5) of the meat inspection regulations provides that FSIS shall be reimbursed for the cost of meat inspection on holidays or on an overtime basis at the rate specified in § 391.3, currently $29.72 per inspector hour. Similarly, § 381.38 (9 CFR 381.38) of the poultry products inspection regulations provides that FSIS shall be reimbursed for the cost of poultry inspection on holidays or on an overtime basis at the rate specified in § 391.3, currently $29.72 per inspector hour. The fee set forth in § 391.3 would be increased to $30.72 per inspector hour.

FSIS also provides a range of voluntary inspection services (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5); the costs of which are totally recoverable by the Government.

These services, provided under Subchapter B—Voluntary Inspection and Certification Service—are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The basic hourly rate for providing such certification and inspection service is currently $29.00 per inspector hour as specified in § 391.2. The overtime and holiday hourly rate is currently $29.72 as specified in § 391.3. The rate for laboratory services is currently $49.80 per hour as specified in § 391.4. The hourly rates for these services would be increased to $29.84, $30.72, and $51.80, respectively.

Each year the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by FSIS are reviewed; and a cost analysis, is performed to

determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services, by anticipated costs associated with changes in operations of the program, by increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990, and by other increases affecting Federal employees, such as costs for benefits.

Based on the Agency's analysis of the increased costs in providing these services, FSIS proposes to increase the fees relating to such services. These increased costs are a result of the pay raise of 3.7 percent for Federal employees effective January 1993, the increasing number of employees covered by the Federal Employees Retirement System in 1993 which is subject to the Federal Insurance Contributions Act (FICA) tax, and the increased health insurance costs

List of Subjects in 9 CFR Part 391

Fees and charges, Meat inspection, Poultry products inspection.

For the reasons set out in the preamble, 9 CFR part 391 is proposed to be amended as set forth below.

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

1. The authority citation for part 391 would continue to read as follows:

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17 (g) and (i), 2.55; 7 U.S.C. 394, 1622, and 1624.

2. Sections 391.2, 391.3, and 391.4 would be revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $29.84 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $30.72 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $51.80 per hour, per program employee.

Done at Washington, DC, on: March 10, 1993.

Kenneth C. Clayton,

Acting Assistant Secretary Marketing and Inspection Services.

[FR Doc. 93-5914 Filed 3-15-93; 8:45 am]

BILLING CODE 3410-DM-M

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested free of charge from the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-Licensed Facilities; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is preparing to initiate an enhanced participatory rulemaking on establishing the radiological criteria for the decommissioning of NRC-licensed facilities. The Commission intends to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff develops the draft proposed rule. The Commission plans to conduct a series of workshops to solicit commentary from affected interests on the fundamental approaches and issues that must be addressed in establishing the radiological criteria for decommissioning. The fourth workshop will be held in Dallas, Texas on March 23 and 24, 1993 and will be open to the public.

DATES: March 23, 1993 from 9 a.m. to 5:45 p.m.; March 24, 1993, from 8:30 a.m. to 4 p.m. In addition, the staff of the Nuclear Regulatory Commission and the Environmental Protection Agency will be available the evening before the workshop, Monday, March 22, 1993, from 7 p.m. to 9 p.m. to provide information on the intent and format of the workshop and to receive comments from members of the public who may not be able to attend the workshop. The workshop agenda also provides for scheduled opportunities throughout the workshop for the public to comment on the rulemaking issues and the workshop discussions. The scheduled public comment periods include: 12:15 p.m.–12:45 p.m.; 3:15 p.m.–3:30 p.m.; and 5:15 p.m.–5:45 p.m. on Tuesday, March 23; and 10 a.m.–10:15 a.m.; 12 p.m.–12:30 p.m.; and 2:45 p.m.–3:15 p.m. on Wednesday, March 24. All sessions will be held at the Doubletree Hotel at Campbell Center, 8250 North Central Expressway, Dallas, Texas, 214–691–8700.

As discussed later in this notice, the workshop discussions will focus on the issues and approaches identified in a Rulemaking Issues Paper prepared by the NRC staff. The Commission will accept written comments on the Rulemaking Issues Paper from the public, as well as from workshop participants. Written comments should be submitted by May 28, 1993.

ADDRESSES: Send written comments on the Rulemaking Issues Paper to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. The Rulemaking Issues Paper is available from Francis X. Cameron (See **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison and Waste Management, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone: 301–504–1642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to ensure the safe and timely decommissioning of nuclear facilities which it licenses and to provide guidance to licensees on how to plan for and prepare their sites for decommissioning. Once licensed activities have ceased, licensees are required to decommission their facilities so that their licenses may be terminated. This requires that the radioactivity in land, groundwater, buildings, and equipment resulting from the licensed operation be reduced to levels that allow the property to be released for unrestricted use. Licensees must then demonstrate that all facilities have been properly decontaminated and that radioactive material has been transferred to authorized recipients.

Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

The types of nuclear fuel cycle facilities that will require decommissioning include nuclear power plants; non-power (research and test) reactors; fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. In addition there are currently about 24,000 materials licensees. About one-third of these are NRC licensees, while the remainder are licensed by Agreement States acting under the authority of the Atomic Energy Act, section 274. These licensees include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. About 50% of NRC's 7,500 materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities should be relatively simple because there is usually little or no residual radioactive contamination. Of the remaining 50%, a small number (e.g. radioactive source manufacturers, radiopharmaceutical producers, and radioactive ore processors) conduct operations that could produce substantial radioactive contamination in portions of the facility. These facilities, like the fuel cycle facilities identified above, must be decontaminated before they can be safely released for unrestricted use.

Several hundred NRC and Agreement State licenses are terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination. However, as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities that have been operating for a number of years will reach the end of their useful lives and be decommissioned. Therefore, both the number and complexity of facilities that will require decommissioning is expected to increase.

The Commission believes that there is a need to incorporate into its regulations radiological criteria for termination of licenses and release of land and structures for unrestricted use. The intent of this action would be to provide a clear and consistent regulatory basis for determining the extent to which lands and structures must be decontaminated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations would result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. A rulemaking effort would also provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

The new criteria would apply to the decommissioning of power reactors, non-power reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and materials licenses. The criteria would apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. The proposed criteria would not apply to uranium (other than source material) mines and mill tailings, high-level waste repositories, or low-level waste disposal facilities.

Until the new criteria are in place, the Commission intends to proceed with the decommissioning of nuclear facilities on a site-specific basis as the need arises considering existing criteria. Case and activity-specific risk decisions will continue to be made as necessary during the tendency of this process.

The Enhanced Participatory Rulemaking

The Commission believes it is desirable to provide for early and comprehensive input from affected interests on important public health and safety issues, such as the development of radiological criteria for decommissioning. Accordingly, the Commission is initiating an enhanced participatory rulemaking to establish these criteria. The objective of the rulemaking is to enhance the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the NRC staff develops the draft proposed rule. The NRC staff will consider this commentary in the development of the draft proposed rule, as well as document how these comments were considered in arriving at a regulatory approach. The Commission believes that this will be an effective method for illuminating the decision making process on complex and controversial public health and safety issues. This approach will ensure that the important issues have been identified; will assist in identifying potential information gaps or implementation problems; and will facilitate the development of potential solutions to address the concerns that affected interests may have in regard to the rulemaking.

The early involvement of affected interests in the development of the draft proposed rule will be accomplished through a series of workshops. A workshop format was selected because it will provide representatives of the affected interests with an opportunity to discuss the rulemaking issues with one another and to question one another about their respective positions and concerns. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement and disagreement, it is not the intent of the workshop process to attempt to develop a consensus agreement on the rulemaking issues. In addition to the commentary from the workshop participants, the workshops will be open to the public and the public will be provided with the opportunity to comment on the rulemaking issues and the workshop discussions at discrete intervals during the workshops.

The workshops were initially announced in the **Federal Register** on December 11, 1992 (57 FR 58727). The complete schedule for the workshops is:

January 27 and 28, 1993—Chicago, Illinois
February 23 and 24, 1993—San Francisco, California
March 12 and 13, 1993—Boston, Massachusetts
March 23 and 24, 1993—Dallas, Texas
April 13 and 14, 1993—Philadelphia, Pennsylvania
April 29 and 30, 1993—Atlanta, Georgia
May 6 and 7, 1993—Washington, DC

The normal process for conducting Commission rulemakings is NRC staff development of a draft proposed rule for Commission review and approval, publication of the proposed rule for public comment, consideration of the comments by the NRC staff, and preparation of a draft final rule for Commission approval. In the enhanced participatory rulemaking, not only will comments be solicited before the NRC staff prepares a draft proposed rule, but the mechanism for soliciting these early comments will also provide an opportunity for the affected interests and the NRC staff to discuss the issues with each other, rather than relying on the traditional one-to-one written correspondence with the NRC staff. After Commission review and approval of the draft proposed rule that is developed using the workshop commentary, the general process of

issuing the proposed rule for public comment, NRC staff evaluation of comments, and preparation of a draft final rule for Commission approval, will occur.

Participants

In order to have a manageable discussion among the workshop participants, the number of participants in each workshop must be limited. Based on discussions with experts on workshop facilitation, the NRC staff believes that the optimum size of the workshop group is fifteen to twenty participants. Due to differing levels of interest in each region, the actual number of participants in any one workshop, as well as the number of participants that represent a particular interest in any one workshop, may vary. Invitations to attend the workshops will be extended by the NRC staff using several selection criteria. First, to ensure that the Commission has the benefit of the spectrum of viewpoints on the issues, the NRC staff is attempting to achieve the participation of the full range of interests that may be affected by the rulemaking. The NRC staff has identified several general interests that will be used to select specific workshop participants—state governments, local governments, tribal governments, Federal agencies, citizens groups, nuclear utilities, fuel cycle facilities, and non-fuel cycle facilities. In addition to these interests, the staff also plans to invite representatives from the contracting industry that performs decommissioning work and representatives from professional societies, such as the Health Physics Society and the American Nuclear Society. The NRC anticipates that most of the participants will be representatives of organizations. However, it is also possible that there may be a few participants who, because of their expertise and influence, will participate without any organizational affiliation.

The second selection criterion is the ability of the participant to knowledgeably discuss the full range of rulemaking issues. The NRC staff wishes to ensure that the workshops will elicit informed discussions of options and approaches, and the rationale for those options and approaches, rather than simple statements of opinion. The NRC staff's identification of potential participants has been based on an evaluation of such factors as the extent of a potential participant's experience with a broad range of radiation protection issues and types of nuclear facilities, specific experience with the decommissioning issue, and the extent of a potential participant's substantive comment and participation on previous Commission regulatory or licensing actions.

The third criterion emphasizes participation from organizations within the region encompassed by the workshop. As much as practicable, those organizations that primarily operate within the region, as opposed to regional units of national organizations, will have priority in terms of participating in the corresponding regional workshops. Organizations with a national standing will be part of the "national" workshop to be held in Washington, DC.

Workshop Format

To assure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused on the Rulemaking Issues Paper discussed below. However, the workshop format will be sufficiently flexible to allow for the introduction of any additional issues that the participants may want to raise. At each workshop, the NRC staff will begin each discussion period with a brief overview of the rulemaking issues to be discussed and the remainder of the workshop will be devoted to a discussion of the issues by the participants. The workshop commentary will be transcribed and made available to participants and to the public.

Personnel from the Keystone Center, a nonprofit organization located in Keystone, Colorado, will serve as neutral facilitators for each workshop. The facilitators will chair the workshop sessions and ensure that participants are given an opportunity to express their viewpoints, assist participants in articulating their interests, ensure that participants are given the opportunity to question each other about their respective viewpoints, and assist in keeping the discussion moving at a pace that will allow all major issue areas to be addressed.

Rulemaking Issues Paper

The NRC staff has prepared a Rulemaking Issues Paper to be used as a focal point for the workshop discussions. This paper, which will be distributed to participants in advance of the workshops, sets forth in neutral terms the issues that must be addressed in the rulemaking, as well as background information on the nature and extent of the problem to be addressed. In framing the issues and approaches discussed in the Rulemaking Issues Paper, the NRC staff has attempted to anticipate the variety of views that exist on these approaches and issues. The paper will provide assistance to the participants, as they prepare for the workshops, suggest the workshop agenda, and establish the level of technical discussion that can be expected at the workshops. The workshop discussions are intended to be used by the staff in developing the draft proposed rule. Prior to the workshops no staff positions will be taken on the rulemaking approaches and issues identified in the Rulemaking Issues Paper. As noted earlier, to the extent that the Rulemaking Issues Paper fails to identify a pertinent issue, this may be corrected at the workshop sessions.

The discussion of issues is divided into two parts. First are two primary issues dealing with: (1) The objectives for developing radiological criteria; and (2) application of practicality considerations. The objectives constitute the fundamental approach to the establishment of the radiological criteria, and the NRC staff has identified four distinct possibilities including: (1) Risk Limits, which is the establishment of limiting values above which the risks to the public are deemed unacceptable, but allows for criteria to be set below the limit using practicality considerations; (2) Risk Goals, where a goal is selected and practicality considerations are used to establish criteria as close to the goal as practical; (3) Best Effort, where the technology for decontamination considered to be the best available is applied; and (4) Return to Preexisting Background, where the decontamination would continue until the radiological conditions were the same as existed prior to the licensed activities.

Following the primary issues are several secondary issues that are related to the discussions of the primary issues, but which the NRC staff believe warrant separate presentations and discussions. These secondary issues include the time frame for dose calculation, the individuals or groups to be protected, the use of separate criteria for specific exposure pathways such as groundwater, the treatment of radon, and the treatment of previously buried materials.

The Rulemaking Issues Paper will be provided to each potential workshop participant. Additional copies will be available to members of the public in attendance at the workshop. Copies will also be available from the NRC staff contact identified above. In addition to the comments on the Rulemaking Issues Paper provided at the workshops, the Commission is also receptive to the submittal of written comments on the

rulemaking issues, as noted under the heading DATES.

Dated at Rockville, MD this 10th day of March 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-5969 Filed 3-15-93; 8:45 am]

BILLING CODE 7590-01-M.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-199-AD]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model L-1011-385 series airplanes. This proposal would require inspections of the cargo door components for cracks and corrosion; and modification, rework, or replacement of discrepant parts. This proposal is prompted by the data gathered during the investigation of a cargo door on a transport category airplane that opened while the airplane was in flight, resulting in an explosive decompression of the airplane. The actions specified by the proposed AD are intended to prevent a cargo door from opening during flight, which could result in rapid decompression of the airplane.

DATES: Comments must be received by May 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-199-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office (ACO), 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Atlanta Aircraft Certification Office (ACO), Flight Test Branch, ACE-160A, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-199-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-199-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In February 1989, the cargo door of a Boeing Model 747 series airplane opened while the airplane was in flight, resulting in an explosive decompression of the airplane. During the investigation of this accident, it became apparent that the latching, locking, and warning systems of the cargo door were probably a factor in its opening in flight.

In June 1989, the Air Transport Association (ATA) of America sponsored a conference to focus on continued structural airworthiness of non-plug type cargo doors. A "Cargo Door Task Force" was established, including representatives from operators, manufacturers, and the FAA, to review the design, manufacture, maintenance, and operation of outward opening cargo doors on all transport category airplanes. One objective of the Task Force was to select service bulletins to be recommended for mandatory accomplishment in order to enhance safety.

The FAA has reviewed and approved the following Lockheed service bulletins that were recommended for mandatory action by the Task Force:

Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989, describes procedures for a one-time visual inspection to detect excessive thickness of the shims installed under the hinges of the C-1A cargo door, and modification of discrepant parts.

Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989, describes procedures for inspections of the lower sill latch fittings and the serrated plates of the C-1A cargo door to detect cracks, corrosion, and proper heat treatment. It also describes procedures for modification, rework, or replacement of discrepant parts.

The procedures described in these service bulletins are intended to positively address cracking and corrosion conditions identified in Lockheed Model L-1011-385 series airplanes that, if not corrected, could lead to a cargo door opening while the airplane is in flight, which could result in rapid decompression of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections to detect excessive thickness of the shims installed under the hinges of the C-1A cargo door. It would also require an inspection to detect cracks and corrosion of the lower sill latch fittings and the serrated plates of the C-1A cargo door, and to determine the heat treatment condition of the serrated plates.

Discrepant parts would be required to be modified, reworked, or replaced. These actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 106 Lockheed Model L-1011-385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it

would take approximately 1.5 work hours per airplane to accomplish the proposed actions on airplanes listed in Lockheed Service Bulletin 093-52-155, and approximately 7 work hours to accomplish the proposed actions on airplanes listed in Lockheed Service Bulletin 093-53-252, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,280, or $853 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Lockheed: Docket 92-NM-199-AD.

Applicability: Model L-1011-385-1, -385-1-14, -385-1-15, and -385-3 series airplanes; as listed in Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989, and Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cargo door latching mechanism, which could lead to the cargo door opening during flight and resulting in rapid decompression of the airplane, accomplish the following:

(a) For airplanes listed in Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989: Prior to the accumulation of 8,000 total landings, or within 1,800 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to detect excessive thickness of the shims installed under the hinges of the C-1A cargo door in accordance with Lockheed Service Bulletin 093-52-155, Revision 1, dated October 23, 1989.

(1) If any shim is found that exceeds 0.125 inch for single leg hinges, or 0.140 inch for double leg hinges, prior to further flight, install a structural doubler on the hinge and a new shim, in accordance with the procedures described in the service bulletin.

(2) If any shim is found that equals or is less than 0.125 inch for single leg hinges, or 0.140 inch for double leg hinges, no further action is required for that shim.

(b) For airplanes listed in Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989: Prior to the accumulation of 8,000 total landings or within 1,800 landings after the effective date of this AD, whichever occurs later, inspect the lower sill latch fittings and serrated plates of the C-1A cargo door for cracks and corrosion, in accordance with Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989. Additionally, perform a hardness test to determine the condition of the heat treatment of the serrated plates.

Note: Lockheed Service Bulletin 093-53-252, Revision 2, dated April 25, 1989, refers to Lockheed Service Modification/Kit Drawing 1646587, Revision C, dated August 14, 1987, for additional information concerning the inspection procedures, corrosion limit specifications, crack limit specifications, and modifications relative to the requirements of this paragraph.

(1) If any cracked latch fitting is found, prior to further flight, replace the latch fitting with a serviceable part.

(2) If any corroded latch fitting is found, prior to further flight, replace the latch fitting with a serviceable part. However, if the latch fitting is of a condition suitable for refurbishment, as referred to in the service bulletin, it may be refurbished and reused.

(3) If any cracked serrated plate is found, prior to further flight, replace it with a serviceable part. However, if the cracked serrated plate is determined to be suitable for reuse, as referred to in the service bulletin, it may be reinstalled for an additional 1,000 landings only, at which time it then must be replaced.

(4) If no crack or corrosion is found in any serrated plate, prior to further flight, apply cadmium plating to the plate in accordance with the service bulletin.

(5) If any serrated plate is found with improper heat treatment, prior to further flight, reprocess the plate or replace the plate with a serviceable part in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

Issued in Renton, Washington, on March 10, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-5933 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-204-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-7 series airplanes. This proposal would require modification of the wing inboard leading edge and support structure. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Comments must be received by May 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-204-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-204-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-204-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The FAA, in concert with the Regional Airline Association (RAA); several U.S. and non-U.S. operators of de Havilland airplanes; Transport Canada Aviation, which is the airworthiness authority for Canada; and de Havilland, Inc.; has agreed to undertake the task of identifying and implementing procedures to ensure continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected service bulletins, applicable to de Havilland Model DHC-7 series airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

The group reviewed and recommended de Havilland Service Bulletin 7-57-14, dated June 25, 1982, for mandatory rulemaking action. The service bulletin describes procedures for modification of the wing inboard leading edge and support structure (Modification No. 7/1632) to ensure that structural strength is maintained. Accomplishment of this modification involves checking the rivets along the lower surface of the front spar datum for integrity, and replacing any defective rivets found; and installing new closing diaphragms, butt straps, seal assemblies, and leading edge seals.

The procedures described in this service bulletin are intended to positively address conditions of fatigue cracking and rivet failure in the wing inner leading edge and support structure on de Havilland Model DHC-7 series airplanes that, if not corrected, could degrade the structural integrity of the wing.

Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-91-05, dated April 15, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the wing inboard leading edge and support structure. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,040, or $1,760 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will

not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

De Havilland, Inc.: Docket 92–NM–204–AD.

Applicability: Model DHC–7 series airplanes; serial numbers 3 through 37, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the wing inboard leading edge and support structure (Modification No. 7/1632), in accordance with de Havilland Service Bulletin 7–57–14, dated June 25, 1982.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Issued in Renton, Washington, on March 10, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–5936 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–CE–52–AD]

Airworthiness Directives; Piper Aircraft Corporation PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA–31 series airplanes. The proposed action would require replacing the main landing gear (MLG) actuator reinforcement bracket. The Federal Aviation Administration (FAA) has received reports of cracked MLG actuator reinforcement brackets on several of the affected airplanes, and a report of the MLG extending, when not selected and while the airplane was in flight. The actions specified by the proposed AD are intended to prevent the MLG from extending, when not selected and while the airplane is in flight, because of actuator reinforcement bracket failure, which could result in substantial damage to or loss of control of the airplane.

DATES: Comments must be received on or before May 28, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–52–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–52–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–52–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of cracked MLG actuator reinforcement brackets on several Piper PA–31 series airplanes, and a report of the MLG extending, when not selected and while the airplane was in flight.

In an effort to prevent these conditions from occurring, Piper has designed and manufactured MLG actuator reinforcement brackets of improved design. Piper Service Bulletin (SB) No. 923, dated August 16, 1989, specifies procedures for installing these new MLG actuator reinforcement brackets.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced part

improvement and service information, the FAA has determined that AD action should be taken to prevent the MLG from extending, when not selected and while the airplane is in flight, because of actuator reinforcement bracket failure.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA-31 series airplanes of the same type design, the proposed AD would require replacing any MLG actuator reinforcement bracket having part number (P/N) 40776-00 with a MLG actuator reinforcement bracket of improved design, P/N 73786-02. The proposed actions would be accomplished in accordance with Piper SB No. 923, dated August 16, 1989.

The compliance time of the proposed AD is presented in both hours time-in-service (TIS) and calendar time. Operators in commuter service can put up to 200 hours TIS in one calendar month while a general aviation operator may not utilize the airplane 200 hours TIS in one calendar year. The proposed calendar time compliance would allow commuter operators the option of accomplishing the proposed actions to coincide with regularly scheduled maintenance, while allowing general aviation operators adequate hours TIS to accomplish the proposed action.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $308 per airplane. On the basis of these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,292,544.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Piper Aircraft Corporation: Docket No. 92-CE-52-AD.

Applicability: The following Model and serial number airplanes, certificated in any category:

Models	Serial Nos.
PA-31-300, PA-31-310, and PA-31-325.	31-2 through 31-8312019.
PA-31-350	31-5001 through 31-8452021.
PA-31-350 T-1020	31-8253001 through 31-8553002.
PA-31P	31P-1 through 31P-7730012.
PA-31P-350	31P-8414001 through 31P-8414050.
PA-31T	31T-7400001 through 31T-8120104.
PA-31T1	31T-7804001 through 31T-1104017.
PA-31T2	31T-8166001 through 31T-1166008.
PA-31T3 T-1040	31T-8275001 through 31T-5575001.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD or the next 6 calendar months after the effective date of this AD, whichever occurs later, unless already accomplished.

Note 1: The calendar month compliance time is utilized to allow commuter operators the option of accomplishing the actions to coincide with regularly scheduled maintenance.

To prevent the main landing gear (MLG) from extending, when not selected and while the airplane is in flight, because of actuator reinforcement bracket failure, which could result in substantial damage to or loss of control of the airplane, accomplish the following:

(a) Replace any MLG actuator reinforcement bracket having part number (P/N) 40776-00 with a new MLG actuator reinforcement bracket, P/N 73786-02, in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 923, dated August 16, 1989.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 10, 1993.

Bobby W. Sexton,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-5939 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-ANE-11]

Airworthiness Directives; Textron Lycoming ALF502R Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R series turbofan engines. This proposal would reduce the service life for the No. 2 stage turbine disk, reduce the service lives for No. 1 and No. 3 through No. 7 stage compressor rotor disks, and require a scheduled removal of these disks from

service. This proposal is prompted by reports of cracks in disks returned from the field and in disks tested by the manufacturer. The actions specified by the proposed AD are intended to prevent disk failure resulting in a possible uncontained engine failure.

DATES: Comments must be received by May 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–11, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Branch, ANE–142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7087; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–ANE–11." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–11, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

The FAA has received reports of cracks in disks returned to the manufacturer and in factory tested disks on Textron Lycoming ALF502R series turbofan engines. The cracks appear in the No. 2 stage turbine disk, and the No. 1 and No. 3 through No. 7 stage compressor rotor disks. Cracks were discovered in the bolt hole area of several No. 2 stage turbine disks and in the rim dovetail area of several No. 1 and No. 3 through No. 7 stage compressor rotor disks. Subsequent analysis and testing of these disks has revealed a lower fatigue life than originally calculated. This condition, if not corrected, could result in disk failure resulting in a possible uncontained engine failure.

This proposal would reduce the service life for the No. 2 stage turbine disk, reduce the service lives for No. 1 and No. 3 through No. 7 stage compressor rotor disks, and require a scheduled removal of these disks from service. This schedule has been developed based on examination of disks returned from the field and on crack propagation testing and analysis.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin (SB) ALF502R 72–281, dated February 7, 1992, which contains a schedule for removal of the No. 2 stage turbine disk, and the No. 1 and No. 3 through No. 7 stage compressor rotor disks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would reduce service life for the No. 2 stage turbine disk, and reduce the service lives of No. 1 and No. 3 through No. 7 stage compressor rotor disks, and require a scheduled removal of these disks from service. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 700 Textron Lycoming ALF502R series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 200 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The required reduction in service life would cost $41,400 per engine based on the cost of a new disk prorated over the reduced service life as compared to the current service life. The total cost impact of the proposed AD on U.S. operators is estimated to be $8,280,000.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Textron Lycoming: Docket No. 92–ANE–11.

Applicability: Textron Lycoming ALF502R series turbofan engines installed on but not limited to British Aerospace BAe–146 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent No. 2 stage turbine disk, and No. 1 and No. 3 through No. 7 stage compressor rotor disk, failure resulting in possible uncontained engine failure, accomplish the following:

(a) Remove from service No. 2 stage turbine disks, P/Ns 2–121–058–18, 2–121–058–20, and 2–121–058–R24, in accordance with the schedule defined in paragraph B(1) of Table 1 of Textron Lycoming Service Bulletin (SB) ALF502R 72–281, dated February 7, 1992.

(b) Remove from service No. 1 stage compressor rotor disks, P/N 2–101–331–04, in accordance with paragraph A(1) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992.

(c) Remove from service No. 3 stage compressor rotor disks, P/Ns 2–101–263–02, 2–101–263–05, 2–101–263–06, 2–101–263–09, and 2–101–263–R10, in accordance with paragraph A(2) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992.

(d) Remove from service No. 4 stage compressor rotor disks, P/Ns 2–100–042–03, 2–100–042–07, 2–100–042–09, and 2–100–042–R08, in accordance with paragraph A(3) of Table 1 Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992.

(e) Remove from service No. 5 stage compressor rotor disks, P/Ns 2–100–043–01, 2–100–043–07, 2–100–042–09, and 2–100–043–R08, in accordance with paragraph A(4) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992.

(f) Remove from service No. 6 stage compressor rotor disks, P/Ns 2–100–044–01, 2–100–044–05, 2–100–044–07, and 2–100–044–R06, in accordance with paragraph A(5) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992.

(g) Remove from service No. 7 stage compressor rotor disks, P/Ns 2–100–045–01, 2–100–045–05, 2–100–045–07, and 2–100–045–R06, in accordance with paragraph A(6) of Table 1 of Textron Lycoming SB No. ALF502R 72–281, dated February 7, 1992.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative means of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 24, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–5988 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–205–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC–7 series airplanes. This proposal would require replacement of six MS rivets with high-strength Hi-Lok fasteners, in the drag strut attachment fitting of the nose landing gear. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Comments must be received by May 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE–172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–205–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The FAA, in concert with the Regional Airlines Association (RAA); several U.S. and non-U.S. operators of the affected airplanes; Transport Canada Aviation, which is the airworthiness authority for Canada; and de Havilland, Inc.; has agreed to undertake the task of identifying and implementing procedures to ensure continued structural airworthiness of aging commuter-class airplanes. This group reviewed selected service bulletins, applicable to de Havilland Model DHC-7 series airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

The group reviewed and recommended de Havilland Service Bulletin 7-53-32, dated March 15, 1991, for mandatory rulemaking action. This service bulletin describes procedures for replacement of six MS rivets with high-strength Hi-Lok fasteners in the drag strut attachment fitting of the nose landing gear. Transport Canada Aviation classified the service bulletin as mandatory and issued Canadian Airworthiness Directive CF-91-31, dated August 16, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

The FAA also has reviewed and approved de Havilland Service Bulletin 7-53-31, dated December 15, 1989, that describes procedures for installation of a new outer drag strut attachment fitting, Modification 7/1328, in the nose landing gear. Installation of Modification 7/1328 may be accomplished in lieu of rivet replacement. This service bulletin has been revised by Notice of Status Change 7-53-31-1, dated April 20, 1990, that defines proper lug thickness as 0.650 inch for incorporation of Modification Number 7/1328. Transport Canada Aviation has not classified this service bulletin or notice of status change as mandatory.

The procedures described in these service bulletins are intended to positively address conditions identified in de Havilland Model DHC-7 series airplanes that, if not corrected, could result in failure of the drag strut attachment fitting in the nose landing gear.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of six MS rivets with high-strength Hi-Lok fasteners in the drag strut attachment fitting of the nose landing gear. For airplanes having certain serial numbers, a new outer drag strut attachment fitting may be installed in lieu of the rivet replacement. The actions would be required to be accomplished in accordance with the service bulletins and notice of status change described previously.

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $63,360, or $1,320 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

De Havilland, Inc.: Docket 92-NM-205-AD.

Applicability: All Model DHC-7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capabilities of the affected airplanes, accomplish the following:

(a) For all affected airplanes: Within 6 months after the effective date of this AD, replace the six MS rivets with hi-strength Hi-Lok fasteners, Modification 7/2572, in the drag strut attachment fitting of the nose landing gear, in accordance with de Havilland Service Bulletin 7-53-32, dated March 15, 1991.

(b) For airplanes having serial numbers 3 through 27, inclusive: Installation of a new outer drag strut attachment fitting, Modification 7/1328, in accordance with de Havilland Service Bulletin 7-53-31, dated December 15, 1989, as revised by Notice of Status Change 7-53-31-1, dated April 20, 1990, constitutes an acceptable alternative method of compliance with the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Issued in Renton, Washington, on March 10, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-5935 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-69-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-7 series airplanes. This proposal would require inspection of certain rivets on the ground spoiler actuator attachment brackets to ensure the integrity of the rivets and to detect fuel leakage; and modification of the ground spoiler actuator attachment brackets. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Comments must be received by May 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-69-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-69-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-69-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The FAA, in concert with the Regional Airline Association (RAA); several U.S. and non-U.S. operators of de Havilland airplanes; Transport Canada Aviation, which is the airworthiness authority for Canada; and de Havilland, Inc.; has agreed to undertake the task of identifying and implementing procedures to ensure continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected service bulletins, applicable to de Havilland Model DHC-7 series airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

The group reviewed and recommended de Havilland Service Bulletin 7-57-12, dated January 15, 1982, for mandatory rulemaking action. The service bulletin describes procedures to perform a one-time inspection of the lower two securing rivets on the left- and right-hand ground spoiler actuator attachment brackets to ensure the integrity of the rivets and to detect signs of fuel leakage. The service bulletin also describes procedures for modification of the ground spoiler actuator attachment brackets (Modification no. 7/1827) to give added strength to the attachment. This modification involves removing the rivets, enlarging the two bracket holes, securing the bracket with bolts, washers, and nuts, and sealing the fasteners inside the fuel tank bay to prevent fuel leakage.

The intent of this service bulletin is to address reports of the lower two rivets that secure the ground spoiler actuator attachment brackets to the wing structure becoming loose. This condition, if not corrected, degrades the integrity of the ground spoiler actuator attachment bracket.

Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-91-13, dated May 13, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this

type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection of the lower two securing rivets on the left- and right-hand ground spoiler actuator attachment brackets to ensure the integrity of the rivets and to detect signs of fuel leakage; and modification of the ground spoiler attachment brackets. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts would be minimal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,650, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

De Havilland, Inc.: Docket 92-NM-69-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 1 through 30, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of the lower two securing rivets on the left- and right-hand ground spoiler actuator attachment brackets to ensure the integrity of these rivets and to detect signs of fuel leakage, in accordance with de Havilland Service Bulletin 7-57-12, dated January 15, 1982.

(1) If any loose or damaged rivet is found, or if there is evidence of fuel leakage, prior to further flight, modify the ground spoiler actuator attachment brackets (Modification No. 7/1827), in accordance with the service bulletin.

(2) If no loose or damaged rivet and no evidence of fuel leakage is found, within 6 months after accomplishing the inspection required by paragraph (a) of this AD, modify the ground spoiler actuator attachment brackets (Modification No. 7/1827), in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Issued in Renton, Washington, on March 10, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-5934 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-D

14 CFR Part 71

[Airspace Docket No. 93-ANE-15]

Proposed Revocation of Control Zone; Fort Devens, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke the control zone for Moore Army Air Field (AAF), Fort Devens, Massachusetts. This action is prompted by the closing of the air traffic control tower (ATCT) at Moore AAF. This action is necessary because due to the ATCT at Moore AAF closing, weather observation reports are no longer available.

DATES: Comments must be received on or before April 30, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 93-ANE-15, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (617) 270-2428. fax: (617) 272-0395.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under ADDRESSES. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a

self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANE-15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, ANE-7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the control zone at Moore Army Air Field (AAF), Fort Devens, Massachusetts. One of the requirements for establishing a control zone is the availability of weather observation and reporting. As of January 31, 1993, the air traffic control tower (ATCT) at Moore AAF closed, and weather observations are no longer taken at Moore AAF. Therefore, the FAA is proposing to revoke the Fort Devens, Massachusetts, control zone. Control zones are published in § 71.171 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Fort Devens, MA control zone would be removed subsequently from the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963, Comp. p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ANE MA CZ Fort Devens Massachusetts [Removed]

* * * * *

Issued in Burlington, Massachusetts, on March 3, 1993.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 93-5989 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AD65

Supplemental Security Income for the Aged, Blind, and Disabled; Reliable Information Which Is Currently Available for Determining Benefit Amounts in the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Act (the Act) provides that if the Secretary of the Department of Health and Human Services (the Secretary) determines that reliable information is currently available concerning the income of an individual, the Secretary may use that information to determine an individual's current month's supplemental security income (SSI) benefit amount. This method of determining SSI benefit amounts is an exception to the use of income from a prior month, known as retrospective monthly accounting (RMA). This proposed rule provides that the Secretary, in exercising her discretionary authority, has determined that no reliable information exists which is currently available for determining SSI benefit amounts for a current month using any method other than RMA.

DATES: To be sure that your comments are considered, we must receive them no later than April 15, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m., on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: As ordered by the United States District Court for the Southern District of Ohio, Eastern Division, in the case of *Gould,*

et al. v. *Sullivan*, No. C2-87-964 (S.D. Ohio October 2, 1992), we are proposing a rule concerning reliable information for determining benefits in the SSI program pursuant to section 1611(c)(4) of the Act.

We published final regulations on November 26, 1985 (50 FR 48563), implementing various provisions in section 1611(c) of the Act. Section 1611(c)(1) of the Act provides that an individual's eligibility for SSI benefits is to be determined based on income, resources, and other relevant characteristics from the current month. The SSI benefit amount for a month is to be determined on the basis of income and other characteristics in the first or, if the Secretary so chooses, the second month preceding the month of eligibility. The final regulations provided that generally the income and other characteristics in the second month preceding the month of eligibility are to be used for determining the amount of SSI benefits.

Section 1611(c)(3) of the Act provides that an increase in Social Security (title II) benefits over the amount payable for the first preceding month, or at the Secretary's election, the second preceding month, will be counted in determining the amount of an SSI benefit for the first month or, at the Secretary's election, the second month in which there is an SSI benefit increase due to a cost-of-living adjustment (COLA) made under section 1617 of the Act. The final regulations, published November 26, 1985 (50 FR 48563), provided for counting an increase from a COLA or recomputation in Social Security benefits for January and February as income in the month received to determine the SSI benefit amounts for January and February.

Section 1611(c)(4)(A) of the Act provides that if the Secretary determines, at her discretion, that reliable information is currently available about an individual's income and other circumstances for a month, the Secretary, at her discretion, may determine the SSI benefit amount for that month on the basis of that information rather than based on income and other characteristics from the first or second prior month as required under RMA pursuant to section 1611(c)(1) of the Act. If the Secretary determines that reliable information is currently available and she further determines that she may use it to affect the current SSI benefit amount, section 1611(c)(4)(B) requires the Secretary to issue regulations prescribing the circumstances in which the information may be used to determine the SSI benefit amount. However, under section 1611(c)(4), the Secretary, at her discretion, may continue to use RMA even if she identifies reliable information which is currently available.

With respect to recipients, the optional computation under section 1611(c)(4)(A) of the Act would, in comparison to RMA, be advantageous in some circumstances and disadvantageous in others. Consider for illustrative purposes only, what would happen if the Secretary were to determine that all title II income information, as opposed to only COLA and recomputation increases discussed above, is reliable and currently available and is to be used to determine the current month's benefit.

Title II income above $20 serves to reduce the SSI benefit dollar-for-dollar. A reduction in the ongoing title II benefit amount will result in an increase in the SSI benefit, and, conversely an increase in the title II benefit will result in a reduction in the SSI benefit. Under RMA, the effects of changes in title II income other than COLA or recomputation increases are generally delayed 2 months. For example, an SSI recipient who is receiving title II mother's benefits whose benefits terminate because she no longer has a child in her care would continue to receive a reduced SSI benefit for 2 months after the termination of the title II income. Conversely, an SSI recipient who becomes entitled to a title II mother's benefit will continue to receive an unreduced SSI benefit for 2 months after the title II benefit begins, and her SSI benefit would not be reduced until the third month following title II entitlement.

Under this current month accounting approach, title II income would affect the SSI benefit as of the month the income is received. The mother whose title II benefit terminates would receive increased SSI in the month following termination. The SSI recipient who subsequently becomes entitled to a title II benefit would have her SSI benefit reduced effective with the month she begins receiving the title II benefit.

Statistically valid sample data indicate that using current month accounting for title II income would be disadvantageous to more SSI recipients than it would advantage. Of the approximately 29,800 recipients whose title II income started or stopped in September 1992, 51.3 percent would have received less in total SSI benefits using current month accounting rather than RMA, 8.7 percent would have received more, and 39.9 percent would have seen no effect. Of the approximately 9,400 recipients whose countable title II income increased or decreased in September 1992, 83 percent would have received less in total SSI benefits using current month accounting, while 17 percent would have received more.

For purposes of RMA, we are defining "reliable information" in these proposed regulations as payment information maintained on a computer system of records by the government agency determining the payments (e.g., Department of Veterans Affairs, the Office of Personnel Management for Federal civil service information, and the Railroad Retirement Board). Because this is actual payment information which is verified by the custodial agency, it is correct virtually all the time. We define the term "currently available information" as information that is available to the Secretary within the time required for us to compute and issue a correct SSI benefit for the month the information is pertinent.

When we published the regulations on November 26, 1985 (50 FR 48563), to reflect various provisions of section 1611(c) of the Act, we discussed the section 1611(c)(4) exception (50 FR 48565) using the following language:

> These regulations do not include a rule to determine a current month's benefit based on reliable information which is currently available. The Secretary has this matter under consideration, and is not exercising this authority at this time.

After publication of the final rules, we examined information regarding other Federal and State benefit programs to determine whether these sources could provide us reliable information which is currently available to be used for determining SSI benefit amounts. The following explains what we determined as a result of this examination.

We maintain computer interfaces only with some Federal agencies, such as the Department of Veterans Affairs, the Office of Personnel Management for Federal civil service information, and the Railroad Retirement Board. We receive this benefit information through computer interface after these other agencies prepare their payment tapes for the Treasury Department to use in issuing benefit checks or making electronic deposits. These interfaces provide us with information with respect to income and other circumstances. We use this information to maintain the SSI records for eligible individuals.

The district court in *Gould* directed the Agency in publishing a regulation concerning section 1611(c)(4) to consider whether the situations of Aid to Families with Dependent Children

(AFDC) recipients prior to April 1, 1988, should be covered by such a rule. With respect to these individuals, we considered the availability of reliable information regarding their AFDC payments. We have never maintained computer interfaces with State agencies including those administering the AFDC benefit programs. Therefore, based on our proposed definition, reliable information regarding AFDC, has not been and is not currently available to us.

The Privacy Act, 5 U.S.C. 552a(p), requires that if the computer match data would cause SSA to take an adverse action against an individual (i.e., to reduce, suspend, terminate or deny payments), SSA must notify the individual of our findings, including the data and their source, and defer the adverse action until the expiration of any time period established for the program by statute or regulation for the individual to respond to the notice (10 days in the SSI program) to give the individual the opportunity to challenge the accuracy of the data. Because of the time required for the receipt of the data and individual notification and appeal rights, data we receive from these other agencies in January, for example, cannot adversely affect an individual's payment until March at the earliest. Thus, based on our proposed definition, we cannot consider this computer interface information to be currently available for determining the SSI benefit amount.

In addition to the computer interfaces with other agencies, we maintain a computer interface with title II records within SSA. The title II interface does not require special electronic matching and is not subject to the Privacy Act requirements discussed above. In certain situations, the title II interface provides information for making correct payment for a particular month under sections 1611(c)(2) and 1611(c)(3). For example, data for the COLA increase of title II benefits are received in time to make reductions in the SSI benefits for the month the increase is effective.

However, our regulations provide, based on the *Goldberg* v. *Kelly* court case, that before SSA can reduce, suspend or terminate an SSI payment, we must issue a written notice to the individual informing him or her of the event and providing the opportunity to appeal. If an adverse change is posted on an SSI claimant's record after the 10th day of the month, due to computer system constraints, we are unable to reduce the SSI payment for the next month. This creates an overpayment for the individual. Because of the advance notice requirements and systems limitations, only changes posted to the SSI record by the 10th of the month before the payment month affect the payment. Because of the various increases and decreases in title II benefits occurring throughout the month, approximately one-half of the changes are posted by the 10th of the month before the payment month. For the other one-half of the cases involving changes, based on our proposed definition the information is not currently available for SSA's system to make timely changes in order to avoid causing an overpayment or an underpayment. It would be inequitable to treat title II income differently in the computation of an SSI payment based on when in the month the income was received because such differing treatments could lead to different SSI benefit amounts for two individuals with identical title II income in a particular month.

Based on the foregoing review and examination of computer interface information, the Secretary has determined that no information exists which is reliable and currently available to use in computing SSI benefit amounts pursuant to section 1611(c)(4). Therefore, the regulations propose that the Secretary exercise her discretion by declining to determine the SSI benefit amount for a current month using a method other than RMA, as allowed under section 1611(c)(4) of the Act.

We are proposing to amend § 416.420 to define the terms "reliable information" and "currently available information" and to state that the Secretary has determined that there exists no reliable information which is currently available to use for determining SSI benefit amounts.

SSA has recently undertaken a comprehensive examination of the SSI program by reviewing its fundamental structure and purpose. Twenty-one experts in public policy were involved in this examination. The report on this examination was published in the **Federal Register** on September 4, 1992, at 57 FR 40732, and public comments were due December 3, 1992.

Accounting issues were thoroughly dealt with in this examination, and the report contains a number of options to deal with perceived problems under RMA. We will be considering the public comments received with a view toward suggesting legislative changes where appropriate.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the costs are expected to be negligible, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This regulation imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 4, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: March 11, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 1102, 1611 (a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. Section 416.420 is amended by revising paragraph (a) and redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(a) *General rule.* We use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current month. We have determined that no reliable information exists which is currently available to compute benefits on a

current basis as is explained in paragraph (c) of this section. However, if you have been receiving an SSI benefit and receiving a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your Social Security benefit in January exceeds the amount of your Social Security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your Social Security benefit in February exceeds the amount of your Social Security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of $100 in November, $100 in December, and $105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November ($5) and add that to his income in November to determine the SSI benefit amount for January.

* * * * *

(c) *Reliable information which is currently available for determining benefits.* The Secretary has determined that no reliable information exists which is currently available to use in determining benefit amounts.

(1) *Reliable information.* For purposes of this section "reliable information" means payment information that is maintained on a computer system of records by the government agency determining the payments (e.g., Department of Veterans Affairs, Office of Personnel Management for Federal civil service information and the Railroad Retirement Board).

(2) *Currently available information.* For purposes of this section "currently available information" means information that is available at such time that it permits us to compute and issue a correct benefit for the month the information is pertinent.

* * * * *

[FR Doc. 93-6025 Filed 3-15-93; 8:45 am]

BILLING CODE 4190-29-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA8-1-5542; AD-FRL-4603-3]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of the State implementation plan (SIP) revision submitted by the State of Washington for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The implementation plan was submitted by the State to satisfy certain federal Clean Air Act requirements for an approvable moderate nonattainment area PM-10 SIP for Kent, Washington.

DATES: Comments on this proposed action must be postmarked by April 15, 1993.

ADDRESSES: Comments should be addressed to: George Lauderdale, Environmental Protection Agency, Air & Radiation Branch, Docket No. WA8-1-5478, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location:

Air and Radiation Branch (WA8-1-5478), U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

State of Washington Department of Ecology, 4224 Sixth Avenue SE., Rowe Six, Building No. 4, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, Telephone (206) 553-6511.

SUPPLEMENTARY INFORMATION:

1. Background

The Kent, Washington, area was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Washington moderate PM-10 SIP for the Kent nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM-10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–44).

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). In today's action, EPA is proposing to grant approval of the plan revision submitted to EPA for Kent, Washington, on November 5, 1990 as revised by addenda submitted on December 27, 1990 and November 15, 1991 (hereafter generally referred to as a single submittal). EPA is proposing to approve the submittal because it appears to meet all of the applicable requirements of the Act. EPA invites public comment on the action.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of Washington Department of Ecology (WDOE) and the Puget Sound Air Pollution Control Agency (PSAPCA) held a joint public hearing to entertain public comment on the Kent implementation plan on December 8, 1988. WDOE adopted the implementation plan for the area on November 3, 1990 and the plan was submitted to EPA on November 5, 1990. The plan was subsequently revised by addenda submitted on December 27, 1990 and November 15, 1991. WDOE held appropriate public hearings prior to submittal each of the addenda to entertain public comment. The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). A letter dated February 13, 1992 was forwarded to the WDOE indicating the completeness of the submittal and the next steps to be taken in the review process.

2. PM–10 Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the submission of the emissions inventory is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain) the emissions inventory must be received with the demonstration (see 57 FR 13539).

WDOE submitted an emissions inventory for the base year of 1986 and the attainment year of 1991. The emission inventory identified three major source categories contributing to particulate matter concentrations in the valley. These are, in descending order of greatest contribution, fugitive emissions from a single point source, Salmon Bay Steel (which has since ceased operation); vehicle resuspended dust; and residential wood combustion. WDOE has determined all other sources to be insignificant.

As noted below, Salmon Bay Steel, the only heavy industrial facility in Kent, has ceased operations. WDOE originally projected a 99% reduction of process fugitive emissions from Salmon Bay Steel. Subsequently, WDOE submitted information to EPA indicating that, for the following reasons, the shutdown of Salmon Bay Steel is permanent and enforceable: (1) Salmon Bay Steel is no longer considered a "Registered Source" under the Puget Sound Air Pollution Control Agency's (PSAPCA) regulations (Section 5.05) (2) the deadline for requesting to bank emission reduction credits has expired (3) any new source occupying the facility must obtain a registration and would be subject to PSAPCA's new source review provisions and (4) any new major source must implement, among other things, the lowest achievable emission rates (LAER) and provide emission offsets.

Emissions inventories are generally required to incorporate allowable emissions from point sources, because this approach takes into consideration possible increases from existing sources allowed by their permits or registrations. The plan used actual emissions as opposed to allowable emissions for Salmon Bay Steel. However, since the source is permanently shut down, this is a moot issue. Thus, EPA believes it is reasonable to ascribe a 100% emission reduction credit to this source.

EPA is proposing to approve the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[4] For further details the reader is referred to the Technical Support Document (TSD) corresponding with this action, which is available at the EPA address indicated above.

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61). The PSAPCA initiated a voluntary woodsmoke curtailment program

[3] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

throughout its jurisdictional area, including Kent, in the winter of 1987–88. The program changed to mandatory curtailment beginning with the 1988–89 heating season, pursuant to WAC 173–433 and the PSAPCA Regulation I, Article 13. The curtailment program is a two stage plan. At Stage I, which is imposed when ambient PM–10 levels reach 75 μg/m³, the use of uncertified stoves and fireplaces are banned. At Stage II, imposed when PM–10 levels reach 105 μg/m³, all wood heating (fireplaces, certified and uncertified woodstoves) is prohibited. The program exempts homes with no other source of heat. WDOE and PSAPCA regulations contain additional controls, including the prohibition of all fuels except dry, seasoned wood in woodheating devices. Plume opacity for woodheating devices is limited to 20%, with brief allowances for fire starting and stoking. PSAPCA serves as the primary enforcement agency for the curtailment and opacity portions of the control program. Both the PSAPCA and WDOE administer public education programs targeted at residential wood burning. Throughout the State, WDOE also enforces its ban on the sale of uncertified woodstoves.

The strength and depth of the legislated woodsmoke program, and the size and historical effectiveness of the agencies involved, demonstrates to EPA's satisfaction that the Kent area is achieving a sufficiently compliance rate to justify the 70% emission reduction credit. A more detailed analysis of the Washington woodsmoke curtailment plan is contained in the TSD. The Kent emission inventory identified industrial fugitive emissions and resuspended road dust as the significant contributors of fugitive dust emissions. PSAPCA's fugitive dust regulation (Regulation I, section 9.15) was designed to reduce fugitive dust from commercial and industrial activities and also to reduce road dust. PSAPCA requires "Best Available Control Technology (BACT)" for all fugitive dust sources.

As previously stated, WDOE projected a 99% reduction of process fugitive emissions from Salmon Bay Steel, the only heavy industrial facility in Kent. Since the source has ceased operations, and EPA considers the shut down to be enforceable, EPA believes it is reasonable to ascribe a 100% emission reduction credit to this source.

The plan uses an emission reduction credit of 37% from resuspended road dust. The plan proposes that the PSAPCA will undertake a cooperative effort with the City of Kent to achieve the reduction in resuspended road dust. The City of Kent has cooperated with the PSAPCA in undertaking several major street improvements, which included grading, paving, and the installation of curbs and gutters to reduce the reentrained road dust problem. Extensive improvements were made to the West Valley Highway, the major arterial road bisecting the nonattainment area.

The permanent and enforceable shutdown of Salmon Bay Steel and the residential wood combustion control measures will assure attainment of the PM–10 NAAQS in this area by 1991. EPA has indicated that for some sources in areas which demonstrate attainment, available control measures may not be "reasonably" available if their implementation would not expedite attainment any sooner (See 57 FR 13543). Because this area demonstrates attainment by 1991 with other available control measures, the implementation of RACM in Kent does not require the resuspended road dust measures. However, PSAPCA's Regulation 9.15 BACT requirement for fugitive dust sources should nevertheless provide an additional margin of safety for any uncertainty associated with the attainment demonstration and, further, should help maintain the PM–10 NAAQS in this area. Thus, while it is unnecessary, to quantify the actual emissions reductions that will be realized from the road dust control measures, EPA intends to approve the measures for their additional SIP strengthening effect.

The Kent area is not significantly impacted by prescribed burning or more traditional stationary sources of PM–10 (other than the now permanently closed Salmon Bay Steel Company). Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that it would be unreasonable (and would not constitute RACM) to require the sources to implement potentially available control measures. 57 FR 13540. EPA believes the significant sources of PM–10 in the area have been reasonably controlled. Thus, EPA believes it would be unreasonable to require other de minimis sources of PM–10 in the area to implement potentially available control measures or technology. Further, EPA believes implementation of such additional controls in this area would not expedite attainment and, therefore, are not "reasonably" required. 57 FR 13543.

A more detailed discussion of the individual source contributions, their associated control measures and an explanation as to why certain available control measures were not implemented, can be found in the Technical Support Document (TSD). EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of the State of Washington's PM–10 nonattainment plan control strategy will result in the attainment of the PM–10 NAAQS as expeditiously as practicable and no later than December 31, 1994. By this notice, EPA is proposing to approve RACM (including RACT) the control strategy in its entirety.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, if the State does not submit a demonstration of attainment, the State must show that attainment by December 31, 1994 is impracticable (section 189(a)(1)(B)(ii)).

The PSAPCA in conjunction with WDOE conducted an attainment demonstration in the Kent, Washington, nonattainment area using the WYNDvalley dispersion model, which is a non-guideline model. The WYNDvalley model was used due to very low wind speeds during historical exceedances. During review of the plan, EPA conducted a rollback analysis, which was later concurred on by WDOE, to verify the results of the dispersion model because use of the WYNDvalley model in this case did not fully meet all EPA criteria. The rollback analysis was therefore used pursuant to EPA's policy on modified demonstrations of attainment. "PM–10 SIP Attainment Demonstration Policy for Initial Moderate Nonattainment Areas" issued by John Calcagni on March 4, 1991. EPA's policy on modified demonstrations states that in circumstances where an initial moderate nonattainment area has completed or can complete its demonstration by November 15, 1991 consistent with existing guidance, an attainment demonstration based on the existing guidance should be submitted. However, in those situations where time constraints, inadequate resources, inadequate data bases, lack of model for some unique situations, and other unavoidable circumstances would leave an initial moderate nonattainment area unable to submit an attainment

demonstration within the short timeframe provided by the newly revised law, then a modified demonstration based on that policy statement may be submitted. (see 57 FR 13539). Note that EPA's policy recommends specific documentation that should accompany modified demonstrations.

The rollback analysis was also undertaken because of slight differences between the original attainment year emission inventory used in the dispersion modeling and the corrected inventory submitted in 1991 as an addendum to the plan. EPA's analysis verified that the results of the dispersion modeling were reliable, and that the minor difference in inventories would not significantly affect expected attainment year values. The rollback analysis confirmed that, with the corrected inventory, attainment was demonstrated in Kent and would be maintained in future years. The 24-hour PM-10 NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). The annual PM-10 NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$(id.). The demonstration predicted that the 24-hour design concentration in the attainment year of 1991 will be below 125 $\mu g/m^3$, thus demonstrating attainment of the 24-hour PM-10 NAAQS. Ambient data show that the area has never approached an exceedance of the annual standard. Since no violations of the annual NAAQS have been noted with the current emissions inventory and since the inventory was "rolled back" to show attainment of the 24-hour NAAQS, no violations of the annual NAAQS are likely. Nevertheless, WDOE prepared and submitted a rollback analysis which demonstrated that the annual standard was, indeed, attained in 1991 and will be maintained until at least 1994. Therefore, EPA believes that WDOE has adequately demonstrated that the annual standard has been attained in the Kent nonattainment area.

The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)". For a more detailed description of the attainment demonstration and the control strategy used, see the TSD.

5. PM-10 Precursors

The control requirements which are applicable to major stationary sources of PM-10, also apply to major stationary sources of PM-10 precursors unless EPA determines such sources do not contribute significantly to PM-10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539-13540 and 13541-13542).

The emissions inventory for the Kent nonattainment area did not reveal any significant major or minor stationary sources of PM-10 precursors. Consequently, EPA believes that stationary sources of precursors provide an insignificant contribution to the Kent, Washington, ambient PM-10 concentration and EPA is proposing to grant the area the exclusion from PM-10 precursor control requirements authorized under section 189(e) of the act. Note that while EPA is proposing to make a general finding for this area, today's proposed finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM-10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three (3) years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In implementing RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions, different from those provided in the SIP, should be required in order to ensure attainment of the PM-10 NAAQS by December 31, 1994 (see section 171(1)). The State of Washington's PM-10 SIP for Kent demonstrates attainment in 1991 and maintenance through 1994, and therefore satisfies the initial quantitative milestone requirement (see 57 FR 13539) and RFP.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by WDOE and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

WDOE's control measures and regulations for control of Particulate Matter, which are contained in the SIP, are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion including, for example, fugitive emissions from a single point source (which, as discussed above, EPA believes has permanently and enforceably ceased operations); vehicle resuspended road dust; and residential wood combustion. The SIP provides that the affected activities will be controlled throughout the entire nonattainment area.

Consistent with the attainment demonstration described above, the SIP requires that all the applicable SIP provisions must be implemented by December 10, 1993 (section 189(a)(1)(C). In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information.

The TSD contains further information on enforceability requirements including enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules; malfunction provisions; excess emission provisions; correctly cited references of incorporated methods/rules; and reporting and recordkeeping requirements. The local air pollution control agency, PSAPCA, has the primary responsibility for implementing the measures in the plan. PSAPCA has many compliance inspectors and, as discussed further in the TSD, EPA considers PSAPCA's staffing level adequate to assure that the Kent attainment plan is fully implemented. As a necessary adjunct of its enforcement program, PSAPCA also has broad powers to adopt rules and regulations, issue orders, require access to records and information, and receive

and disburse funds. WDOE has adequate authority to implement and enforce the plan in event PSAPCA fails to make a good faith effort to implement the regulations.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–13544). These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

The Kent, Washington, plan does not contain contingency measures. In a section referring to contingency measures, it describes measures that will achieve reductions beyond those achieved by the control strategy. However, these measures are not contingent upon Kent's failure to attain the NAAQS or meet RFP, and will be implemented regardless of attainment status. They are therefore not approvable as meeting the contingency measure requirements of section 172. The State must submit a SIP revision containing approvable contingency measures by November 15, 1993. Since this element was not due with the November 15, 1991 moderate PM–10 nonattainment area SIP requirements, EPA will not take action on it at this time.

III. Implications of Today's Action

EPA is proposing to approve the plan revision submitted to EPA for the Kent, Washington, nonattainment area on November 5, 1990 as subsequently revised by addenda submitted on December 27, 1990 and November 15, 1991. Among other things, the State of Washington Department of Ecology has demonstrated that the Kent moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994.

As noted, additional submittals for the initial moderate PM–10 nonattainment areas are due at later dates. EPA will determine the adequacy of any such submittals as appropriate.

IV. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the beginning of this notice, EPA will consider any comments postmarked by April 15, 1993.

V. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

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

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 29, 1993.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 93–5983 Filed 3–15–93; 8:45 am]

BILLING CODE 6560-50-P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–212]

Review of Motor Tariff Regulations—1993

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to seek public comment on whether certain tariff filing requirements should be modified. These requirements include the tariff numbering requirements; the rule numbering requirements; the periodic tariff reissuing requirement; separate publication of surcharges; tariff check sheets requirement; and the requirement for listing of items in supplements to bound tariffs. In addition, the Commission seeks public comment on whether special requirements should be adopted for non-alternating rates.

DATES: Comments are due on May 17, 1993.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC–212 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas A. Mongelli, (202) 927–5150 or Charles E. Langyher, (202) 927–5160 [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Regulatory Flexibility

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of this proceeding is to determine whether certain existing tariff requirements should be modified. Unless these requirements are substantially revised, carriers may be required to cancel and/or refile affected tariffs. However, the economic impact upon carriers of a requirement to cancel and/or refile certain tariffs is not likely

to be significant within the meaning of the Regulatory Flexibility Act (Act), nor is it likely to be felt by a substantial number of other small entities such as shippers. Moreover, several of these tariff requirements are likely to aid small entities (both shippers and carriers) in their ability to compete by enhancing their ability to use the tariffs on file with the Commission. However, we welcome any comments regarding the small entities considerations embodied in the Act.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10761(a) and 10762.

List of Subjects in 49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines.

Decided: February 24, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–5998 Filed 3–15–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on Proposed Critical Habitat Designation for the Delta Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that the public comment period is reopened on the proposed determination of critical habitat for the delta smelt (*Hypomesus transpacificus*). The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

DATES: The comment period on the proposal is opened until April 30, 1993. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nadine R. Kanim (see **ADDRESSES**) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

The delta smelt is a small, translucent, slender-bodied fish in the Osmeridae family, endemic to the upper Sacramento-San Joaquin estuary in the San Fransico Bay area of California. Except during the spawning period, this fish is adapted to living in estuarine habitat at the freshwater-saltwater interface, where salinities do not exceed two parts per thousand. Abundance estimates indicate that the entire delta smelt population has experienced nearly a 90 percent decline over the last 20 years. The species is threatened by a variety of impacts, including reduced water outflows from the Sacramento and San Joaquin Rivers due to drought, water exports, and diversions; a more frequent upstream shift of the species' range resulting in restriction of available food supply and habitat; entrainment in water diversion structures; water pollution; and introduction of exotic species.

A proposal to list the delta smelt as a threatened species and to designate its critical habitat was published on October 3, 1991 (56 FR 50075). Critical habitat was proposed for areas of all water and all submerged lands below ordinary high water and the entire water column bound by and contained within Suisun Bay (including the contiguous Grizzly and Honker Bays), the length of Montezuma Slough, portions of the Sacramento River, portions of the Sacramento-San Joaquin estuary (known as the Delta), portions of the San Joaquin River, and the contiguous water bodies in between (a complex of bays, dead-end sloughs, channels typically less than four meters deep, marshlands, etc.), California. Please refer to the October 3, 1991, proposed rule for a map of the proposed critical habitat. The public comment period opened effective the date of publication of the proposed rule (October 3, 1991) and closed on January 31, 1992.

The Service published a notice of public hearing on December 19, 1991 (56 FR 65877). Public Hearings were conducted in California on January 9, 1992, in Sacramento; on January 14, 1992, in Santa Monica; and on January 16, 1992, in Visalia. At each meeting, testimony was taken from 1 p.m. to 4 p.m. and from 6 p.m. to 9 p.m.

The final rule to list the delta smelt as a threatened species was published on March 5, 1993 at 58 FR 12854. The final rule postponed the decision on critical habitat determination for up to one year (October 3, 1993) in accordance with section 4(b)(6)(C)(ii) of the Act. The economic analysis necessary to determine critical habitat is still in progress. Reopening the comment period will allow the Service to consider any information that previously had not been submitted in its decision of whether or not to designate critical habitat. Critical habitat information may be submitted until the end of the comment period on April 30, 1993.

Author

The primary author of this notice is Nadine R. Kanim (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

List of Subjects in 50 CFR Part 17

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

Dated: March 9, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–5963 Filed 3–15–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 49
Tuesday, March 16, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-607]

Commercial Grade Amorphous Silica Filament Fabric From Japan, Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on commercial grade amorphous silica filament fabric from Japan.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to section 353.25(d)(4)(iii) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the antidumping duty order on commercial grade amorphous silica filament fabric from Japan (52 FR 35750, September 23, 1987) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on September 10, 1992, we published in the **Federal Register** (57 FR 41471) a notice of intent to revoke the order and served written notice of the intent to revoke to each interested party on the Department's service list.

On September 28, 1992, the Haveg Division of Ametek Inc. and HITCO, petitioners, objected to our intent to revoke the order. Therefore, because interested parties objected to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: March 8, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-5907 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-809]

Postponement of Final Antidumping Duty Determination: Certain Cut-to-Length Carbon Steel Plate from Mexico

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: N. Gerard Zapiain or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3793.

Postponement of Final Determination

On February 4, 1993, the Department of Commerce (the Department) published an affirmative preliminary determination of sales at less than fair value of certain cut-to-length carbon steel plate from Mexico. On February 12, 1993, Altos Hornos de Mexico, S.A. de C.V. (AHMSA) requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).

Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. AHMSA, the only respondent in this proceeding, represents a significant proportion of exports of cut-to-length carbon steel plate (cut-to-length plate) from Mexico to the United States. Accordingly, we are postponing our final determination as to whether sales of cut-to-length plate from Mexico have been made at less than fair value until not later than June 21, 1993.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: February 24, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-5906 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-580-818]

Preliminary Negative Critical Circumstances Determinations; Countervailing Duty Investigations of Certain Steel Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Rill, Office of Antidumping Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4794 or 482-4733, respectively.

Preliminary Critical Circumstances Determinations

The Department preliminarily determines that critical circumstances do not exist with respect to the investigations of certain hot-rolled carbon steel flat products, corrosion-resistant carbon steel flat products, and cut-to-length carbon steel plate from Korea. There was no allegation of critical circumstances concerning the investigation of certain cold-rolled carbon steel flat products.

Background

On January 12, 1993, petitioners[1] amended their petition to allege the

[1] Petitioners include National Steel Corporation, LTV Steel Company, Inland Steel Industries, Bethlehem Steel Corporation, U.S. Steel Group—a unit of USX Corporation, Armco Steel Company, Geneva Steel, Gulf States Steel of Alabama, Sharon

existence of critical circumstances, as defined by 19 U.S.C. 1671b(e) (section 703(e) of the Tariff Act of 1930, as amended ("the Act")), with respect to imports of certain hot-rolled carbon steel flat products, corrosion-resistant carbon steel flat products, and cut-to-length carbon steel plate. For the scope of the products covered by this investigation, please see Appendix 1 of the Department's preliminary determinations in this investigation. 57 FR 57761, 57771 (Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Korea, December 7, 1992). On January 25, 1993, respondents[2] issued a reply to these allegations.

Analysis of Allegations

In determining if there is a reasonable basis to believe or suspect the existence of critical circumstances, the Department must consider whether: (1) The alleged subsidy is inconsistent with the Agreement,[3] and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period. If either of these conditions is not met, critical circumstances do not exist. 19 U.S.C. 1671b(e) (section 703(e) of the Act).

Concerning the first condition, there are restrictions regarding both the nature and the size of a subsidy that is "inconsistent with the Agreement." First, the Department's regulations limit the analysis of the first condition to "export subsidies." 19 CFR 355.16(a)(1). In the Comments to the Final Rule, the Department explained that this limitation was adopted in order to adhere to the critical circumstances standard delineated in Article 5(9) of the Agreement, which explicitly requires that the subject merchandise benefit from "export subsidies." ITA Countervailing Duties, Final Rule, 53 FR 52306, 52312 (December 27, 1988). In addition, we have consistently maintained that the aggregate net subsidy at issue must be at least 0.5 percent ad valorem in order to issue an affirmative determination. See 19 CFR 355.7. This standard applies to any preliminary or final determination, including the present preliminary critical circumstances determination.

In the current investigation, we have preliminarily determined that respondents have benefited from three export subsidies: (1) Reserve for export loss; (2) reserve for overseas market development; and (3) deduction from overseas entertainment expenses. The aggregate net subsidy for these benefits is 0.01 percent for both hot-rolled carbon steel flat products and corrosion-resistant carbon steel flat products, and 0.06 percent for cut-to-length plate. Since each of these aggregate figures is significantly below the 0.5 percent *de minimis* standard, the first prong of the critical circumstances test is not met with respect to any of the relevant classes or kinds of merchandise. The second prong of the critical circumstances test ("massive imports") therefore need not be examined.

Accordingly, we preliminarily determine that critical circumstances do not exist for hot-rolled carbon steel flat products, corrosion-resistant carbon steel flat products, and cut-to-length plate from Korea.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these determinations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Compliance, Import Administration.

If our final determinations are affirmative, the ITC will make its final determinations within 45 days after the Department makes its final determinations.

Public Comment

Written comments concerning these preliminary critical circumstances determinations should be included with any briefs that are submitted in connection with the country-specific hearing for this case. If written comments are received on this issue, the critical circumstances determinations will be addressed at the country-specific hearing. Since investigations involving the same classes or kinds of merchandise subject to these investigations from various other countries are currently being conducted, we will publish a briefing and hearing schedule in the **Federal Register** after receipt of all requests for hearings in these investigations.

These determinations are published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: March 8, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-5905 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-DS-P

Steel Corporation, WCI Steel, La Clede Steel Company, and Lukens Steel Company.

[2] Respondents include the Government of Korea, steel producers Pohang Iron and Steel Company, Union Steel Manufacturing Company, Dongkuk Steel Mill Company, and Dongbu Steel Mill Company, and trading companies Hyundai Corp., Samsung Company, Ssangyong Corp., Sunkyung Corp., Hyosung Corp., Dongbu Corp., Keoyang Company, and Dongkuk Industries.

[3] The use of the term "Agreement" refers to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade.

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Bruce E. Mattson, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, Maryland 20899; Fax: 301-869-2751. Any request for information should include the NIST Docket No. for the relevant invention(s) as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 92-023

Title: Sample Cell for Infrared Spectrophotometry

Description: A sample cell for infrared spectrophotometry comprises a sample holder for holding a sample to be analyzed by infrared spectrophotometry, a cool air passageway and a vortex tube. The sample cell allows infrared spectrophotometry of volatile fluids while avoiding vaporization and bubble formation. This invention is significantly easier and less

cumbersome than current methods of maintaining a sample at lower temperatures.

NIST Docket No. 92-032

Title: Method and Apparatus for Visualization of Internal Stresses in Solid Non-Transparent Materials by elastoacoustic Technique

Description: A process and apparatus for visualization of internal stresses in solid materials by an acoustic microscope connected to an acoustic lens. This invention has several advantages over current methods of evaluating internal stresses. Current methods such as the speed of sound method or X-ray diffraction are limited to measurement of surface stresses; in addition, X-ray diffraction and neutron diffraction allow measurement of strain at a given point, but they do not, as a practical matter, allow mapping of the stresses. The invention described here allows the mapping and imaging of the stresses in a material, theoretically, at any depth.

NIST Docket No. 92-037

Title: Use of B-Hydroxyhistidine, 4-(1-Hydroxy-1-alkyl) imidazole or Derivatives Thereof as Bidentate Ligand for Use in Chelating Agents

Description: B-hydroxyhistidine, 4-(1-hydroxy-1-alky) imidazole or derivatives thereof can be used as a bidentate ligands in the chelation of iron (III), Cr (III), Ga (III) and the actinides (IV), such as plutonium 238. B-hydroxyhistidine is a pyoverdine-type siderophore produced by Pseudomonas fluorescens 244. The ligands may be useful in developing new chelating materials for use in chelation therapy, waste clean-up, and other areas where specific metal-ion chelation is needed.

Dated: March 9, 1993.

Raymond G. Kammer,

Acting Director.

[FR Doc. 93-6004 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-13-M

Computer System Security and Privacy Advisory Board; Meeting Cancellation

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting cancellation.

SUMMARY: Notice is hereby given that the meeting of the Computer System Security and Privacy Advisory Board, previously announced for March 17-18, 1993, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

Dated: March 9, 1993.

Raymond G. Kammer,

Acting Director.

[FR Doc. 93-6005 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Issuance of an emergency modification to Scientific Research Permit No. 747 (P45H).

On August 8, 1991 (56 FR 40312), the U.S. Fish and Wildlife Service (USFWS) was issued Permit No. 747 under the authority of the Endangered Species Act of 1973 (U.S.C. 1531-1543) and the NMFS regulations governing endangered fish and wildlife (50 CFR parts 217-227).

Notice is hereby given that on March 3, 1993, as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), NMFS issued an emergency Modification to Permit No. 747.

Permit 747 currently authorizes scientific research on and captive propagation of Sacramento River winter-run chinook (*Oncorhynchus tshawytscha*), including the capture of up to 20 adults per year for broodstock purposes, the incubations of up to 35,000 of their eggs, and the rearing of the resulting juveniles for release into the upper Sacramento River. These activities are permitted through December 31, 1995.

The emergency modification authorizes the permittee to collect and sacrifice up to 450 coded-wire tagged and adipose fin clipped juvenile winter-run chinook salmon released from the USFWS's Coleman National Fish Hatchery on January 27, 1993.

An emergency modification is necessary to allow the USFWS to verify, in 1993, juvenile growth rate and the size criteria used to identify juvenile winter-run chinook salmon in the Sacramento—San Joaquin Delta.

Issuance of this emergency Modification was based on a finding that such Modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this Modification; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This emergency Modification was also issued in accordance with and is subject to parts 217-227 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits and modifications. This emergency Modification will be valid only until June 30, 1993, or until superseded by changes made as a result of comments.

Written data or views, or requests for a public hearing on this modification request, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification 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/modification summary are those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

The application, Permit, emergency Modification and supporting documentation are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713-2232); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802-4213 (310/980-4016).

Dated: March 3, 1993.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-5946 Filed 3-15-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application

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

ACTION: Application for scientific research permit (P79F).

Notice is hereby given that Drs. C. Leo Ortiz, Burney J. Le Boeuf, and Daniel P. Costa, Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, have 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).

The applicants request a Permit to continue and extend a long term study on the behavior, physiology, and life history characteristics of the northern elephant seal (*Mirounga angustirostris*). Up to 19,575 (up to 3,915 annually) animals may be handled over a five-year period. No intentional lethal takes are requested. The entire population of the area to be studied (*i.e.*, approximately 5000 animals) may be harassed incidental to the proposed activities. Permission is also requested to import/export biological specimens of northern elephant seals and southern elephant seals (*Mirounga angustirostris*). Activities will be conducted at all times of the year in the immediate environs of Ano Nuevo, CA, 30 km north of Santa Cruz, CA and at the Long Marine Laboratory, University of California, Santa Cruz, CA.

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 its 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 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Dated: March 9, 1993.

Nancy Foster, Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–5937 Filed 3–15–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

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

ACTION: Request for modification of permit No. 717(P77#44).

Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, Northwest Region, 7600 Sand Point Way, N.E. BIN C15700—Building 1, Seattle, WA 98115–0070, requested a modification to Permit No. 717, issued on October 22, 1990 (55 FR 35923), 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).

Permit No. 717 currently authorizes the capture, handling, tagging, hot-branding, instrumentation, and subsequent recapture of California sea lions. The applicant is now requesting authorization to administer low doses of valium to recaptured adult females in order to reduce possible stress incurred as a result of handling.

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 modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289);

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, N.E., BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016).

Dated: March 9, 1993.

Nancy Foster,

Office of Protected Resources.

[FR Doc. 93–5938 Filed 3–15–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of Defense.

ACTION: Notice.

The Department of Defense 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).

Title, Applicable form, and Applicable OMB Control Number: Professional Qualifications, Medical and Peer Reviewers, CHAMPUS Form 780, 0704–0313

Type of Request: Reinstatement

Average Burden Hours Minutes Per Response: 15 minutes

Responses Per Respondent: 1

Number of Respondents: 60

Annual Burden Hours: 15

Annual Responses: 60

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within CHAMPUS. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file

Affected Public: Businesses or other for-profit and small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Joseph F. Lackey

Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer for DoD, room 3002, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

March 11, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–5962 Filed 3–15–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Environmental Assessment for Realignment Actions at Cape St. George, FL

AGENCY: United States Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The Department of the Army has prepared an Environmental Assessment (EA) that evaluates the impact of the assignment of the Cape St. George Military Reservation, Little St. George Island, Florida, to the U. S. Department of the Interior and its conveyance to the State of Florida Department of Natural Resources, in accordance with the Base Closure and Realignment Act of 1988 (Public Law 100–526).

Because of the interest expressed in the property by the Department of the Interior (DOI), and the unique location of the site, only the no-action alternative was considered in addition to the proposed action.

Under the proposed action, the DOI would acquire control of the Cape St. George Reservation property in order to further transfer it to the State of Florida. The State of Florida, through the Board of Trustees of the Internal Improvement Trust Fund, currently owns Little St. George Island except for the Army and Coast Guard properties. The Florida Department of Natural Resources (DNR), Division of Marine Resources, Bureaus of Sanctuaries and Research Reserves manages the entire island as a research reserve. The military reservation is an integral part of DNR's management of the reserve. The DNR would continue its management practices if the site was transferred to the state.

The goal of the proposed action is the highest and best use of the Cape St. George reservation site. The primary land uses after disposal would be the same as the current primary land uses: Environmental education, historic interpretation, ecological research, and low-impact public recreation.

The EA determined the proposed action would have no significant impact upon the quality of air, surface water, groundwater, wildlife, threatened or endangered species, wetlands, unique habitats or cultural resources. Environmental and socioeconomic analyses, along with coordination with responsible environmental agencies, have determined that the relative impacts associated with the proposed action are not significant. Consequently, an environmental Impact Statement (EIS) will not be prepared.

DATES: Comments must be received within 30 days from the publishing date of this notice.

ADDRESSES: The EA and FNSI can be obtained by contacting the U.S. Army Corps of Engineers, Mobile District, Attn: Mr. Jack Mallory, P.O. Box 2288, Mobile, AL 36628, or call (205) 690–2723.

FOR FURTHER INFORMATION CONTACT: Send all comments to: Mr. Jack Mallory, U.S. Army Corps of Engineers, Mobile District, P.O. Box 2288, Mobile, AL, 36628 or call (205) 690–2723.

Dated: March 11, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety, & Occupational Health), OASA (IL&E).

[FR Doc. 93–5975 Filed 3–15–93; 8:45 am]

BILLING CODE 3710–08–M

Draft Programmatic Environmental Impact Statement for Joint Training Exercise Roving Sands at Fort Bliss, TX and NM and White Sands Missile Range, NM

AGENCY: United States Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: Interested parties are hereby notified that the District Engineer, U.S. Army Corps of Engineers, Forth Worth District, has prepared a Draft Programmatic Environmental Impact Statement (DPEIS) for the U.S. Army Forces Command (FORSCOM) regarding Joint Training Exercise Roving Sands (RS) proposed to be conducted at Fort Bliss and White Sands Missile Range. This EIS addresses the next five RS exercises as well as potential uses of RS sites by 3rd Armored Cavalry Regiment and 11th Air Defense Artillery (ADA) Brigade.

PROPOSED ACTION: Roving Sands is an annual training exercise coordinated by the Chairman, Joint Chiefs of Staff, sponsored by FORSCOM, and executed by the 11th ADA Brigade. This DPEIS covers the next five RS training exercises. The exercise will take place on and above the following areas: Fort Bliss, Texas and New Mexico; White Sands Missile Range, Holloman Air Force Base, and Roswell, New Mexico. Most of the ground activity will occur on established Fort Bliss training areas. As many as 10,000 Army, Air Force, Navy, and Marine personnel will participate in the exercise with about 200 aircraft and 3,000 wheeled vehicles. Roving Sands is scheduled to be conducted in the third quarter (April-June) of Fiscal Year 1993. The exercise will last approximately three weeks. Actual force employment and field training will be approximately 11 days.

This action does not involve a discharge of dredged or fill material into waters of the United States or wetlands, and no evaluation into section 404(b)(1) of the Clean Water Act is required. Cultural and biological surveys have been conducted to satisfy pertinent statutory and regulatory requirements pertaining to historical and archeological resources as well as threatened and endangered species and critical habitats. Therefore, no threatened or endangered species or cultural resources would be affected by this action. Advance planning has been used to avoid any sites which are environmentally sensitive.

SUPPLEMENTARY INFORMATION: The public is encouraged to comment on the DPEIS. Copies of the DPEIS are available upon written request to the U.S. Army Corps of Engineers, Fort Worth District, Planning Division, Post Office Box 17300, Fort Worth, Texas 76102–0300, or at the Environmental Resources Branch Office, room 13A20, 819 Taylor Street, Fort Worth, TX 76102–0300. Written comments will be accepted and considered for 30 days after the date of this notice.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. Arver Ferguson, Jr., telephone (817) 334–3246, CESWF–PL–RE, 819 Taylor Street Box 17300, Fort Worth, Texas 76102–0300.

Dated: March 11, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health), OASA(I,L&E).

[FR Doc. 93–5974 Filed 3–15–93; 8:45 am]

BILLING CODE 3710–08–M

Final Environmental Impact Statement for Army Realignments at Redstone Arsenal, AL

AGENCY: United States Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the realignment of the Materiel Readiness Support Activity from Lexington-Bluegrass Army Depot, Kentucky; the Logistics Control Activity from the Presidio of San Francisco, California, and the Armament and Chemical elements of the Armament, Munitions and Chemical Command from Rock Island Arsenal, Illinois, to Redstone Arsenal, Alabama. These recommendations became law on October 2, 1991. Subject document focuses on the environmental and socioeconomic impacts and mitigations associated with the construction and site decisions for the facilities to accommodate the new activities at Redstone Arsenal.

No long-term adverse ecological or environmental health effects are expected due to construction of the required facilities. The increase in population, caused by the realignment of the above mentioned logistics functions is expected to have a net positive impact on the local economy. The preferred alternative sites for the proposed construction projects are not expected to significantly impact environmental resources.

A scoping meeting was held in Huntsville, Alabama, on December 12, 1991. Public notices requesting input and comments from the public were issued in the regional area surrounding Redstone Arsenal. A Draft Environmental Impact Statement (DEIS) was published in October 1992. Comments received from the public in response to the DEIS have been addressed in the Final Environmental Impact Statement.

DATES: Written public comments and suggestions received by April 19,1993 will be considered prior to publishing the Army's Record of Decision.

ADDRESSES: Copies of the Final Environmental Impact Statement can be obtained by writing to the United States Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, 109 Saint Joseph Street, P.O. Box 2288, Mobile, Alabama 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Coffee at (205) 690–2729.

Dated: March 11, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 93–5967 Filed 3–15–93; 8:45 am]

BILLING CODE 3710–08–M

Technology and Patent Application Available for Licensing and Announcement of Opportunity for a Cooperative Research and Development Agreement (CRDA)

AGENCY: U.S. Army Armament Research, Development and Engineering Center, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army, U.S. Army Armament Research, Development and Engineering Center, announces the availability of non-exclusive, exclusive, or partially exclusive licensing of technology for automated inspection of manufactured products. The technology is applicable to digitized signals acquired by sensors proximate to the manufacturing area, of such non-destructive energy as visible light, infrared, microwave, x-ray, gamma ray, sound, ultrasound, electronic or magnetic, and may be multi-dimensional in nature. Analysis techniques are offered for the sensed signals which include elaborate algorithms to evaluate manufacturing success including spreadsheet-like image analysis and ANN (artificial neutral networks). A CRT displays the results of the analysis.

In addition, the following related patent application is available for licensing: Serial Number 07/929,217, filed August 13, 1992, Docket DAR–47–91, entitled "System for Analyzing Measurement Data", by Paul D. Wilson. Licenses shall comply with 35 U.S.C. 209 and 27 CFR part 404.

The U.S. Army is also seeking a partner or partners for a Cooperative Research and Development Agreement (CRDA) relative to further mutual development of the above-mentioned technology between the government and private industry, and use of same in royalty bearing commercial products.

DATES: Written objections must be filed within 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Edward Goldberg, Chief Patent Counsel, SMCAR–GC, U.S. Army Armament Research, Development and Engineering Center, Picatinny Arsenal, NJ 07806–5000, Telephone: (201) 724–6590 or DSN 880–6590.

Kenneth L. Denton,

Army Federal Liaison Officer.

[FR Doc. 93–5953 Filed 3–15–93; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

Defense Science Board Task Force on FY 1994–99 Future Years Defense Plan (FYDP); Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on FY 1994–99 Future Years Defense Plan (FYDP) will meet in closed session on March 10–11, March 15–16, and March 25, 1993 at the Pentagon, Arlington, Virginia. For budgetary purposes, the Secretary of Defense has requested this work on a priority basis, therefore, the short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide an independent assessment of the management and financial plans of the Department of Defense. The Task Force will review the overall health of the FY 1994–99 FYDP that was prepared by the Bush Administration. It will identify any major management challenges or serious underfunding problems.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: March 11, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–5961 Filed 3–15–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: March 24–26, 1993, from 9 a.m. to approximately 5 p.m. each day.

ADDRESSES: The meeting will be held at the Ramada Hotel Old Town, 901 North Fairfax Street, Alexandria, Virginia, 22314, (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

Under section 5342(a)(2) of the Indian Education Act, the Council is directed to review applications for assistance and to make recommendations to the Secretary of Education with respect to their approval. The duly authorized Proposal Review Committee of the Council will meet in closed session starting at approximately 9 a.m. and will end at approximately 5 p.m. each day during the proposal review session. The agenda will include reviewing grant applications from individuals for assistance under the fellowship program authorized by Subpart 2 of the Indian Education Act of 1988.

The discussion during the review process may disclose sensitive information about applicants, funding level requests and the names and comments of expert reviewers. Such discussion would disclose commercial or financial information obtained from a person and is privileged or confidential and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

Records are kept of all Council proceedings, and are available for public inspection. A summary of activities of this closed meeting which are informative to the public consistent with the policy of title 5 U.S.C. 552b shall be available for public inspection within 14 days of the meeting at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m Monday through Friday, except holidays.

Dated: March 3, 1993.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 93–5898 Filed 3–15–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.219]

Student Literacy Corps and Student Mentoring Corps Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide grants to institutions of higher education (IHEs) to promote the development of literacy corps programs and mentoring corps programs to be operated by IHEs in public community agencies in the communities in which such institutions are located. This program supports the strategy for moving the Nation toward the National Education Goals, especially Goals Two, Three and Five, which call for increasing the high school graduation rate, increasing academic competency and adult literacy and lifelong learning.

Eligible Applicants: Institutions of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, including branch campuses of the institutions.

Deadline for Transmittal of Applications: May 3, 1993.

Deadline for Intergovernmental Review: July 1, 1993.

Applications Available: March 19, 1993.

Available Funds: $5,270,496.

Estimated Range of Awards: Up to $100,000.

Estimated Average Size of Awards: $95,000.

Estimated Number of Awards: 55.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 (a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation. (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications or Information Contact: Darlene B. Collins, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–6128 or 708–7389. Individuals who are hearing-impaired may call 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.

Program Authority: 20 U.S.C. 1138–1138e.

Dated: March 10, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–5932 Filed 3–15–93; 8:45am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Grant Award to Tufts University

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Tufts University for continuing research efforts in support of the DOE Office for Building Technologies programs. The Tufts project seeks to develop and improve electrochromic windows for building and vehicle applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The proposed basic research will contribute to the DOE mission by identifying and solving the materials and optics problems associated with developing practical electrochromic windows for electrical control of radiant energy

transfer in building and vehicle windows. Successful completion of this research would advance the goal of commercialization of electrochromic window technology. Deploying this window technology will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption. Approximately one-sixth of that energy is wasted by unwanted radiation transfer through windows.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant is estimated at $238,947 and the anticipated period of performance is twelve (12) months. Tufts will share in the grant in the amount of $110,785.

Issued in Chicago, Illinois, on March 1, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–5999 Filed 3–15–93; 8:45 am]

BILLING CODE 6450–01–M

Cooperative Agreement Award to the University of Massachusetts

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a cooperative agreement to the University of Massachusetts for continuing research efforts in support of the DOE Office for Building Technologies programs. This project seeks to improve the methods used to calculate fenestration system (windows, skylights, etc.) U-values and solar heat gain coefficients.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The proposed research will contribute to the DOE mission by helping to identify and develop accurate, unbiased procedures for evaluating and comparing window thermal performance. Successful completion of this research would advance the goal of having testing procedures that give a reliable picture of window thermal performance characteristics. Displaying this information on window labels will enable people to make informed choices when purchasing window systems. This will lead to reduced energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption. Approximately one-sixth of that energy is wasted by unwanted radiation transfer through windows.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant is estimated at $106,000 and the anticipated period of performance is twelve (12) months.

Issued in Chicago, Illinois, on March 2, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–6000 Filed 3–15–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–191–000, et al.]

Electric Rate, Small Power Production, and Interlocking Directorate Filings; Alabama Power Company, et al.

March 9, 1993.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Co.

[Docket No. ER93–191–000]

Take notice that on February 26, 1993, Alabama Power Company (APCo) submitted additional documentation and information pertaining to certain reimbursements by Alabama Municipal Electric Authority and by Alabama Electric Cooperative, Inc. for modifications to APCo's transmission facilities resulting from requests by those customers pursuant to the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative, respectively. This additional documentation and information was submitted in compliance with a letter from the Director of the Division of Applications dated January 27, 1993, finding certain deficiencies in the original submittal.

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Fitchburg Gas and Electric Light Co.

[Docket No. ER93–414–000]

Take notice that on March 1, 1993, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a service agreement between Fitchburg and Central Vermont Public Service Corporation (Central Vermont) for the sale of up to 14 MW (winter maximum) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92–88–000 on September 30, 1992. The capacity rate to be charged Central Vermont is below the maximum capacity charges set forth in the Tariff, and the energy rate is that established in the Tariff. Fitchburg requests that service commence as of May 1, 1993. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on Central Vermont and the Massachusetts Department of Public Utilities.

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Texas-New Mexico Power Co.

[Docket No. ER93–145–000]

Take notice that on February 24, 1993, Texas-New Mexico Power Company (TNP) filed an Amendment No. 1 to a Microwave Communications Agreement between itself and El Paso Electric Company (EPE) dated October 18, 1988 (Agreement). The purpose of the Agreement is to provide for a mutually beneficial exchange of microwave communication channels to facilitate utility communications in southern New Mexico. TNP requests that the Agreement, as so amended, be permitted to become effective as of October 18, 1988, as provided therein.

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Empire District Electric Co.

[Docket No. ER93–393–000]

Take notice that on February 25, 1993, Empire District Electric Company (Empire) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 26 between Empire and Southwestern Gas & Electric Company.

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Gas and Electric Co.

[Docket No. ER93-395-000]

Take notice that on February 25, 1993, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change in its Federal Power Commission Electric Service Tariff No. 93. KG&E states that the proposed change is to reflect the amount of transmission capacity requirements required by Western Resources, Inc. under Service Schedule M to Rate Schedule No. 93 for the period June 1, 1993 through May 31, 1994.

Copies of this filing were served upon Western Resources, Inc. and the Kansas Corporation Commission.

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Public Service Co.

[Docket No. ER93-418-000]

Take notice that on March 2, 1993, Central Illinois Public Service Company (CIPS) tendered for filing the First Amendment (Amendment) to the Power Supply Agreement (Agreement) between CIPS and Illinois Municipal Electric Agency (IMEA). The Amendment extends the term of the Agreement and service schedules thereunder.

Copies of the filing have been served on the IMEA and the Illinois Commerce Commission.

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Co.

[Docket No. ER93-389-000]

Take notice that on February 22, 1993, Washington Water Power Company (WWP) tendered for filing a Notice of Termination of the following agreements:

Other party	Type of agreement	FERC No.	Termination date
California Dept of Water Resources.	Standby energy sale.	166	4/10/91
Sierra Pacific Pacific Power Company.	Standby energy sale.	167	4/10/91
Western Area Power Administration.	Non-firm energy sale.	140	6/9/92

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. El Paso Electric Co.

[Docket No. ER93-423-000]

Take notice that on March 3, 1993 El Pasco Electric Company (EPE) filed an agreement between itself and the Texas-New Mexico Power Company, dated October 18, 1988 and amended February 19, 1993. The purpose of the Agreement is to provide for a mutually beneficial exchange of microwave communication channels to facilitate utility communications in southern New Mexico. No transmission or energy services are provided by either party under this Agreement. No transmission or energy services are provided by either party under this Agreement. The amendment was executed in response to requests by the FERC Staff in order to (1) ensure a standard of operation and maintenance and (2) set a cap on contributions-in-aid according to a cost formula. EPE requests that the Agreement, as amended, be permitted to become effective as of October 18, 1988, its date of execution, pursuant to FERC's order allowing an amnesty for the filing of contributions-in-aid in Florida Power Corporation, Docket No. E ER93-4-000.

Comment date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corp.

[Docket No. ER93-421-000]

Take notice that on March 2, 1993, New York State Electric Gas Corporation (NYSEG) tendered for filing a Rate Schedule and six Supplements relating to an agreement for the installation, ownership and maintenance by NYSEG of certain facilities at its Coopers Corners and Fraser Substations in connection with the construction by the Power Authority of the State of New York (NYPA) of its Marcy South Transmission Lines. NYSEG has requested as of December 8, 1983, Supplement No. 1 as of September 27, 1984, Supplement 4 as of July 1, 1988, Supplement No. 5 as of July 1, 1989 and Supplement No. 6 as of July 1, 1990, Supplement No. 7 as of July 1, 1991 and Supplement No. 8 as of July 1, 1992.

NYSEG states that a copy of this filing has been served by mail upon NYPA and upon the Public Service Commission of the State of New York.

Comment Date: March 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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. 93-5980 Filed 3-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-225-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

March 9, 1993.

Take notice that on February 25, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, field in Docket No. CP93-225-000 a request pursuant to §§ 157.205 and 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a sales tap, under the blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

United states that natural gas deliveries will be made through the proposed tap in Jefferson Davis County, Mississippi to Entex, Inc. (Entex), a jurisdictional sales customer, pursuant to United's DG Rate Schedule. According to United, it currently makes natural gas sales to Entex in its McComb-Summit billing area under a service agreement dated October 1, 1991. United further states that the volumes proposed to be delivered to Entex at the new tap will be within the currently effective entitlements of 2,353 MMBtu per day for the McComb-Summit billing area.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and

pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-5976 Filed 3-15-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4604-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 15, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Emission Defect Information and Voluntary Emission Recall Reports (EPA ICR No. 282.03; OMB No. 2060-0048). This ICR requests renewal of the existing clearance.

Abstract: Motor vehicle and engine manufacturers must submit reports and keep records of their voluntary recall campaign to EPA. Manufacturers must inform EPA of emission nonconformities which prompted the recall. They must submit reports for six consecutive quarters of specific emission defects, and parameters affected by the defects, in 25 or more vehicles of a model year in actual use. Manufacturers must also keep records of their recalls, causes for each recall, and how the emission defects are corrected. EPA uses these data to ensure compliance with Federal regulations, and if necessary, to enforce Federal emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average 4 hours per response for reporting, and 26 hours annually per recordkeeper. This estimate includes the time needed to review instructions, search the existing data sources, gather the data needed and review the collection of information.

Respondents: Manufacturers of motor vehicles and motor vehicle engines

Estimated Number of Respondents: 12.

Estimated Total Annual Burden on Respondents: 1379 hours.

Frequency of Collection: Quarterly.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: March 9, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-5996 Filed 3-15-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4603-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 15, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Municipal Waste Combustors (Subpart Ea)-Reporting and Recordkeeping Requirements (EPA ICR No. 1506.04; OMB No. 2060-0210). This is a request for renewal of a currently approved information collection.

Abstract: These standards apply to municipal waste combustor (MWC) units with a capacity greater than 225 megagrams per day (250 tons per day) of municipal solid waste or refuse-derived fuel, for which construction, modification, or reconstruction commenced after December 20, 1989. Owners or operators of such units must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install continuous monitoring systems (CMS) to monitor specified operating parameters to ensure that good combustion practices are implemented on a continuous basis. Owners or operators must submit quarterly and annual compliance reports. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained, and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 249 hours per response for reporting, and 320 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of municipal waste combustors larger than 250 tons per day capacity.

Estimated Number of Respondents: 63.

Estimated Number of Responses Per Respondent: 4.

Estimated Total Annual Burden on Respondents: 82,892 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly and annual compliance reports.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 9, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-5995 Filed 3-15-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL 4606-3]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of privately offered allowances for the 1993 EPA SO_2 allowance auctions and announcement of the 1993 direct sale.

SUMMARY: Pursuant to Title IV of the Clean Air Act and 40 CFR Part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO_2), a precursor of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by virtually all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden.

EPA is directed under Section 416 of the Act to conduct annual sales and auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Sales and auctions are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. In the Fall of 1992, EPA delegated the administration of the EPA allowance auctions and sales to the Chicago Board of Trade (CBOT). The auctions and sales will be conducted under the regulations governing the auctions and sales which were promulgated on December 17, 1991 (40 CFR Part 73, Subpart E). Today, the Acid Rain Division is giving notice of (1) the total amount of allowances that will be auctioned in the first annual SO_2 allowance auctions, which are scheduled for March 29, 1993, and (2) the start date of the 1993 direct sale. Notice of the date of the first annual SO_2 allowance auctions was previously given in the February 3, 1993 Federal Register, cite 58 FR 6962.

Auctions. Anyone can participate in the EPA auctions, and bidders are not restricted as to the quantity or price of their bid. Allowances sold at the auctions will be sold to the highest bidder until no allowances remain. The 1993 auctions will consist of one "spot" auction and one "advance" auction. Allowances sold in the spot auction are useable for compliance beginning in 1995. Allowances sold in the advance auction are useable for compliance beginning in 2000. The Act directs EPA to sell in the 1993 auctions any spot or advance allowances that are offered by any Phase I or Phase II utility. However, offered allowances will be sold after the allowances that were withheld from the utilities, so offered allowances will consequently be sold at a lower price than the withheld allowances. Owners of offered allowances may set a minimum price for their allowances. The number of withheld allowances and offered allowances that are being sold in the 1993 auctions are listed in the table below. Bid Forms for the 1993 auctions must be received by the CBOT by the close of business on March 23, 1993.

ALLOWANCES TO BE SOLD IN THE 1993 AUCTIONS

Origin of allowances	Spot auction (first useable 1995)	Advance auction (first useable 2000)
EPA	50,000	100,000
Offered	95,010	30,500
Total	145,010	130,500

Direct Sale. Anyone can participate in the EPA direct sale, and buyers are not restricted as to the quantity of their purchase request. The 1993 direct sale will consist of one "advance" sale in which 25,000 allowances, first useable beginning in the year 2000, will be available for purchase. These allowances will be sold for $1,610.10 each (this amount reflects the $1,500 required price adjusted annually for inflation). The 1993 direct sale will run from June 1, 1993 to January 31, 1994. EPA will accept Direct Sale Application Forms during this time period, depending on availability of allowances. Buyers should not send payment with their form; after EPA receives a Direct Sale Application Form, it will convey, in writing, the exact price for allowances and payment instructions. Allowances from the direct sale will be sold on a first come, first served basis.

ADDRESSES: U.S. EPA Acid Rain Division (6204J), 401 M St., S.W., Washington, DC 20460 Attn: Auctions and Sales. Chicago Board of Trade, 141 W. Jackson Blvd., Suite 2240, Chicago, IL 60604 Attn: EPA Auctions.

Forms needed to participate in the EPA auctions and direct sales are available from the Acid Rain Division at (202) 233-9170.

FOR FURTHER INFORMATION CONTACT: The Acid Rain Hotline at (617) 674-7377. Information on bidding in the 1993 EPA auctions can be found in the brochure "How to Bid in the EPA SO_2 Allowance Auctions;" general information on the EPA auctions and sales can be found in the "Acid Rain Program Allowance Auctions and Direct Sales" fact sheet. These publications can be obtained by calling the Acid Rain Hotline or by writing to EPA at the address listed above.

Dated: March 10, 1993.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 93-5984 Filed 3-15-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-977-DR]

Arizona; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona (FEMA-977-DR), dated January 19, 1993, and related determinations.

EFFECTIVE DATE: March 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 6, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-5959 Filed 3-15-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-980-DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency [FEMA].

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia [FEMA-980-DR], dated March 4, 1993, and related determinations.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 4, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *er seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from tornadoes, high wind, and heavy rain on February 21-22, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period precribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin J. Schneider of the Federal Emergency Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster: The counties of Bartow, Cobb, Hall, Heard, Meriwether, Pike, Polk, and Walton for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William Tidball,

Acting Director.

[FR Doc. 93-5958 Filed 3-15-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-981-DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-981-DR), dated March 4, 1993, and related determinations.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 4, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from severe storms and high winds and January 20-21, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance with be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John Kainrad of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster: The Counties of Snohomish, King, Pierce, Thurston, Lewis, Mason, and Wahkiakum for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93-5956 Filed 3-15-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Prestige Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 9, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Prestige Financial Corp., Flemington, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Prestige State Bank, Flemington, New Jersey.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 100 percent of the voting shares of Wausau Financial Corporation, Wausau, Wisconsin, and thereby indirectly acquire Citizens Bank & Trust, Wausau, Wisconsin.

Board of Governors of the Federal Reserve System, March 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-5927 Filed 3-15-93; 8:45 am]

BILLING CODE 6210-01-F

SUN Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. SUN Bancorp, Inc., Selinsgrove, Pennsylvania; to engage *de novo* through its subsidiary, Pennsylvania SUN Life Insurance Company, in domestic life and disability reinsurance limited to ensuring the payment of the outstanding balance due on the extension of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. LeMars Bancorporation, Inc., Le Mars, Iowa; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Pacific Capital Bancorp, Salinas, California; to engage *de novo* in making loans or other extensions of credit, directly and for its own account to persons or entities in its market area, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Salinas, California, Watsonville, California and the greater Monterey, California peninsula area.

Board of Governors of the Federal Reserve System, March 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-5928 Filed 3-15-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Docket No. 9233]

Harold A. Honickman, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the 1991 consent order by allowing the respondents and the Brooklyn Beverage Acquisition Corp. to acquire non-carbonated soft drink assets without prior Commission approval. The Commission concluded that modifying the order was warranted to eliminate unintended coverage.

DATES: Consent Order issued July 25, 1991. Modifying Order issued March 2, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Joseph Eckhaus, FTC/S-2115, Washington, DC 20580. (202) 326-2665.

SUPPLEMENTARY INFORMATION: In the Matter of Harold A. Honickman, et al. The prohibited trade practices and/or corrective actions, as set forth at 56 FR 38446, are changed, in part, as indicated in the summary.

Authority: 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. 93-5981 Filed 3-15-93; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0205, GSAR Part 523: Environmental, Conservation, Occupational Safety, and Drug-Free Workplace. Hazardous material information clause requires a contractor to identify items to be delivered which are hazardous substances and to provide specific information concerning the shipment of that material.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 1,590; *annual responses:* 1; *average hours per response:* 0.33; *burden hours:* 530.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501-1224.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H-130, 6th & PA., Ave., NW., Washington, DC 20580.

2691, or by faxing your request to (202) 501-2727.

Dated: March 8, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-5947 Filed 3-15-93; 8:45 am]

BILLING CODE 6820-61-M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve information collection, GSAR 538: Submission and Distribution of Authorized GSA Schedule Pricelists. After award, GSA Multiple Award Schedule Contractors are required to submit and distribute paper copies of their authorized GSA Schedule Pricelist. The clause also requires Contractors to submit the pricelist to the Contracting Officer, on an electronic media.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 3250; *annual responses:* 1; *average hours per response:* 54.9; *burden hours:* 178,585.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501-1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: March 8, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-5948 Filed 3-15-93; 8:45 am]

BILLING CODE 6820-01-M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Commodity Management (FC), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve information collection, Market Research Questionnaire. Market research questionnaires are used to gather information which is necessary to develop and/or revise Federal specifications or other purchase descriptions.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 25; *annual responses:* 1; *average hours per response:* .5; *burden hours:* 12.5.

FOR FURTHER INFORMATION CONTACT: John T. Miller, (703) 305-6930. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: March 8, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-5949 Filed 3-15-93; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for authority to continue use of an existing information collection titled: "State Corrective Action Plans for the Aid to Families with Dependent Children (AFDC) Program". This request was previously approved under OMB Control Number 0970-0027.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: State Corrective Actions Plans For The Aid To Families With Dependent Children (AFDC) Programs

OMB No.: 0970-0027

Description: This information collection is under the general authority of section 408 of the Social Security Act which gives the Secretary of the Department of Health and Human Services the authority to require corrective action plans (CAP) for error rate levels in public funds appropriated for State-administered financial assistance to the Aid to Families with Dependent Children (AFDC) programs. This collection of information is also authorized by 45 CFR 205.40. These final regulations govern the revised Quality Control (QC) system for the (AFDC) program established by section 408 of the Social Security Act, as added by section 8004 of the Omnibus Budget Reconciliation Act (OBRA) of 1989.

As provided by these regulations, all States are required to analyze the error rate levels in State and Federal assistance payments and take the necessary corrective action.

The corrective action plans system is ACF's major management tool for measuring the accuracy of payments and the level of Federal funding under the AFDC assistance programs, and for obtaining the data needed to analyze and improve performance in paying benefits. These two objectives are achieved by the Office of Family Assistance, ACF, by a continuous review of statistically valid and reliable State samples of AFDC cases.

Annual Number of Respondents: 13

Annual Frequency: 1

Average Burden Hours Per Response: 160

Total Burden Hours: 2,080

Dated: February 19, 1993.

Larry Guerrero,

Deputy Director, Office of Information System Management.

[FR Doc. 93-5945 Filed 3-15-93; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children, Youth and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the

Office of Management and Budget (OMB) a request for approval of new information collection titled: "Study of the Impact on Service Delivery of Families with Substance Abuse Problems". This information collection is submitted by the Evaluation Branch within the Administration on Children, Youth and Families of the Administration for Children and Families.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Study of the Impact on Service Delivery of Families with Substance Abuse Problems

OMB No.: New request

Description: The primary purpose of the this study is to provide information to the Administration on Children, Youth and Families (ACYF) that will guide future policy and programmatic decisions and improve the overall quality and effectiveness of its service delivery programs. The information to be collected concerns the nature and dimensions of the effects of alcohol and other drug (AOD) abuse problems on ACYF-funded programs, specifically Head Start, Head Start Parent-Child Centers, the Comprehensive Child Development Program, the Child Abuse and Neglect State Grant Program, the Federal Foster Care Program, the Adoption Assistance Program, and the Runaway and Homeless Youth (RHY) Program.

If this study is not conducted, ACYF administrators will not have documentation of the impact of AOD abuse on ACYF-funded programs. Since these data will describe the nature and the dimension of the problem and the variations in impact across program areas, the various bureaus of ACYF will be able to respond to the problems that specifically affect the programs they administer.

Annual Number of Respondents: 3,330

Frequency: 1

Average Burden Hours Per Response: .61

Total Burden Hours: 2,045

Dated: January 15, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–5944 Filed 3–15–93; 8:45 am]

BILLING CODE 4310–01–M

Food and Drug Administration

[GN 2015]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970), as amended most recently in pertinent parts at 57 FR 20115, May 11, 1992; 56 FR 47098, September 17, 1991; 57 FR 54241, November 17, 1992; 53 FR 8978 March 18, 1988; 49 FR 10175, March 19, 1984; 56 FR 50126, October 3, 1991; 48 FR 54129, November 30, 1983; 55 FR 20533, May 17, 1990; and 52 FR 3352, February 3, 1987) is amended to reflect the transfer of the functions relating to equal employment opportunities (EEO) from the Offices of Management to the Offices of the Center Directors. The major components involved are listed as follows: The Office of Regulatory Affairs, the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, the Center for Veterinary Medicine, and the National Center for Toxicological Research. This reorganization will assure the appropriate level of attention to the functions relating to EEO by placing them separately and independently from all other functions within the major organizational components to which they provide services. The Office of Regulatory Affairs functions do not need to be revised as they are currently sufficient to encompass these functions. In addition, the Center for Food Safety and Applied Nutrition is not addressed in this proposal because the transfer of EEO functions was covered in the reorganization approved by the Secretary, HHS, on November 6, 1992.

Section HF–B, Organization and Functions is Amended as Follows

1. Delete subparagraph (f–1) under the *Office of Operations (HFA9), Office of Regulatory Affairs (HFA4), Office of Resource Management (HFA4A)* in its entirety and insert a new subparagraph (f–1) reading as follows:

(f–1) Office of Regulatory Resource Management (HFA4A). Serves as the Agency lead office, in cooperation with the Office of Health Affairs, in initiating, coordinating, and offering specific regulatory bilateral agreements and Memoranda of Understanding (MOU's) to foreign countries.

Provides policy direction to other Agency components in the initiation, development, and recommendation of specific domestic regulatory bilateral agreements and MOU's with other governments.

Provides technical input for the Office of Regulatory Affairs quality assurance program as it pertains to assuring the consistency and adequacy of field investigational and inspectional operations.

Develops proposed overall field manpower allocations and long- and short-range operational program plans; identifies management data requirements for information systems; analyzes and evaluates field performance data and overall accomplishments.

Advises the Associate Commissioner and the Regional Food and Drug Directors on all areas of management, including financial management, management analysis, and administrative operations.

Designs, develops, and manages a comprehensive career development and training program for Office of Regulatory Affairs Headquarters and field and State employees.

Develops and implements nationwide information storage and retrieval systems for data originating in the field offices.

2. Delete subparagraphs (p–1) and (p–2) under the *Office of Operations (HFA9), Center for Biologics Evaluation and Research (HFB),* in their entirety and insert the following new subparagraphs:

(p–1) Office of the Center Director (HFB1). Promulgates, plans, administers, coordinates, and evaluates overall Center scientific, regulatory, and management programs, plans and policies.

Provides leadership and direction for all Center activities and cooperation with other Agency components and outside organizations.

Coordinates and directs the Center management, planning, and evaluation systems to assure optimum utilization of Center personnel, financial resources, and facilities.

Plans and coordinates the Center's Equal Employment Opportunity Program.

(p–2) Office of Management (HFB12). Monitors the development and operation of planning systems for Center activities and resource allocations and

advises the Center Director on Center administrative policies and guidelines and information systems and services.

Directs and counsels Center managers through program evaluation and technological forecasting.

Plans and directs Center operations for financial and personnel management and administrative management services.

Directs Center organization, management, and information systems.

Manages studies designed to improve processes and resource allocations in the Center.

Advises the Center on contract and grant proposals.

3. Delete subparagraphs (n–1) and (n–1–i) under the *Office of Operations (HFA9), Center for Drug Evaluation and Research (CDER)* in their entirety and insert new subparagraphs reading as follows:

(n–1) Office of the Center Director (HFN1). Promulgates, plans, administers, coordinates, and evaluates overall Center scientific, management, and regulatory programs, plans, and policies.

Provides leadership and direction for all Center activities.

Coordinates and directs the Center management, planning, and evaluation systems, to assure optimum utilization of Center manpower, financial resources, and facilities.

Plans and coordinates the Center's Equal Employment Opportunity Program.

(n–1–i) Office of Management (HFN12). Monitors the development and operation of planning systems for Center activities and resource allocations and advises the Center Director on Center administrative policies and guidelines and information systems and services.

Directs and counsels Center managers through program evaluation and technological forecasting.

Plans and directs Center operations for financial and personnel management, employee development and training, and office services.

Directs Center organization, management, and information systems, and provides library services.

Manages studies designed to improve processes and resource allocations in the Center.

Advises the Center on contract and grant proposals.

Provides coordination for receipt and distribution of initial drug applications and other related documents.

Prepares, develops, and coordinates Center and Agency responses to drug-related requests under the Freedom of Information (FOI) Act, the Privacy Act, and other statutes.

4. Delete subparagraphs (m-1) and (m-1-i) under the *Office of Operations (HFA9), Center for Veterinary Medicine (HFV)* in their entirety and insert new subparagraphs reading as follows:

(m-1) Office of the Center Director (HFV1). Directs overall Center activities and coordinates and establishes Center policy in the areas of research, management, scientific evaluation, and compliance, surveillance.

Approves new animal drug applications and issues notices of withdrawal of new animal drug approvals when the opportunity for a hearing has been waived.

Authorizes for use as edible products animals treated with investigational drugs and terminates exemptions for investigational trials.

In conjunction with appropriate Agency officials in the foods area, provides FDA policy development and direction on environmental impact matters.

Plans and coordinates the Center's Equal Employment Opportunity Program.

(m-1-i) Office of Management (HFV1A). Provides guidance and leadership in the analysis, planning, coordination and evaluation of administrative management activities including: Personnel; facilities; property; budget formulation and execution; program analysis; management analysis; communications, including freedom of information, training, and education; procurement; automated data processing; travel; and messenger services to Center officials.

Plans, develops, and implements Center management policies. Provides leadership and direction for the management and administrative interface with the Office of the Assistant Secretary for Health (OASH), the Department of Health and Human Services (DHHS), and other Federal agencies.

Serves as Center interface with Agency, OASH, and DHHS on budget issue resolutions.

Performs analyses, program assessments, or special studies of key issues relative to policy review and oversight. Directs a variety of short-range and long-range special projects or assignments of substantial significance to the Center.

Implements internal control reviews in accordance with OMB, DHHS and Agency guidelines. Provides direction in the preparation of responses to the Office of Inspector General and the General Accounting Office regarding audits and investigation.

Directs the Center's outreach efforts to consumers, professionals, and the industry in communicating the program goals and priorities of the Center.

5. Delete subparagraphs (o-1) and (o-1-i) under the *Office of Operations (HFA9), Center for Devices and Radiological Health (HFW)* in their entirety and insert new subparagraphs reading as follows:

(o-1) Office of the Center Director (HFW1). Provides leadership and direction for, and evaluation and coordination of, the activities of the Center.

Provides advice and consultation to the Commissioner and other Agency officials on policy matters concerning radiological health and medical device activities.

Recommends changes in legislative authority to the Office of the Commissioner.

Establishes policy in the areas of education and communications and formulates strategies for developing and disseminating educational and programmatic information to health professionals, consumers, and other government agencies.

Manages a tracking system for the control and monitoring of the Director's correspondence and provides management support for the coordination of meetings involving the Center Director and Deputy Center Director.

Plans and coordinates the Center's Equal Employment Opportunity Program.

(o–1–i) Office of Management Services (HFW11). Advises the Center Director in regard to all administrative management matters.

Plans, develops, and implements Center management policies and programs concerning manpower management, financial management, personnel management, contracts and grants management, conference management, employee development and training, occupational safety, organization, management analysis, and general office services support.

Develops and implements the Center's long-range, strategic, and operational plans.

Develops and applies evaluation techniques to measure the effectiveness of Center programs.

Provides general information and technical publication services to the Center.

Plans, conducts, and coordinates Center committee management activities.

6. Delete subparagraph (q–1) under the *Office of Science (HFAH), National Center for Toxicological Research (HFT)* in its entirety and insert a new subparagraph reading as follows:

(q-1) Office of the Director (HFT1). Provides leadership and direction to assure the efficient and effective planning, performance, and evaluation of Center activities.

Provides leadership and direction to all Center research activities.

Provides for scientific intelligence between the Center and all related interests in toxicological research, including the National Academy of Sciences, the National Science Foundation, and the worldwide academic, scientific, and medical communities consort; acts as principal liaison with the Director of the National Toxicology Program.

Coordinates Center programs with similar in-house, grant, and contract programs of the Food and Drug Administration, the Environmental Protection Agency, the National Institutes of Health, the National Toxicology Program, and other government toxicological research laboratories.

Monitors and evaluates performance of contractors supporting Center activities.

Plans and coordinates the Center's Equal Employment Opportunity Program.

Dated: March 1, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93-5960 Filed 3-15-93; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Availability of Funds for Grants To Provide Outpatient Early Intervention Services With Respect to HIV Disease

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that for fiscal year (FY) 1993 approximately $47.5 million is available for discretionary grants to provide outpatient early intervention services with respect to human immunodeficiency virus (HIV) disease. These grants are awarded under the provisions of subpart II and subpart III of part C of title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101-381 (42 U.S.C. 300ff-51—300ff-67).

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. This grant program is related to the following priority areas: Increase the proportion of HIV-infected persons who are tested; increase the proportion of primary health care providers who provide age-appropriate HIV counseling; and increase the proportion of family planning and primary health care providers who provide a comprehensive HIV program. 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. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

ADDRESSES: Application kits (Form PHS 5161-1 with revised face sheet HHS Form 424, as approved by the Office of Management and Budget (OMB) under control number 0937-0189) may be obtained from, and completed applications should be mailed to, the appropriate PHS Regional Grants Management Officer (RGMO) (see Appendix). The RGMO can also provide assistance on business management issues.

DATES: In order to have received consideration, applications for noncompeting continuation grants with January 1 budget start dates, were received by the RGMO by September 1, 1992. These applicants were given individual notice of this deadline. Applications for both competing and noncompeting continuation grants with September 30 budget start dates, must be received by the appropriate RGMO by June 1, 1993. Applications will be considered to be "on time" if they are either: (1) Received on or before the established deadline date, or (2) sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.) Late applications will not be considered for funding and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Enrique Fernandez, M.D., HIV Program Director, Division of Programs for Special Populations, Bureau of Primary Health Care (BPHC), at 5600 Fishers Lane, Rockville, Maryland 20857 (telephone 301-443-8113).

SUPPLEMENTARY INFORMATION:

Number of Awards

It is anticipated that a total of 136 grants will be awarded ($47.5 million), of which 40 ($12.7 million) will be for noncompeting continuation grants with January 1 budget start dates, and 26 ($9.4 million) will be for competing continuations and 70 ($25.4 million) will be for noncompeting continuations with September 30 budget start dates.

The range of project support is approximately $100,000-$500,000. The budget period will be for 12 months. Continuation awards for any future years will be made subject to the availability of funds and satisfactory performance in past budget years toward meeting the goals and objectives of the project.

Eligible Applicants

Eligible applicants are public entities and nonprofit private entities that are: Migrant health centers under section 329 of the PHS Act; community health centers under section 330 of the PHS Act; health care for the homeless grantees under section 340 of the PHS Act; family planning grantees under section 1001 of the PHS Act other than States; comprehensive hemophilia diagnostic and treatment centers; federally-qualified health centers under section 1905(*l*)(2)(B) of the Social Security Act; or public and private nonprofit entities that currently provide comprehensive primary care services to populations at risk of HIV disease.

Funding under this grant program is intended to increase the capacity and accessibility of the specified entities to offer a higher quality and a broader scope of HIV-related early intervention services to a greater number of people in their service areas who are at risk of HIV infection. The program must provide the services specified in the statute (sections 2651, 2661, 2662) and may provide for a set of other optional services.

The required services to be provided under this grant are:

- Comprehensive individual counseling regarding HIV disease according to specific statutory mandates for the content and conduct of pretest counseling, counseling of those with negative test results, counseling of those with positive results, and with attention to the appropriate setting for all counseling;
- Testing individuals with respect to HIV disease, in laboratories certified under the Clinical Laboratories Improvement Amendments, including tests to confirm the presence of the disease, tests to diagnose the extent of

the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

• Referral to appropriate providers of health and support services, including, as appropriate to entities funded under parts A and B of title XXVI of the PHS Act, to biomedical research facilities, community-based organizations or other entities that offer experimental treatment for HIV disease, and to grantees under 2671 in the case of pregnant women;

• Other clinical and diagnostic services regarding HIV disease, and periodic medical evaluations of individuals with the disease;

• Providing therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease; and

The optional services that may be included if they can be shown to be essential to the delivery of care are:

• Outreach, case-management, and counseling for eligibility for other health services.

Applicants, or providers acting under an agreement with the applicant, must be participating and qualified providers under the State Medicaid plan approved under title XIX of the Social Security Act; a waiver procedure is available from BPHC. Grantees are required to maximize service reimbursements from private insurance, Medicare, other Federal programs, and other third-party payment sources.

The applicant must agree that the services provided will conform to the assurances and agreements required under the statute that:

• The applicant will participate in an HIV care consortium established pursuant to part B, title XXVI, if such a consortium exists.

• Hemophilia services will be provided through the network of regional comprehensive hemophilia diagnostic and treatment centers.

• The applicant will ensure confidentiality of patient information.

• Testing will be provided only after obtaining a statement that the testing is done after counseling has been conducted and that the decision of the individual to undergo testing is voluntarily made.

• Opportunities for anonymous testing will be provided.

• Individuals seeking services will not have to undergo testing as a condition of receiving other health services.

• The applicant will maintain its FY 1993 expenditures for early intervention services at the same level as existed in FY 1992.

• A sliding fee schedule with the limits established in the statute will be utilized.

• Funds will not be expended for services covered, or which could reasonably be expected to be covered, under any State compensation program, insurance policy, or under any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis.

• Funds will be expended only for the purposes awarded, and such procedures for fiscal control and fund-accounting, as may be necessary, will be established.

• Counseling programs shall not be designed to directly promote or encourage injecting drug use or sexual activity, homosexual or heterosexual; shall be designed to reduce exposure to, and transmission of, HIV disease by providing accurate information; and shall provide information on the health risks of promiscuous sexual activity and injecting drug use.

• A limit of 5 percent of the grant funds will be imposed for administrative expenses. Funds may not be expended for construction, inpatient care, residential care, or cash payments to recipients of services.

• The HIV Client and Program Profile which has been formally established as the Minimum Data Set (MDS) for BPHC, will be submitted every 6 months.

Criteria for Evaluation

A. Non-Competing Continuations

HRSA will consider the extent to which the grantee displays satisfactory and substantial progress towards meeting the objectives proposed and funded in the previous year, as well as documents and addresses any significant changes that have occurred over the past budget year. This will include:

• Documented continued need for early intervention services in the community including additional preventive and primary care services to those at-risk for HIV infection, including women, children, and minorities, and persons with HIV infection, barriers to meeting those needs with the existing service provider system, and other information (i.e., epidemiological and health resources data).

• A well functioning HIV early intervention services program especially emphasizing the scope of counseling and testing, referral, primary care prevention, diagnostic and treatment services, and optional outreach, case-management, or eligibility assistance services provided by the applicant.

• Appropriateness of management and staffing plans.

• Appropriateness and adequacy of the proposed budget.

• Resolution of problems and obstacles in program implementation.

• Effective collaboration with city/county/State health department HIV prevention activities supported by the Centers for Disease Control and with State Care Consortia funded under section 2613 of the PHS Act: description of efforts to achieve consistency with priorities of the HIV Planning Council in the cities funded under title XXVI of the PHS Act and programs funded by other PHS agencies.

• Progress in implementing the program evaluation plan related to impact and quality of care.

B. Competing Continuations

In its review of applications for competing projects, BPHC will consider the extent to which:

• The need in the community, based on the 2-year period preceding the proposed grant period, for additional preventive and primary care services to those at-risk for HIV infection, including women, children, and minorities, and persons with HIV infection, barriers to meeting those needs with the existing service provider system, and other information (i.e. epidemiological and health resources data) that makes a compelling case for the grant requested as specified in section 2653 of the PHS Act.

• Adequacy of the existing, plus intended, scope of counseling and testing, referral, primary care prevention, diagnostic and treatment services, and optional outreach, case-management, or eligibility assistance services provided by the applicant.

• Appropriateness and adequacy of the proposed budget.

• Extent to which actions taken assure effective collaboration with city/county/State health department HIV prevention activities supported by the Centers for Disease Control and with State Care Consortia funded under section 2613 of the PHS Act; extent to which efforts are consistent with priorities of the HIV Planning Council in the cities funded under title XXVI of the PHS Act and programs funded by other PHS agencies.

• Progress in implementing the program evaluation plan related to impact and quality of care.

Other Grant Information

The Grant Program to Provide Outpatient Early Intervention Services with Respect to HIV Disease has been determined to be a program which is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State-point-of-contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal Governments) should contact their 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. The due date for State process recommendations is 60 days after the application deadline date. The BPHC does not guarantee to accommodate or explain State process recommendations it receives after that date.

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal Application receipt due date:

a. A copy of the face page of the application (SF–424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies. Grants will be administered in accordance with HHS Regulations in 45 CFR part 92 for State and local governments, or 45 CFR part 74 for other grantees.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.918.

Dated: March 11, 1993.

Robert G. Harmon,

Administrator.

Appendix

Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203 (617) 565–1482

Region II: Steven Wong, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278 (212) 264–4496

Region III: Marty Bree, Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101 (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323 (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603 (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202 (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64106 (816) 426–5841

Region VIII: Jerry F. Wheeler, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294 (303) 844–4461

Region IX: Linda Gash, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102 (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121 (206) 553–7997.

[FR Doc. 93–5954 Filed 3–15–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Names of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: March 26, 1993.

Time of Meeting: 8 a.m. until adjournment.

Place of Meeting: Contact Dr. Semmes for place of meeting.

Agenda: Review of applications received in response to RFA DC–93–01.

Contact Person: Dr. Marilyn Semmes, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400B, Bethesda, Maryland 20892, (301) 496–8683.

This notice is being published less than 15 days prior to the meetings due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: March 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–5920 Filed 3–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Ad Hoc Language and Language Impairments Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Language and Language Impairments Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on April 29, 1993. The meeting will take place from 8 a.m. to 4 p.m. in Conference Room 9, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8 a.m. to 1 p.m. to discuss changes in the scientific field of language and language impairments since the Research Plan was written, compare the research portfolio of the

Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and to identify gaps and to suggest new initiatives in preparation for the updating of the language and language impairments section of the Research Plan. Attendance by the public will be limited to the space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 1 p.m. until adjournment for the discussion and recommendation of individuals to serve on a scientific panel to update the language and language impairments section of the Research Plan. These discussions could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Mirene Boerner, Acting Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, Room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Acting Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders)

Dated: March 9, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–5921 Filed 3–15–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of C.I. Direct Blue 15

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of C.I. Direct Blue 15, used as a dye to color textiles, paper, plastic, rubber, and leather.

Twenty-two month toxicology and carcinogenesis studies were conducted by administering to male and female rats doses of 0, 630, 1250, or 2500 ppm C.I. Direct Blue 15 in distilled drinking water for 96 weeks. There were 70 rats per control group, 45 rats per low-dose group, 75 rats per mid-dose group, and 70 rats per high-dose group.

Under the conditions of these 22-month drinking water studies, there was clear evidence of carcinogenic activity [1] of C.I. Direct Blue 15 (desalted industrial grade) in male F344/N rats, as indicated by benign and malignant neoplasms of the skin, Zymbal's gland, preputial gland, liver, oral cavity, and small and large intestine. Increased incidences of mononuclear cell leukemia and neoplasms of the brain may have been related to chemical administration. There was clear evidence of carinogenic activity of C.I. Direct Blue 15 in female F344/N rats, as indicated by benign and malignant neoplasms of the skin, Zymbal's gland, clitoral gland, liver, oral cavity, small and large intestine, and uterus, and by mononuclear cell leukemia.

The study scientist for this bioassay is Dr. June K. Dunnick. Questions or comments about the contents of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4811.

Copies of Toxicology and Carcinogenesis Studies of C.I. Direct Blue 15 in F344/N Rats (Drinking Water Studies) (TR 397) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419 or (919) 541–0977.

Dated: March 10, 1993.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93–5922 Filed 3–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid, Disodium Salt

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 4,4'-diamino-2,2'-stilbenedisulfonic acid, disodium salt, used in the synthesis of dyes and optical brighteners or fluorescent whitening agents. Fluorescent whitening agents are added to paper, leather, fabrics, plastics, and detergents to enhance colors and whiteness.

Two-year toxicology and carcinogenesis studies were conducted by administering 4,4'-diamino-2,2'-stilbenedisulfonic acid, disodium salt, to groups of 60 rats and 60 mice of each sex in feed for 7 days a week for up to 103 weeks. Rats received feed containing 0, 12,500, or 25,000 ppm and mice received feed containing of 0, 6,250 or 12,500 ppm of the chemical.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity [1] of 4,4'-diamino-2,2'-stilbenedisulfonic acid, disodium salt, in male or female F344/N rats receiving 12,500 or 25,000 ppm. There was no evidence of carcinogenic activity of 4,4'-diamino-2,2'-stilbenedisulfonic acid, disodium salt, in male or female B6C3F1 mice receiving 6,250 or 12,500 ppm.

The study scientist for this bioassay is Dr. James R. Hailey. Questions or comments about the contents of this Technical Report should be directed to Dr. Hailey at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–0294.

Copies of Toxicology and Carcinogenesis Studies of 4,4'-diamino-2,2'-stilbenedisulfonic Acid, Disodium Salt in F344/N Rats and B6C3F1 Mice (Feed Studies) (TR 412) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419 or (919) 541–0977.

Dated: March 10, 1993.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93–5923 Filed 3–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of HC Yellow 4

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of HC Yellow 4, used in semipermanent hair dyes.

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Two-year toxicology and carcinogenesis studies were conducted by feeding groups of 70 male rats diets containing 0, 2,500 or 5,000 ppm HC Yellow 4 and feeding groups of 70 female rats and 70 mice of each sex diets containing 0, 5,000 or 10,000 ppm HC Yellow 4 for up to 2 years.

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity[1] of HC Yellow 4 in male F344/N rats based on the increased incidence of pituitary gland adenomas and hyperplasia. The male rats may have been able to tolerate a slightly higher dose of the chemical. There was no evidence of carcinogenic activity of HC Yellow 4 in female F344/N rats given 5,000 or 10,000 ppm. There was no evidence of carcinogenic activity of HC Yellow 4 in male or female B6C3F1 mice given 5,000 or 10,000 ppm.

There was a chemical-related increase in the incidence of thyroid gland pigmentation and follicular cell hyperplasia in mice.

The study scientist for this bioassay is Dr. Kamal M. Abdo. Questions or comments about the contents of this Technical Report should be directed to Dr. Abdo at P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819.

Copies of Toxicology and Carcinogenesis Studies of HC Yellow 4 in F344/N Rats and B6C3F1 Mice (Feed Studies) (TR 419) are available without charge from Central Data Management, NIEHS, MD A0-01, P. O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419 or (919) 541-1371.

Dated: March 10, 1993.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93-5924 Filed 3-15-93; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Quercetin

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of quercetin, a member of a group of naturally occurring compounds, the flavonoids. Quercetin is found in various food products and plants, including fruits, seeds, vegetables, tea, coffee, bracken fern and natural dyes.

Two-year toxicology and carcinogenesis studies were conducted by administering quercetin to groups of 70 male and 70 female rats at concentrations of 0, 1,000, 10,000 or 40,000 ppm quercetin in feed.

Under the conditions of these 2-year feed studies, there was some evidence of carcinogenic activity[1] of quercetin in male F344/N rats based on an increased incidence of renal tubule cell adenomas. There was no evidence of carcinogenic activity of quercetin in female F344/N rats receiving 1,000, 10,000 or 40,000 ppm. The incidence of renal tubule hyperplasia and the severity of nephropathy were increased in exposed male rats.

The study scientist for this bioassay is Dr. June K. Dunnick. Questions or comments about the contents of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-4811.

Copies of Toxicology and Carcinogenesis Studies of Quercetin in F344/N Rats (Feed Studies) (TR 409) are available without charge from Central Data Management, NIEHS, MD A0-01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419 or (919) 541-0977.

Dated: March 10, 1993.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93-5925 Filed 3-15-93; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Resorcinol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of resorcinol, used in the manufacture of adhesives and dyes and as an ingredient in pharmaceutical preparations for the topical treatment of skin conditions.

Two-year toxicology and carcinogenesis studies were conducted by administering doses of 0, 112, or 225 mg/kg resorcinol in deionized water by gavage to groups of 60 male rats and 60 mice of each sex. Female rats received dose levels of 0, 50, 100, or 150 mg/kg resorcinol.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity[1] of resorcinol in male F344/N rats given 112 or 225 mg/kg or female F344/N rats given 50, 100, or 150 mg/kg. There was no evidence of carcinoge Zic activity of resorcinol in male or female B6C3F1 mice given 112 or 225 mg/kg.

Clinical signs suggestive of a chemical-related effect on the central nervous system, including ataxia, recumbency, and tremors, were observed in rats and mice in the 2-year studies.

Copies of Toxicology and Carcinogenesis Studies of Resorcinol in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 403) are available without charge from Central Data Management, NIEHS, MD A0-01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541-3419 or (919) 541-0977.

Dated: March 10, 1993.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93-5926 Filed 3-15-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-940-03-4210-02]

Notice of Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has prepared a draft report to Congress concerning the history, as well as current and future administration, of road rights-of-way granted under the provisions of Revised Statute 2477 (R.S. 2477). This statute was repealed with the enactment of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), but valid existing rights were retained. The draft addresses the impacts of current and

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), and one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

potential claims of R.S. 2477 rights-of-way, possible alternative methods for assessing the validity of such claims and alternatives to obtaining rights-of-way.

SUPPLEMENTARY INFORMATION: Conference Report 102–901, which accompanied the 1993 Appropriations Act for the Department of Interior and related agencies, directed the Department of the Interior to report to the appropriate Congressional committees on the following aspects of management of the R.S. 2477 rights-of-way.

- The likely impacts of current and potential claims under R.S. 2477 on: the management of federal lands, access to federal, private, state and Indian & native lands, access to multiple use activities.
- The current status claims under R.S. 2477.
- Possible alternatives for assessing the validity of claims under R.S. 2477.
- Possible alternatives to obtaining rights-of-way.

This draft report will be available for public review and comment on March 18, 1993. A series of public meetings will be held to discuss the draft report: April 6, 1–3 p.m. and 6–9 p.m., Sacramento Inn, 1401 Arden Way, Sacramento, California; April 7, 4–8 p.m., BLM Conference Room, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah; April 9, 10–2 p.m. Las Vegas Library, 833 Las Vegas Blvd. No., Las Vegas, Nevada; April 12, 2–4 and 7–9 p.m., BLM Conference Room, Boise, District Office, 3948 Development Avenue, Boise, Idaho; April 15, 9:30–11:30 a.m. and 1–3 p.m., Noel Wien Library Auditorium, 1215 Cowles Avenue, Fairbanks, Alaska; and April 16, 12–4 p.m., ZJ Loussac Library Conference Room, 3600 Denali Street, Anchorage, Alaska.

The public comment period will end on April 16, 1993. Comments received after this date may not be included in the final report submitted to Congress.

Written comments should be addressed to Ted Stephenson, R.S. 2477 Project, Utah State Office BLM, P.O. Box 45155, Salt Lake City, UT 84145–0155.

FOR FURTHER INFORMATION CONTACT: Ted Stephenson or Terry Catlin, R.S. 2477 Project, Utah State Office BLM, P.O. Box 45155, Salt Lake City, Utah 84145–0155; Telephone (801) 539–4100.

Ted D. Stephenson,

R.S. 2477 Task Force Leader.

[FR Doc. 93–5901 Filed 3–15–93; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–930–4210–06; A–27587, A–27588, A–27589]

Notice of Proposed Withdrawal and Opportunity for a Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service (FS) has filed applications A–27587, A–27588 and A–27589 to withdraw from location and entry under the mining laws only, appoximately 1,277.00 acres of National Forest System lands. The withdrawals as proposed are for the Charcoal Kiln Historic Site, the Grapevine Springs Botanical Area and the Lynx Creek Indian Ruin. The withdrawals will be made subject to valid existing rights. Existing improvements are located at the Charcoal Kiln Historic Site and the Lynx Creek Indian Ruin and presently have an estimated value of $50,000 and $45,000 respectively. No improvements are located at the Grapevine Springs Botanical Area.

These applications are in compliance with the regulations found in 43 CFR 2310.1–2 and the Prescott National Forest Plan. Publication of this notice closes the land for up to 2 years from location and entry under the United States mining laws only. Other uses applicable to National Forest System lands will continue to be allowed.

DATES: Comments and requests for a meeting should be received on or before June 14, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602–640–5509.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture, Forest Service, filed applications A–27587, A–27588 and A–27589 to withdraw the following described lands from location and entry under the United States mining laws only. Other uses applicable to National Forest System lands will be allowed to continue. The withdrawals will be issued subject to valid existing rights. The withdrawals are for three sites located as described below:

Gila and salt River Meridian, Arizona; (Prescott National Forest)

A–27587, Charcoal Kiln Historic Site, (77.00) acres)
T. 12½ N., R. 1 W.,
Sec. 21, Lots 4 & 5.
T. 13 N., R. 1 W.,
Sec. 33, SE¼SW¼.
A–27588, Grapevine Springs Botanical Area, (1,040.00 acres)
T. 12½ N., R. 1 W.,
Sec. 26, S½SW¼,
Sec. 35, All,
Sec. 36, S½NW¼, SW¼, W½SE¼.
A–27589, Lynx Creek Indian Ruin, (160.00 acres)
T. 13 N., R. 1 W.,
Sec. 5, E½SW¼, W½SE¼.

All applications aggregate approximately 1,277.00 acres in Yavapai County.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with any or all of the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on any of the proposed withdrawals must submit a written request to the undersigned officer within 90 days from the date of publication of this notice.

Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with any or all of the proposed withdrawals may present their views in writing to the undersigned officer of the Bureau of Land Management.

The applications will be processed in accordance with regulations as set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the applications are denied, cancelled or the withdrawals are approved prior to the date.

The temporary segregations on the land in conjunction with these applications shall not affect the administrative jurisdiction over it.

John H. Stephenson,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93–5952 Filed 3–15–93; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before

March 6, 1993. 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 March 31, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

CALIFORNIA

Alameda County

Edwards, George C. Stadium, Jct. of Bancroft Way and Fulton St., UC Berkeley campus, Berkeley, 93000263

Los Angeles County

Baldwin Hills Village, 530 Rodeo Rd., Los Angeles, 93000269

Marin County

Sausalito Woman's Club, 120 Central Ave., Sausalito, 93000272

Napa County

Goodman, George E., Mansion, 1120 Oak St., Napa, 93000261

Goodman, George E., Jr., House, 492 Randolph St., Napa, 93000270

Manasse, Edward G., House, 495 Coombs St., Napa, 93000271

Orange County

Orange Intermediate School—Central Grammar School, 370 N. Glassell St., Orange, 93000282

Santa Clara County

Miller—Melone Ranch, 12795 Saratoga—Sunnyvale Rd., Saratoga, 93000260

Southern Pacific Depot, 65 Cahill St., San Jose, 93000274

CONNECTICUT

Litchfield County

Sharon Historic District, Roughly, Main St. from Low Rd. to jct. with Mitchelltown, Amenia Union and W. Woods Rds., Sharon, 93000257

FLORIDA

Palm Beach County

Via Mizner, 337—339 Worth Ave., Palm Beach, 93000256

GEORGIA

Bibb County

East Macon Historic District, Roughly bounded by Emery Hwy., Coliseum Dr., and Clinton, Fletcher and Fairview Sts., Macon, 93000281

LOUISIANA

Jefferson Davis Parish

Funk House, 523 Cary Ave., Jennings, 93000267

Ilgenhurst, 402 W. Nezpique, Jennings, 93000273

Twitchell House, 803 Cary Ave., Jennings, 93000268

MARYLAND

Prince George's County

Bellamy, Raymond W., House, 2819 Cheverly Ave., Cheverly, 93000265

MINNESOTA

St. Louis County

East Howard Street Commercial Historic District, 101—510 E. Howard St., Hibbing, 93000255

MISSOURI

St. Louis Independent City

Negro Masonic Hall, 3615—3619 Dr. Martin Luther King Blvd., St. Louis (Independent City), 93000262

MONTANA

Chouteau County

Teton River Crossing on the Whoop-Up Trail (Whoop-Up Trail of Northcentral Montana MPS), Address Restricted, Carter vicinity, 93000275

Pondera County

Froggie's Stopping Place on the Whoop-Up Trail (Whoop-Up Trail of Northcentral Montana MPS), Address Restricted, Conrad vicinity, 93000277

Toole County

Rocky Springs Segment of the Whoop-Up Trail (Whoop-Up Trail of Northcentral Montana MPS), Address Restricted, Kevin vicinity, 93000278

NEW MEXICO

Colfax County

Maxwell—Abreu and North (Martinez) Houses (Rayado Ranch MPS), Jct. of NM 121 and Rayado Creek Rd., NW corner, Cimarron vicinity, 93000253

Sierra County

Hillsboro High School, Jct. of Elenora St. and First Ave., SE corner, Hillsboro, 93000254

Socorro County

Archeological Site No. LA 1069 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000243

Archeological Site No. LA 1070 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000244

Archeological Site No. LA 1071 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000245

Archeological Site No. LA 1072 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000246

Archeological Site No. LA 1073 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000247

Archeological Site No. LA 1074 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000248

Archeological Site No. LA 1075 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000249

Archeological Site No. LA 1076 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000250

Archeological Site No. LA 1181 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000251

Archeological Site No. LA 1201 (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Bingham vicinity, 93000252

NEW YORK

Dutchess County

Bogardus—DeWindt House, 16 Tompkins Ave., Beacon, 93000280

Suffolk County

Congregational Church of Patchogue, 95 E. Main St., Patchogue, 93000279

TEXAS

Cameron County

Palmito Ranch Battlefield, Between TX 4 (Boca Chica Hwy.) and the Rio Grande, approximately 12 mi. E of Brownsville, Brownsville vicinity, 93000266

VERMONT

Addison County

Witherell Farm (Agricultural Resources of Vermont MPS), Town Hwy. 74 (Witherell Rd.) W of Lakeview and St. Genevieve cemeteries, Shoreham Township, Shoreham vicinity, 93000241

Orange County

May, Asa, House, Town Hwy. 4 (Blood Brook Rd.) SE of West Fairlee Center, West Fairlee Township, West Fairlee vicinity, 93000240

Windsor County

Raymond, Isaac M., Farm (Agricultural Resources of Vermont MPS), Jct. of Woodstock Town Hwys. 95 and 18, Woodstock Township, Woodstock vicinity, 93000242

WISCONSIN

DANE COUNTY

Lake View Sanatorium, 1204 Northport Dr., Madison, 93000258

Sauk County

Marshall Memorial Hall, 30 Wisconsin Dells Pkwy. S., Lake Delton, 93000264

Taylor County

Medford Free Public Library (Public Library Facilities of Wisconsin MPS), 104 E. Perkins St., Medford, 93000259

[FR Doc. 93-5913 Filed 3-15-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-342]

Certain Circuit Board Testers; Commission Decision To Extend Administrative Deadline for Completion of the Temporary Relief Proceedings; Setting of New Administrative Deadline

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by one week the administrative deadline for completion of temporary relief proceedings in the above-captioned investigation. The new administrative deadline is March 17, 1993.

ADDRESSES: Copies of the nonconfidential version of the ID and all other non-confidential documents filed in connection with this investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On September 25, 1992, Integri-Test, Corp. (Integri-Test) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain circuit board testers allegedly covered by certain claims of Integri-Test's U.S. Letters Patent 4,565,966 (the '966 patent). The notice of investigation instituting an investigation based on Integri-Test's complaint was published in the **Federal Register** on November 2, 1992. 57 FR 49490. Bath Scientific Ltd. of the United Kingdom and BSL North America of Massachusetts were named as respondents. Pursuant to Commission interim rule 210.24(e)(8) (19 CFR 210.24(e)(8)), the Commission also provisionally accepted Integri-Test's motion for temporary relief.

On January 11, 1993, the ALJ issued an ID denying complainant's motion for temporary relief. On January 19, 1993, the parties filed written comments concerning the ID. Parties filed reply comments on January 25, 1993. No government agency comments were received.

On February 1, 1993, the Commission determined to designate the temporary relief phase of the investigation "more complicated" because the ALJ's ID was based on incomplete and/or erroneous legal analyses and did not contain sufficient factual findings to support a denial of relief. In order to ensure sufficient time to supplement the findings of fact made in the ID and to issue an opinion in support of its determination, the Commission set an administrative deadline of March 10, 1993, for completion of the investigation. 58 FR 7746 (February 5, 1993).

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Issued: March 10, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-5918 Filed 3-15-93; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-212A]

Monitoring of Motor Tariff Filings

Congress has appropriated additional resources to the Commission for the purpose of monitoring and enforcing our tariff filing standards and requirements.[1] With these added resources, we intend to increase our monitoring and enforcement efforts by screening new tariff filings to detect those which fail to comply with our regulatory standards and requirements, and by examining existing tariffs for violations.

Tariffs that fail to comply will be subject to rejection. Increased Commission action to obtain compliance should assist in preventing substantively unlawful provisions from becoming effective and ensuring that tariffs are not needlessly difficult to use and understand. We will initially focus our monitoring upon the most egregious tariff deficiencies. These include the following:

(1) Failure to Participate in Governing Tariffs

Our regulations require that a carrier issuing or participating in a particular tariff also participate in all other tariffs which are "referred to" or which govern that tariff, 49 CFR 1312.27(e), by executing either a concurrence or power of attorney, 49 CFR 1312.4(d). Otherwise, the tariff provision which depends upon the provisions of such other tariffs is void as a matter of law and cannot be applied, 49 CFR 1312.4(d). This requirement ensures that carriers maintain control over their own rates and do not delegate the ratemaking function in any way to others without knowledge of, and formal agreement to, any and all provisions (including revisions) governing their rates. Some carriers have failed to comply with this requirement, thereby engendering considerable confusion and resulting in litigation over the applicable rates for their services.[2] Increasing monitoring of compliance with this requirement will limit the potential for similar cases in the future.

(2) Pricing Based on Ineffective, or Obsolete Rate Levels

Another source of confusion as to the rate specified in a tariff is when a tariff establishes a price (usually a discount) that is based on obsolete rate levels. For example, suppose a carrier filed a tariff, to take effect January 1, 1993, which provided: "Shipments moving for the account of XXXXX will be charged for at the class rate level in effect January 1, 1990 less a discount of 40%." Suppose also that the tariff containing the January 1, 1990 class rate level had been canceled and replaced, so that the current class rate tariff is different than the base rates referred to in the new tariff filing. This appears to violate 49 U.S.C. 10761(a), which provides that a carrier may not provide service unless "the rate for the transportation or service is contained in a *tariff that is in effect* * * *" (emphasis added). We will not permit a reference to an obsolete rate level where we are aware of it.

[1] Specifically, our fiscal year 1993 appropriation provides funding for an additional eight staff-years for our Office of Tariffs, to enable us to respond to Congress' concern that our motor carrier tariff filing standards be adequately enforced. See Senate Report No. 102-351, dated July 30, 1992, Senate Committee on Appropriations.

[2] *See, e.g., Jasper Wyman & Son et al.—Pet, for Declaratory Order*, 8 I.C.C.2d 246 (1992), *appeal pending sub. nom. Overland Express, Inc. v. ICC & USA*, No. 92-1037 (D.C. Cir., filed Feb. 13, 1992); *Wonderoast, Inc.—Transp. Systems International, Inc.*, 8 I.C.C.2d 272 (1992), *aff'd sub nom., Thomas G. Lovett, Jr., Trustee for the Bkrptcy Est. of Transp. Systems International, Inc. v. Wonderoast*, Adv. No. 4-89-292 (Bankr. D. Minn. June 26, 1992; *Freightcor Services, Inc. v. Vitro Packaging, Inc.*, 969 F.2d 1563 (5th Cir. 1992), *cert. denied* (Jan. 12, 1993).

(3) Unlawful Tariff Rules, Regulations, and/or practices

More generally, we will not knowingly permit a tariff filing that would be unlawful on its face under existing statutory and regulatory requirements or that would be facially defective (for patent vagueness or ambiguity, for example).

FOR FURTHER INFORMATION CONTACT: Thomas A. Mongelli, (202) 927–5150, or Charles E. Langyher, (202) 927–5160. [TDD for hearing impaired: (202) 927–5721].

Decided: February 24, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–5997 Filed 3–15–93; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463); 86 Stat. 770) notice is hereby given of a public meeting to be held in Boston, Massachusetts, on Wednesday in the Federal Reserve Bank of Boston, 600 Atlantic Avenue, in the New England Room, and on Thursday at the Omni Parker House, 60 School Street, in the Kennedy Room.

DATES: Wednesday, March 31, 1993 2 p.m.–4 p.m.; Thursday, April 1, 1993 9 a.m.–12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, future research, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV–F of the Job Training Partnership Act (P.L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues.

The meeting will be open to the public. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Anyone wishing to submit comments prior to the meeting, should do so by C.O.B. March 29, and they will be included in the record. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 10th day of March, 1993.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 93–5968 Filed 3–15–93; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: April 1–3, 1993, 9 a.m. to 6 p.m.

Place: Rooms 543 and 523, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Daniel Newlon, Program Director for Economics, Division of Social, Behavioral, and Economics Research, room 336, National Science Foundation, 1800 G Street NW., Washington, DC 20550, Telephone: (202) 357–9675.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–5904 Filed 3–15–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric & Power Co., Surry Power Station, Units 1 and 2; Environmental Assessment

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Virginia Electric and Power Company (the licensee), for the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise Technical Specification (TS) to allow one of two service water flow paths to the main control and emergency switchgear rooms air conditioning condensers to be removed from service for system maintenance. This is accomplished by specifying an Action Statement for operable service water flow paths to the main control and emergency switchgear rooms air conditioning condensers governed by TS 3.14.C. A Limiting Condition for Operation (LCO) permitting one train to be out of service for 24 hours prior to HOT SHUTDOWN and an additional 48 hours prior to COLD SHUTDOWN will be used in lieu of the requirements of TS 3.0.1.

The Need for the Proposed Action

The proposed change is necessary to facilitate system maintenance without shutting down the plants as currently required by the TS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS to allow the removal of one of the above cited service water flow paths from service for a limited period of time and has found them to be acceptable. Without such operational flexibility, the current TS would require shutting down both Surry units, since both units share a common control room and air conditioning system. Routinely performing maintenance of this system will increase the reliability of the service water supply to the main control and emergency switchgear rooms' air conditioning condensers. Since an adequate supply of service water is being maintained by the redundant service water train, the existing analysis envelope remains bounding, hence there is not a significant increase in the probability or consequences of an accident. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this action would result in no significant environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the Technical Specifications involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing was published in the **Federal Register** on December 10, 1992 (57 FR 58523). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impacts of plant operation and would result in no benefits to the public.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Surry Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated November 10, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 9th day of March, 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-5971 Filed 3-15-93; 8:45 am]

BILLING CODE 7590-01-M

Toledo Edison Company, et al.

[Docket No. 50-346]

Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 178 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specification sections for reactivity control systems related to group heights for safety and regulating rod groups and for position indicator channels, thereby allowing more operational flexibility.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 5, 1992 (57 FR 34598). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated April 30, 1992 (2) Amendment No. 178 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated March 8, 1993 and (4) the Environmental Assessment dated February 3, 1993 (58 FR 8068). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V.

Dated at Rockville, Maryland this 8th day of March 1993.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-5792 Filed 3-15-93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF GOVERNMENT ETHICS

Senior Executive Service Performance Review Board: Updating

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the updated OGE Performance Review Board.

EFFECTIVE DATE: March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Robert E. Lammon, Associate Director for Administration, Office of Government Ethics, 1201 New York Avenue NW., suite 500, Washington, DC 20005-3917, telephone (202/FTS) 523-5757.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) (1)-(5), requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.307 thereof in particular, one or more Senior Executive Service (SES) performance review boards. In order to insure an adequate level of staffing and to avoid a constant series of recusals, the members of the OGE board are being drawn primarily from the SES ranks of other agencies because OGE itself now has only four SES members. The board shall review and evaluate the initial appraisal of OGE senior executives' performance by the supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. This notice updates the membership of OGE's SES Performance Review Board that was published in the **Federal Register** on July 23, 1990, at 55 FR 29927.

Approved: March 8, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

The following have been selected as regular members of the Performance Review Board of the Office of Government Ethics:

Donald E. Campbell [Chair], Deputy Director, Office of Government Ethics
Gary J. Edles, General Counsel, Administrative Conference of the United States
Llewellyn M. Fischer, General Counsel, Merit Systems Protection Board
Gabriele Paone, Deputy Agency Ethics and Audit Coordination Official, Department of the Interior
Sandra Shapiro, Associate General Counsel, Department of Health and Human Services

[FR Doc. 93-6002 Filed 3-15-93; 8:45 am]

BILLING CODE 6345-01-U

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1993.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 12 deferrals contained in three special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992, and on February 26, 1993.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Attachments A and B)

Attachment A provides the status of the $3,669.8 million in budget authority being deferred from obligation as of March 1, 1993. Attachment B provides the status of each deferral reported during FY 1993.

Information from Special Messages

The special messages containing information on the deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

57 FR 46730, Friday, October 9, 1992

58 FR 3368, Friday, January 8, 1993

(The third special message for FY 1993 had not been printed in the **Federal Register** as of the date of this report)

Leon E. Panetta,

Director.

ATTACHMENT A.—STATUS OF FY 1993 DEFERRALS

	Amounts (in millions of dollars)
Deferrals proposed by the President	4,467.5
Routine Executive releases through March 1, 1993	−797.7
Overturned by the Congress	
Currently before the Congress	3,669.8

ATTACHMENT B.—STATUS OF FY 1993 DEFERRALS—AS OF MARCH 1, 1993

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 3-1-93
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Funds Appropriated to the President									
International security assistance economic support fund.	D93-1	492,736		10-1-92					
	D93-1A		1,492,774	12-30-92	602,449				1,383,062
Foreign military financing grants	D93-8	1,487,000		12-30-92					1,487,000
Foreign military financing program	D93-9	149,200		12-30-92	138,997				10,203
Agency for International Development:									
Demobilization and transition fund.	D93-2	13,750		10-1-92					13,750
International disaster assistance, executive.	D93-10	63,823		2-26-93	7,068				56,755
Sub-Saharan Africa assistance, executive.	D93-11	67,188		2-26-93	14,000				53,188
Department of Agriculture									
Forest Service:									
Cooperative work	D93-3	364,582		10-1-92	33,151				331,431
Expenses, brush disposal	D93-4	40,241		10-1-92					
	D93-4A		5,835	12-30-92					46,076
Timber salvage sales	D93-12	222,994		2-26-92					222,994
Department of Defense—Civil									
Wildlife Conservation, Military Reservations:									
Wildlife conservation, Defense	D93-5	2,175		10-1-92					2,175
Department of Health and Human Services									
Social Security Administration limitation on administrative expenses.	D93-6	7,267		10-1-92					7,267

ATTACHMENT B.—STATUS OF FY 1993 DEFERRALS—AS OF MARCH 1, 1993—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 3–1–93
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Department of State									
Bureau for Refugee Programs:									
United States emergency refugee and migration assistance fund.	D93–7	10,123	.....	10–1–92	.....	.....	.....	.....	.....
	D93–7A	.....	47,761	12–30–92	2,000	.....	.....	.....	55,884
Total, deferrals		2,921,080	1,546,371	.....	797,665	0	.....	0	3,669,786

[FR Doc. 93–6003 Filed 3–15–93; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of New Form RI 38–117

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a new information collection. Form RI 38–117, Rollover Election, is designed to collect information from each payee affected by the change in the Federal income tax code, Public Law 102–318, so that OPM can make payment in accordance with the wishes of the payee. RI 38–118, Rollover Information, is a cover letter for RI 38–117; the information letter explains the election. More detailed information is provided on RI 37–22, Special Tax Notice Regarding Rollovers.

The estimated number of respondents is 12,000. We estimate it will take 30 minutes to complete this form. The annual burden is 6,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Operations Support Division, Retirement & Insurance Group, U.S. Office of Personnel Management, 1900 E Street NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief Administrative Management Branch (202) 606–0616.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

[FR Doc. 93–5902 Filed 3–15–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31970; File No. 4–208]

Intermarket Trading System; Order Approving an Amendment to the ITS Plan Revising the Pre-Opening Rule

March 9, 1993.

On October 16, 1992, the Intermarket Trading System ("ITS") submitted to the Securities and Exchange Commission ("Commission") an amendment to the restated ITS Plan pursuant to section 11A of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder.[1] The purpose of the amendment is to clarify the use of a cancellation notification under the ITS pre-opening rule. Notice of the proposal appeared in the **Federal Register** on November 10, 1992.[2] The Commission received no comments on the proposal. For the reasons discussed below, the Commission is approving the proposal.

The proposal amends the ITS pre-opening application rule to clarify the use of a cancellation notification (designated as "CXL") sent after a pre-opening notification.[3] Under the amendment, a cancellation notification will indicate that the security will open within the applicable price change, including the price range contained in the original pre-opening notification.[4]

Security	Consolidated closing price	Applicable price change (more than)
Network A ..	Under $15 ..	⅛ point.
	$15 or over.*.	¼ point.
Network B ..	Under $5	⅛ point.
	$5 or over ..	¼ point.

* If the previous day's consolidated closing price of a Network A eligible security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the applicable price change is one point.

[1] The ITS is a National Market System ("NMS") plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

Participants to the ITS Plan include the American Stock Exchange, Inc. ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Midwest Stock Exchange, Inc. ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX").

[2] Securities Exchange Act Release No. 31396 (November 2, 1992), 57 FR 53530.

[3] The pre-opening rule prescribes that if an ITS market maker anticipates that the opening transaction in the stock will be at a price that represents a change from the security's previous day's consolidated closing price by more than the "applicable price change," the market maker shall notify other participant markets by sending a pre-opening notification through ITS. See ITS Plan, section 7(a). See also infra note 4.

The pre-opening rule also applies whenever an "indication of interest" is sent to the CTA plan processor prior to the reopening of trading of an ITS security following a trading halt, even if the anticipated price is not greater than the applicable price change. See ITS Plan, section 7(a). See also Securities Exchange Act Release No. 27472 (November 24, 1989), 54 FR 49829.

[4] The ITS Plan defines "applicable price changes" as:

ITS Plan, Section 7(a).

The amendment applies to the situation where an ITS market maker has sent a cancellation notification following the initial pre-opening notification, and subsequently receives additional orders indicating the security will open within the price range of the original pre-opening notification. Under the current pre-opening rule, a cancellation notification represents that the market maker will open the security within the applicable price change, but outside the price range of the original pre-opening application.

For example, a market maker sends a pre-opening notification of 30–30½ for a stock that closed at 30. Subsequent to sending the notification, the market maker receives sell orders indicating that the stock will be opened at 29⅞. The market maker then sends a cancellation notification—which, by definition, means that the stock will open at 29¾ or 29⅞. The market maker then receives more buy orders and opens the stock at 30, which is outside the 29¾ or 29⅞ prices. The pre-opening rule does not currently address this situation.

As revised, the CXL notification procedure will operate as follows:

The CTA close in a stock is 30. A pre-opening notification is sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or, 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞ and the market maker sends a cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, under the amendment the market maker will not be required to reindicate the stock. The amendment will conform the pre-opening rule to commonly understood practice among the ITS participant markets.

The Commission finds that approval of the amendment is consistent with the Act, in particular, with sections 11A(a)(1)(C)(ii) and (D) which provide for fair competition among the ITS participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors orders, and contribute to the best execution of such orders. The Commission also finds the amendment consistent with Rule 11Aa3–2(c)(2) which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the Act.

The pre-opening application enables an ITS market maker who wishes to open his or her market in an ITS stock to obtain any pre-opening interest in that stock of other market markers registered in that stock in other participant markets. This enables ITS market makers to participate as either principal or as agent in the opening transaction in a stock in another participant market, and thus, enables execution of limited price orders that may otherwise go unexecuted. The instant filing should prevent confusion in the pre-opening process by clarifying the use of a cancellation notification sent after a pre-opening notification.

For the foregoing reasons, the Commission finds that the ITS amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and (D) of the Act and Rule 11Aa3–2(c)(2).

It is Therefore Ordered, Pursuant to section 11A(a)(3)(B) of the Act, that the amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–5910 Filed 3–15–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31969; International Series Release No. 525; File No. SR–CBOE–93–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options on Country Funds

March 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to provide for the listing and trading of options on the securities issued by registered closed-end management investment companies that invest in securities of issuers located in a particular foreign country ("Country Funds").

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

By order dated August 29, 1991, the Commission approved uniform proposals by the options exchanges to revise the criteria that a security must satisfy in order to be eligible to underlie a standardized individual equity option.[1] In footnote eleven of that order, the Commission stated that the "Exchanges must file separate rule changes pursuant to section 19(b) of the Act for options on securities other than common stock."

The purpose of the current proposal is to request Commission approval of uniform criteria for listing options on securities issued by Country Funds. The proposed criteria would permit the CBOE, without further Commission approval, to list options on securities issued by Country Funds that meet the Exchange's initial listing criteria provided: (1) The Exchange has in place an effective surveillance sharing agreement with the primary exchange in the home country on which the securities held in the Country Fund's portfolio are traded; or (2) the Commission otherwise authorizes the listing.

[1] Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and the national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-5909 Filed 3-15-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31976; File No. SR-GSCC-92-18]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Notice of Filing of a Proposed Rule Change Relating to Amendments to Rules on Financial Reporting Requirements

March 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 28, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify section 5 of GSCC's Rule 2 to enhance GSCC's financial reporting standards and to provide greater consistency with the Commission's uniform net capital rule.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[2] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.15c3-1 (1992).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance GSCC's financial responsibility standards and to provide greater symmetry between those standards and the Commission's net capital rule. GSCC proposes to accomplish this purpose by incorporating the essence of the notice provisions of paragraph (e)(1) of the net capital rule[3] into its rules.

The failure in 1990 of Drexel Burnham Lambert, Inc. led to various legislative and regulatory changes. Among them were the amendments adopted by the Commission to its net capital rule to give the Commission the ability to restrict capital flows from registered broker-dealers to affiliates during periods of distress.

The amendments address the Commission's concern that significant amounts of equity capital could be withdrawn from a broker-dealer between reporting periods without notification to the Commission or to the broker-dealer's designated examining authority. Such capital withdrawals might indicate that the broker-dealer is experiencing financial difficulty, that its equity is being improperly appropriated for the benefit of its owners, or that its owners are being favored to the detriment of customers and other creditors.

The amendments to the Commission's net capital rule, among other things, require a registered broker-dealer to notify the Commission and its designated examining authority (i.e., generally, the NYSE or NASD) two business days before the occurrence of any withdrawal of equity capital that exceeds thirty percent of the broker-dealer's excess net capital and two business days after withdrawals that exceed twenty percent of the broker-dealer's excess net capital.

In order to enhance GSCC's surveillance capabilities, GSCC would amend its rules to impose on each member that is subject to the Commission's net capital rule the requirements that it: (1) Notify GSCC of the fact it has provided to its regulators a capital withdrawal notice on the day that it does so and (2) provide a copy of such notice to GSCC on that day. This new requirement would not affect the relatively few GSCC members that are not subject to the net capital rule such as banks or broker-dealers that are

[3] 17 CFR 240.15c3-1(e)(1) (1992).

subject to the Treasury Department's liquid capital rule.

The proposed rule change will strengthen GSCC's rules relating to financial surveillance and financial responsibility, which are designed to protect GSCC and its members. Thus, GSCC believes that the proposed rule changes are consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–92–18 and should be submitted by April 6, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–5978 Filed 3–15–93; 8:45 am]

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[Release No. 34–31975; File No. SR–MSE–93–04]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to an Extension of the Pilot Program for Stopped Orders in Minimum Variation Markets

March 10, 1993.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The MSE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to extend the pilot program for stopped orders in minimum variation markets for an additional three (3) month period. This is the first requested extension of the pilot, originally approved by the Commission on January 14, 1992.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend an MSE pilot program for an additional three months which established procedures regarding the execution of "stopped" market orders[4] in minimum variation markets (usually an ⅛th point spread market). The Exchange also has a policy regarding the execution of stopped market orders generally.[5] However, the Exchange believed that it was necessary to establish a separate policy for executing stopped market orders when there is a minimum variation market.

The Exchange's current policy regarding the execution of stopped orders is to execute them after the next primary market sale on a "next no better" basis.[6] In a minimum variation market, the MSE believes this policy frequently causes the anomalous result of requiring the execution of all pre-existing orders even if those orders are not otherwise entitled to be filled.[7] The

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[4] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Securities Exchange Act Release No. 30189 (January 14, 1992), 57 FR 2621 (January 22, 1992) (order approving MSE pilot program for stopped orders in minimum variation markets).

[4] When a specialist agrees to "stop" a market order at a specified price, the specialist guarantees the purchase or sale of the securities at the price or its equivalent in the amount specified. See MSE Article XX, Rule 28.

[5] Prior to the commencement of the pilot program, Exchange Rules required specialists to grant stops if an out-of-range execution would result, regardless of the spread. The term "out-of-range" means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[6] "Next or no better" means that a customer who requests a stop at a specific price will not do any worse than that price and could do better.

[7] For example, assume the market in ABC stock is 20–20⅛; 50 × 50 (i.e. 5000 shares are bid at a price of 20 and 5000 shares are offered at a price of 20⅛). A customer places an order with the MSE specialist to buy 100 shares of ABC at the market. The specialist stops the order at 20⅛ (effectively guaranteeing that the customer bought the 100 shares at 20⅛ or at a better price to be determined) and the MSE specialist includes the order in his quote by bidding the 100 shares at 20. A transaction

Exchange's pilot program procedures will prevent unintended results by requiring the execution of stopped market orders in minimum variation markets after a transaction takes place in the primary market at the stopped price or higher, or after the applicable MSE share volume is exhausted. In no event will a stopped order be executed at a price inferior to the stopped price.[8] The pilot program procedures will continue to benefit customers because they might receive a better price than the stop price, yet it also protects MSE specialists by eliminating their exposure to executing potentially large amounts of bids or offers when such executions would otherwise not be required under Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-93-04 and should be submitted by April 6, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the MSE proposal to extend the pilot program for stopped orders in minimum variation markets for an additional three (3) month period is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5)[9] and section 11(b)[10] of the Act. Section 6(b)(5) requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Section 11(b) permits a specialist to effect only market or limited price transactions on the exchange as broker. The Commission believes that approving the proposal to extend, for an additional three months, the pilot program which amends MSE Article XX, Rule 37, should further the objectives of section 6(b)(5) and section 11(b) through the use of procedures designed to provide a revised policy for the execution of stopped orders, in minimum variation markets, while still providing the possibility of price improvement to customers whose orders are granted a stop.

As discussed in the original order approving the MSE pilot procedures for stopping stock in minimum variation markets, the Commission has been concerned about the practice of stopping stock for a number of years. Specifically, the Commission has voiced concern that the practice of stopping orders may cause customer limit orders on the book to be bypassed by the stopped orders, thereby compromising the specialist's fiduciary obligation to orders on the book.[11] Nevertheless, the Commission has allowed the practice of stopping stock in markets where the spread is twice the minimum variation because the possible harm to orders on the book would be offset by the possibility of price improvement to the stopped order when the spread between the bid and offer is reduced.[12] The Commission also has approved on-going New York Stock Exchange, Inc. ("NYSE") and American Stock Exchange, Inc. ("Amex") pilot programs which permit NYSE and Amex specialists, respectively, to stop stock in minimum variation markets under certain limited circumstances where there is an imbalance on the opposite side from the order being stopped, and the imbalance is of sufficient size, given the characteristics of the security, to suggest the likelihood of price improvement.[13]

The MSE has had a policy for the execution of orders in minimum variation markets. MSE Rule 37, Article XX, requires that a specialist grant a stop if requested by an MSE member firm if the execution would occur outside of the primary market range for the day. Thus, this rule generally operates to ensure that MSE customers receive executions on the MSE that are no worse than if executed on the primary market. While the pilot program adds new procedures for

at 20⅛ would be out-of-range, and would therefore be a transaction at a price higher than any effected on the primary market that day. If the next sale on the primary exchange is for 100 shares at 20, MSE policy, prior to the initiation of the pilot procedures, required the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution would have triggered the requirement for the MSE specialist to execute all pre-existing bids (in this case 5,000 shares) based on the Exchange's rules of priority and precedence. This would have been so, even though the pre-existing bids were not otherwise entitled to be filled.

In the above example, if there had been no stopped order, Exchange Rule 37 (Article XX) would have required the MSE specialist to fill orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would have caused at most 100 of the 5,000 share limit order to be filled on the MSE. However, because the MSE's policy regarding stopped orders would have required the 100 share stopped market order to be filled, all pre-existing bids at the same price would have been filled in accordance with Exchange Rule 16 (Article XX).

[8] Exchange Rule 28 (Article XX) states:

An agreement by a member or member organization to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] 15 U.S.C. 78k(b) (1988).

[11] See Securities Exchange Act Release No. 30189, *supra* note 3. The discussion in that order is incorporated by reference into this order. See also SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. 95, 88th Cong., 1st Sess., Pt. 2 (1963).

[12] See New York Stock Exchange, Inc., Rule 116.30; American Stock Exchange, Inc., Rule 109(c).

[13] See Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (File No. SR-NYSE-90-48); Securities Exchange Act Release No. 30482 (March 16, 1992), 57 FR 10198 (March 24, 1992) (File No. SR-NYSE-92-02) and Securities Exchange Act Release No. 30603 (April 17, 1992), 57 FR 15340 (April 27, 1992) (File No. SR-Amex-91-05).

stopping stock, the MSE has limited this practice to situations where the specialist stopping orders would not violate his or her fiduciary obligation to orders on the book. As discussed above, the pilot procedures provide that the stopped market orders will be executed in minimum variation markets if the primary market trades at the stopped price (thus, creating a new range for the day in the primary market which includes the stopped price), or if all of the displayed bid (in the case of stopped orders to buy) or offer (in the case of stopped orders to sell) has been exhausted on the MSE.

The Commission believes that the proposal is consistent with section 11(b) of the Act. Section 11(b) was designed, in part, to address potential conflicts of interest which may arise as a result of the specialist's dual role as agent and principal in executing transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.[14] The Commission has stated that, pursuant to section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.[15] In our order approving the initiation of the MSE pilot program for stopping orders in minimum variation markets, the Commission stated its belief that, under the pilot, a specialist's treatment of stopped orders as equivalent to limit orders is appropriate, and consistent with section 11(b) of the Act because the orders would be automatically executed after a transaction takes place on the primary market at the stopped price. The Commission, therefore, believes that the requirements imposed on the specialist for granting stops in minimum variation markets under the MSE pilot procedures provide sufficient guidelines to ensure that the specialist implements the procedures in a manner consistent with his or her Section 11(b) market making obligations.

The Commission believes that the proposal is consistent with rule 11b–1(a)(2)(ii) of the Act.[16] Rule 11b–1(a)(2)(ii) requires that a specialist engage in a course of dealings for his or her account that assists in the maintenance, so far as practicable, of a fair and orderly market. The Commission believes that the proposal should further the objectives with Rule 11b–1(a)(2)(ii), because the procedures should help the specialist to provide an opportunity for price improvement to the customer whose order is granted a stop, without requiring execution of pre-existing bids or offers when such executions otherwise would not be required under Exchange rules.

The Commission believes that it is appropriate to extent the pilot program procedures for an additional three months in order to provide both the Commission and the Exchange an opportunity to study the effects of the revised procedures. At the same time, the pilot program should provide a benefit to investors through the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. In our order approving these procedures on a pilot basis, the Commission specifically requested that the MSE monitor the operation of the revised procedures during the pilot program and report its findings to the Commission. The Commission stated that the report should include, among other things, the MSE's findings with respect to the percentage of stopped orders that are executed at the stop price and the percentage of such orders that receive a price that is better than the stop price. The Commission stated that the report also should contain an analysis of the impact on orders on the book resulting from the execution of stopped orders at a price that is better than the stopped price to determine if orders are being bypassed.

The MSE submitted its report to the Commission on March 2, 1993.[17] This report indicates that, during February, 1993, 3,700 market orders were stopped in a minimum variation market.

According to the MSE, 90% of these orders received improved execution prices and the remaining orders received the price they would have received if the order had not been stopped. The MSE also studied three days in February, 1993, specifically to see if there were orders at the stopped price that did not get executed because of the pilot procedures. According to the MSE, during those three days, when stopped orders received an improved price, there was an order at the stopped price that was not executed at the time 26% of the time.

The Commission is approving the use of the pilot procedures for an additional three months to allow the Commission an opportunity to review the MSE's data and to allow the Commission an opportunity to request any additional information from the MSE concerning the pilot program.[18] The Commission expects that the MSE will continue to monitor the operation of the pilot program procedures, using the criteria described above, during the course of the pilot extension. The Commission requests that the MSE submit a second report concerning its use of the pilot procedures by April 30, 1993.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval is appropriate because it will allow the pilot to continue while the Commission examines the data to determine if the pilot should be extended for an additional period of time. Further, the substance of the proposal has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[19]

It is therefore ordered, Pursuant to section 19(b)(2)[20] that the proposed rule change is hereby approved for a three month period expiring on June 10, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

[FR Doc. 93–5979 Filed 3–15–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31973; File No. SR–NASD–93–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Clarifying NASD Authority To Suspend or Terminate Nasdaq National Market System Securities When the Issuer of Such Securities Files for Bankruptcy

March 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 18, 1993,

[14] See H.R. No. 1383, 73rd Cong., 2d Sess. 22, S.Rep. 792, 73rd Cong., 2d Sess. 16 (1934).

[15] See, e.g., SEC, Special Study of the Securities markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Pt. 2, 72 (1963).

[16] 17 CFR 240.11b–1(a)(2)(ii) (1992).

[17] See letter from Roger D. Hendrick, MSE, to Sharon Lawson, Commission, dated March 1, 1993.

[18] While the Commission continues to believe that careful review of the procedures is warranted, the MSE has advised the Commission that no surveillance investigations have been initiated, and there have been no member or customer complaints received by the Exchange, regarding the operation of the pilot. See letter from Daniel J. Liberti, MSE, to Betsy Prout, Commission, dated February 22, 1993.

[19] See Securities Exchange Act Releases No. 29958 (November 18, 1991), 56 FR 59309 (November 25, 1991) (notice of proposed rule change by MSE to initiate pilot procedures for stopping stock in minimum variation markets, File No. SR–MSE–91–10). No comments were received on the proposal.

[20] 15 U.S.C. 78s(b)(2)(1988).

[21] 17 CFR 200.30–3(a)(12) (1991).

the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule D to the By-Laws—Part III

* * * * *

Sec. 4. Quantitative Maintenance Criteria

* * * * *

(d) Bankruptcy and/or Liquidation

Should an issuer file under any of the sections of the Bankruptcy Act or announce that liquidation has been authorized by its board of directors and that it is committed to proceed, *the Association may suspend or terminate the issuer's securities* [its securities shall not remain designated] unless it is determined that the public interest and the protection of investors would be served by continued designation.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, part II, section 3(a) of Schedule D to the NASD By-Laws ("Schedule D") provides that the Association "may" suspend and/or terminate the inclusion of an otherwise qualified Nasdaq security if the issuer of such security files for protection under any provision of the federal bankruptcy laws. Part III, section 4(d) of Schedule D contains a similar requirement applicable to Nasdaq National Market System ("Nasdaq NMS") securities and provides that if a Nasdaq issuer files under any sections of the Bankruptcy Act, its securities "shall" not remain designated unless it is determined that the public interest and the protection of investors would be served by continued designation.[1] While the language of the above two sections differs, in practice, the NASD reviews both Nasdaq and Nasdaq NMS issuers that have filed under federal bankruptcy laws in a similar manner. Specifically, if an Nasdaq or Nasdaq NMS company in bankruptcy is unable to provide to NASD staff within five calendar days current financial information, including a balance sheet and statement of operations, the company's securities are delisted. Requests for exceptions to the above Nasdaq and Nasdaq NMS listing requirements are reviewed by the NASD on a case-by-case basis. If the NASD determines that the public interest and the protection of investors would be served by continued designation of either Nasdaq or Nasdaq NMS security, then a "Q" symbol is attached to the trading symbol of bankrupt companies to disclose to the public that the issuer has filed for bankruptcy protection.

Upon review, the NASD believes that the term "shall" in Part III, Section 4(d) of Schedule D could be misconstrued to imply that the filing for bankruptcy by a Nasdaq NMS issuer will effect an automatic delisting of such issuer's securities from Nasdaq NMS without recourse to a case-by-case NASD review as currently provided to issuers of securities designated in Nasdaq. The NASD, therefore, proposes to eliminate any such misinterpretation of current language by replacing the term "shall" with the term "may" under part III, section 4(d) of Schedule D applicable to Nasdaq NMS issuers, to make that section consistent with the provisions of Section 3(a) of Part II of Schedule D, which provides that the NASD "may" terminate bankrupt Nasdaq companies.

The NASD is requesting that the proposed rule change be effective within 45 days of SEC approval.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires that the rules of the association perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change clarifies for investors that when a Nasdaq NMS issuer files for bankruptcy under the Bankruptcy Act, the security is not automatically delisted, but instead the NASD commences a review of the company to determine what action best serves the public interest and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[1] Part III, Section 4(d) of Schedule D also provides the NASD with authority to withdraw the issuer's securities from NMS if the company announces that liquidation has been authorized by its board of directors and that it is committed to proceed.

the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-5977 Filed 3-15-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31972; File No. SR-NASD-93-04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Issuer Disclosure of Material Information to the Public and to the NASD

March 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

SCHEDULE D TO THE NASD BY-LAWS

* * * * *

PART II—QUALIFICATION REQUIREMENTS FOR NASDAQ SECURITIES

Sec. 1 Qualification Requirements for Domestic and Canadian Securities

* * * * *

(c)

* * * * *

[(15) The issuer shall make prompt disclosure to the public through the press of any material information that may affect the value of its securities or influence investors' decisions and shall, prior to the release of the information, provide notice of such disclosure to the NASD Market Surveillance Section. The issuer shall provide full and prompt responses to all requests for information by the NASD.]

(15) The issuer shall provide full and prompt responses to requests by the NASD for information related to unusual market activity or to events that may have a material impact on trading of its securities in the NASDAQ System.

(16) Except in unusual circumstances, the issuer shall make prompt disclosure to the public through the news media of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions and shall, prior to the release of the information, provide notice of such disclosure to the NASD Market Surveillance Department.

Subsections (16)–(17) are renumbered (17)–(18) respectively.

* * * * *

Sec. 2 Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

* * * * *

(e)

* * * * *

[(14) The issuer shall make prompt disclosure to the public in the United States through international wire services or similar disclosure media of any material information that may affect the value of its securities or influence investors' decisions and shall, prior to the release of the information, provide notice of such disclosure to the NASD Market Surveillance Section. The issuer shall provide full and prompt responses to all requests for information by the NASD.]

(14) The issuer shall provide full and prompt responses to requests by the NASD for information related to unusual market activity or to events that may have a material impact on trading of its securities in the NASDAQ System.

(15) Except in unusual circumstances, the issuer shall make prompt disclosure to the public in the United States through international wire services or similar disclosure media of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions and shall, prior to the release of the information, provide notice of such disclosure to the NASD Market Surveillance Department.

Subsections (15)–(16) are renumbered (16)–(17) respectively.

* * * * *

[NOTIFICATION TO NASD OF NEWS RELEASES]

DISCLOSURE OF MATERIAL INFORMATION

Schedule D requires *that, except in unusual circumstances,* NASDAQ *issuers* [companies to] disclose promptly to the public through the [press] *news media* any material information which [may] *would reasonably be expected to* affect the value of their securities or influence investors' decisions and that NASDAQ *issuers* [companies] notify the NASD of the release of any such information prior to its release to the public through the [press] *news media.* The Board of Governors recommends that NASDAQ *issuers* [companies] provide such notification at least ten minutes before such release.[1] *Under unusual circumstances issuers are not required by Schedule D to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its corporate objectives. However, NASDAQ issuers remain obligated to disclose this information to the NASD upon request pursuant to Subsection 1(c)(15) or Subsection 2(e)(14) of this Part II to Schedule D.*

Whenever unusual market activity takes place in a NASDAQ issuer's securities, the issuer normally should determine whether conditions requiring corrective action exist and, if so, should take whatever action is appropriate. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, a clear public announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Trading Halts

[The purpose of this recommendation is to assist in maintaining a stable and orderly market for NASDAQ securities. One of the methods used by the NASD to accomplish such is the institution of NASDAQ trading halts.] A trading halt benefits current and potential shareholders by halting [the] *all* trading [of] *in any NASDAQ* securities [through the NASDAQ System] until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known

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[1] Notification may be provided directly to the NASD Market Surveillance Department by telephone (1-800-537-3929, (301) 590-6411, or from 7 p.m. to 7 a.m. ET (301) 590-6413). Information communicated orally should be confirmed promptly in writing.

to them but which is not known to others. A trading halt normally lasts *until* one half hour after the appearance of the news on wire services[,] but it may last longer if a determination is made that the news has not been adequately disseminated. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

The NASD's Market Surveillance Department monitors real time trading in all NASDAQ securities during the trading day for price and volume activity. In the event of certain price and volume movements, the Market Surveillance Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The Market Surveillance Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A NASDAQ listing includes an obligation to disclose to the Market Surveillance Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing public. Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the Market Surveillance Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated effect of the information on the price of the issuer's securities, the Market Surveillance Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions.

The Market Surveillance Department is required to keep non-public information, including denial of rumors, confidential and to use such information only for regulatory purposes.

Material information which [might] *would* reasonably be expected to affect the value of the securities of an *issuer* [company] or influence investors' decisions would include information regarding [corporate] *issuer* events of an unusual and/or nonrecurrent nature. The following list of events, while not an exhaustive summary of all situations in which disclosure to the NASD should be considered, may be helpful in determining whether information is material. It should also be noted that every development that might be reported to the NASD in these areas would not necessarily be deemed to warrant a trading halt.

- a merger, acquisition or joint venture;
- a stock split or stock dividend;
- earnings and dividends of an unusual nature;
- the acquisition or loss of a significant contract;
- a significant new product or discovery;
- a change in control or a significant change in management;
- a call of securities for redemption;
- the public or private sale of a significant amount of additional securities;
- the purchase or sale of a significant asset;
- a significant labor dispute;
- establishment of a program to make purchases of the [company's] *issuer's* own shares;
- a tender offer for another [company's] *issuer's* securities; and
- an event requiring the filing of a current report under the Securities Exchange Act of 1934.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposed Rule Change to Subsections 1(c)(15) and 2(e)(14) to Part II of Schedule D Subdividing Subsection 1(c)(15)

Subsection 1(c)(15) of part II to Schedule D of the NASD By-Laws currently provides that a Nasdaq domestic or Canadian issuer[2] is required to make prompt disclosure to the public through the press of any material information that may affect the value of its securities or influence investors' decisions and shall, prior to the release of the information, provide notice of such disclosure to the NASD Market Surveillance Department. The above subsection also provides that such an issuer shall provide full and prompt responses to all requests for information by the NASD. The NASD is proposing to qualify the issuer duty in revised Subsection 1(c)(16) to disclose material information to the public with a "reasonable" shareholder standard for purposes of determining when material information would be expected to affect the value of the issuer's securities or influence investors' decisions. The NASD is also proposing to add an "unusual circumstance" exception to the reporting of such material information to the public. In comparison, the NASD is not proposing to qualify the issuer's duty to respond to requests by the NASD for information with a "reasonable" shareholder standard and, instead, is proposing to include in new Subsection 1(c)(15) the requirement that Nasdaq issuers respond to NASD requests for information related to unusual market activity or to events that "may have a material impact" on the trading of its securities in the Nasdaq System. The NASD, therefore, believes that the separation of Subsection 1(c)(15) into two subsections will help clarify for issuers the difference between these two provisions.

Subdividing Subsection 2(e)(14). Under Subsection 2(e)(14) of Part II to Schedule D of the NASD By-Laws, Nasdaq non-Canadian foreign issuers and American Depositary Receipts ("ADRs") are subject to requirements

[2] Qualification requirements for Nasdaq securities contained under Part II of Schedule D also apply to Nasdaq National Market System ("Nasdaq NMS") securities. For purposes of this rule change, the term "issuer" therefore applies to issuers of securities designated on either the Regular Nasdaq System or the Nasdaq NMS. For purposes of this rule filing, the term issuer also applies both to corporations and to limited partnerships.

equivalent to the requirements imposed by Subsection 1(c)(15) on Nasdaq domestic and Canadian issuers, as described above. The NASD is proposing changes to the provisions contained in subsection 2(e)(14) which are substantially equivalent to the changes proposed above to the provisions contained in subsection 1(c)(15). The NASD, therefore, believes it is appropriate to separate the provisions under subsection 2(e)(14) in the same manner and for the same reasons as is proposed above for subsection 1(c)(15). As proposed, the requirement for Nasdaq non-Canadian foreign issuers and ADRs to respond to NASD requests for information would be contained under subsection 2(e)(14), and the requirement for such issuers to disclose material information to the public and provide prior notification to the NASD of such disclosure would be contained under subsection 2(e)(15).

Responding to NASD requests for information. Currently, Nasdaq issuers are required under subsections 1(c)(15) and 2(e)(14) to part II of Schedule D to provide full and prompt responses to "all requests for information" by the NASD. As a practical matter, the NASD only makes request to issuers for information relating to unusual market activity or to events that may have a material impact on the trading of the issuer's securities in the Nasdaq System.[3] The NASD believes it should amend its rules to reflect the current practice and scope of NASD requests to issuers for information. Therefore, the NASD is proposing that Subsections 1(c)(15) and 2(e)(14) to part II of schedule D require the issuer to provide full and prompt responses to requests by the NASD for information related to unusual market activity or to events that may have a material impact on trading of its securities in the Nasdaq System.[4] The NASD believes that the proposed rule change will enhance its ability to provide oversight of the Nasdaq System by clarifying the NASD's authority to request information from issuers for regulatory purposes.

Prompt Disclosure of Material Information to the Public. Currently, Nasdaq issuers are required under Subsection 1(c)(15) and 2(e)(14) of Part II to Schedule D to make prompt disclosure to the public through the press[5] of any material information that may affect the value of its securities or influence investors' decisions. The U.S. Courts of Appeals have stated that, absent circumstances requiring immediate disclosure, the specific timing of corporate disclosure of material information should be left to the good faith business judgment of management.[6] Specifically, the Second Circuit in *SEC* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968) stated that "we do not suggest that any material facts must be disclosed immediately; the timing of disclosure is a matter for the business judgment of the corporate officers entrusted with the management of the corporation within the affirmative disclosure requirements promulgated by the exchanges and the SEC." Current rules of the national exchanges also recognize that immediate disclosure of material information is not always required.[7]

Upon review, the NASD recognizes that unusual circumstances may exist wherein it would be appropriate for an issuer not to immediately disclose material information to the public; for example, in the area of negotiations leading to mergers, acquisitions, and stock splits when it is possible to maintain the confidentiality of the discussions, when SEC rules or regulations do not require prompt disclosure, and when other circumstances do not arise that would impose an issuer duty to make prompt public disclosure. In such cases, it is recognized that premature disclosure of material information may be detrimental to the interest of investors. The NASD is, therefore, proposing to include in new Subsections 1(c)(16) and Subsection 2(e)(15) of Part II to Schedule D the phrase "except under unusual circumstances" to provide an exception to the issuer's obligation to make prompt public disclosure of material information. The NASD believes that the proposed rule change is appropriate and would be in the interest of the public investors.[8]

Determination of Materiality. Current Subsections 1(c)(15) and 2(e)(14) require an issuer to publicly disclose material information that "may affect" the value of its securities or influence investors' decisions. The NASD believes this rule language should be modified to reflect current NASD practice that the determination of whether material information would affect the value of the issuer's securities or influence investors' decisions is based on a "reasonable" shareholder standard.[9] The NASD is, therefore, proposing to replace the phrase "may affect" in proposed new Subsections 1(c)(16) and 2(e)(15) of Part II to Schedule D with the phrase "would reasonably be expected." The NASD also proposes that the phrase "would reasonably be expected" replace the phrase "might reasonably be expected" in the last paragraph of the Notification Section that provides guidance on what material information would affect the value of securities of a company or influence investors' decisions.[10]

[3] In comparison, both the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") rules and listing agreements require listed companies to furnish the exchanges with such information as the exchange may reasonably demand. See, NYSE Company Manual Section 202.4 and AMEX Guide Section 404.

[4] NASD staff provide determinations regarding issuer compliance with Nasdaq qualifications criteria, which determinations are subject to appeal pursuant to Article IX of the NASD's Code of Procedure. NASD staff would provide a determination of issuer compliance with the proposed rule change including a determination on the existence of the separate elements contained with the requirement such as the existence of "unusual market activity" or "events that may have a material impact on the trading of its securities in the Nasdaq System."

[5] Non-Canadian foreign issuers and ADRs are similarly required to make prompt disclosure through international wire services or similar disclosure media pursuant to Section 2(e)(14) to Part II of Schedule D.

[6] *Kohler* v. *Kohler Co.*, 319 F.2d 634, 641 (7th Cir. 1963); *SEC* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833, 850 n.12 (2d Cir. 1968).

[7] With respect to public disclosure of information, NYSE rules indicate that negotiations leading to mergers, acquisitions, stock splits and other such corporate actions may be withheld from public disclosure where it is possible to maintain the confidentiality of those discussions. Additional guidance is provided on circumstances during which disclosure may be withheld and events that should trigger disclosure. See, NYSE Manual, Section 202.01. In comparison, AMEX rules state that a listed company is required to make immediate public disclosure of all material information concerning its affairs, except in unusual circumstances. See AMEX Guide, Section 401(a). It is further stated that occasionally, circumstances may arise in which, provided that complete confidentiality is maintained, a company may temporarily refrain from publicly disclosing material information. Two such situations are noted: (i) When immediate disclosure would prejudice the ability of the company to pursue its corporate objectives; and (ii) when the facts are in a state of flux and a more appropriate moment for disclosure is imminent. AMEX rules also state that these situations, however, are limited and constitute an infrequent exception to the normal requirement of immediate disclosure. See, AMEX Guide, Section 402 at 3552.

[8] The NASD's proposed standard for determining whether an exception is available from the requirement of prompt disclosure is not intended to be identical to standards under federal case law or other self-regulatory organization rules, but will be decided on a case-by-case basis. See, discussion below of proposed rule change to Notification Section.

[9] For comparison, certain leading case law finds that an admitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote (See, *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U.S. 438,96 S.Ct. 2126, 48 L. Ed. 2d 757 (1976)), or whether to purchase or sell securities (See, *Basic Incorporated* v. *Levinson, et al.*, 485 U.S. 224, 108 S. Ct. 978,99 (1988)).

[10] With respect to public disclosure of information, the NYSE generally states that a listed company is expected to release quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities. See, NYSE Company

Pre-Notification to the NASD of public release of material information. Under subsection 1(c)(15) and subsection 2(e)(14) to part II of Schedule D, Nasdaq issuers are required to provide the NASD with prior notice of the release of material information to the public. The NASD has not amended this requirement which is contained in new Subsections 1(c)(16) and 2(e)(15).

Proposed Rule Change to the Notification Section

Heading of the notification section. The current heading of the Notification Section is NOTIFICATION TO NASD OF NEWS RELEASES. The NASD proposes to replace this heading with the phrase DISCLOSURE OF MATERIAL NEWS to better describe the subject matter of the provisions contained therein.

Guidance Regarding the "Unusual Circumstances" Exception to Proposed Subsections 1(c)(16) and 2(e)(15) to Part II of Schedule D. The NASD proposes to provide further guidance regarding the term "except in unusual circumstances" that is contained under new subsections 1(c)(16) and 2(e)(15) of the proposed rule change by amending the first paragraph of the Notification Section to add a new sentence which states that under unusual circumstances, issuers are not required by Schedule D to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate disclosure would prejudice the ability of the issuer to pursue its issuer objectives.

The NASD is also proposing to clarify in a second new sentence to the first paragraph of the Notification Section that information not required to be disclosed to the public pursuant to the above-described "unusual circumstances" exception must still be disclosed by the issuer to the NASD pursuant to subsection 1(c)(15) or subsection 2(e)(14) to part II of Schedule D.

Clarification of issuer obligations regarding unusual market activity and rumors. The NASD believes that the Nasdaq issuer disclosure requirement contained in new Subsections 1(c)(16) and 2(e)(15) of Part II to Schedule D imposes certain responsibilities on a Nasdaq issuer in connection with unusual market activity in the issuer's securities or rumors regarding the issuer. The NASD noted that the SEC has taken a position that under certain circumstances, unusual market activity may require public disclosure.[11] The NASD is, thereof, proposing to amend the Notification Section to provide guidance to Nasdaq issuers on such issuer responsibilities by inserting a new paragraph into the Notification Section.[12] The new proposed second paragraph of the Notification Section provides that whenever unusual market activity takes place in a Nasdaq issuer's securities, the issuer normally should determine whether conditions requiring corrective action exist and, if so, should take whatever action is appropriate. The second and third sentences of the proposed second paragraph are intended to provide guidance as to those situations where it may be appropriate for an issuer to make public announcements regarding unusual market activity or rumors. It is stated that if rumors or unusual market activity indicate that information on impending developments has become known, a clear public announcement may be required as to the state of negotiations or development of issuer plans. It is emphasized that such an announcement may be required, even though the matter has not yet been presented to the issuer's Board of Directors for consideration. It is also stated that it may be appropriate in certain circumstances to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities, or would likely have a bearing on investment decisions.

New Subheading: TRADING HALTS

The NASD proposes to insert the subheading "TRADING HALTS" after the second paragraph of the Notification Section to reflect that the subsequent paragraphs deal with trading halts and other subject matter related to trading halts, including the function of the Nasdaq Market Surveillance Department.

Clarification of Nasdaq Market Surveillance Department Function. The NASD believes that further clarification regarding the function of the Nasdaq Market Surveillance Department and the purpose of trading halts would be helpful to Nasdaq issuers. The NASD proposes to insert a new fourth paragraph into the Notification Section to describe the functions of the NASD Market Surveillance Department as well as the inter-relationship between a Nasdaq issuer and the NASD Market Surveillance Department with respect to the occurrence of unusual market activity in the issuer's securities and the timely release of information and a temporary trading halt.

The NASD also believes clarification is appropriate regarding the confidentiality of information that issuers provide to the Market Surveillance Department pursuant to Subsection 1(c)(15) and Subsection 2(e)(14) to Part II of Schedule D. As amended, a new, fifth paragraph has been inserted into the Notification Section providing that the Market Surveillance Department is required to keep non-public information provided by a Nasdaq issuer, including denial of rumors, confidential and to use such information only for regulatory purposes.

Other Changes. The NASD proposes to replace the term "press" contained under proposed Subsection 1(c)(16) and contained in the Notification Section with the term "news media". The NASD is also proposing to replace the term "NASD Market Surveillance Section" with the term "NASD Market Surveillance Department".

The NASD believes the first two sentences of the first paragraph under the proposed "Trading Halts"

Manual, Section 202.05. AMEX rules state that a company is required to make immediate public disclosure of all material information concerning its affairs, except in unusual circumstances. See AMEX Guide, Section 401(a).

[11] In SEC Release No. 34–18271 (November 19, 1981), the SEC stated: "In those instances * * * where there are indications that information may have become selectively available to certain persons who are trading in a corporation's securities, disclosure is especially significant in order to apprise the marketplace of the material information and substantially reduce the opportunity for such persons to profit from such trading.

If the company learns of unusual trading activity in its stock and such activities are occurring at a time when the company has failed promptly to disclose corporate information, it should realize that its nondisclosure may be assisting persons with access to such information to take unfair advantage of the company's other shareholders. This is particularly true where the company knows or has reason to believe that material non-public information has been made selectively available to certain market participants and that this selective availability may be the cause of unusual market activity."

[12] In comparison, NYSE rules state that disclosures should be made when market activity indicates that information on impending developments has leaked out; if rumors are in fact false or inaccurate; if rumors are correct or there are developments; or to dispel unfounded rumors which result in unusual market activity or price variations. See, NYSE Company Manual, Section 202.03. It is also stated that where the market appears to reflect undisclosed information, the company will normally be requested to make the information public immediately. See NYSE Company Manual, Section 202.04. AMEX rules state that a listed company is expected to make an inquiry to determine whether rumors or other conditions requiring corrective action exist, and if so, to take whatever action is appropriate, and if after such review the unusual market action remains unexplained, it may be appropriate for the company to issue a "no news" release. See, AMEX Guide Section 401(d) and 402(d). AMEX rules also provide guidance regarding: (i) What action is required if rumors occur while material information is being temporarily withheld; (ii) what rumors and reports must be clarified and confirmed; and (iii) the significance of unsual market activity from the standpoint of disclosure. See AMEX Guide, Section 402, pages 3553–3556.

subheading in the Notification Section are unnecessary. The NASD proposes to delete these two sentences.

Finally, the NASD is also proposing to replace the terms "company" and "corporate" with the term "issuer" throughout the Notification Section to provide conformity with Part II to Schedule D of the NASD By-Laws.

It is anticipated that the effective date of the rule change will be no more than 45 days after the publication of a Notice to Issuers announcing the approval of the rule change. The Notice to Issuers announcing the approval of the proposed rule change will be published no more than 45 days following Commission approval. However, the NASD will amend this rule filing to request an appropriate effective date prior to SEC approval.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[13] which requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, in that the proposed rule change clarifies Nasdaq issuer disclosure requirements to the public and to the NASD Market Surveillance Department regarding material news, unusual market activity and rumors, and temporary trading halts, and also clarifies the confidentiality of issuer non-public information provided to the Market Surveillance Department.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[13] 15 U.S.C. 78o-3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-5966 Filed 3-15-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31967; International Series Release No. 524; File No. SR-PHLX-93-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Foreign Currency Option Fees

March 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 28, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its Schedule of Fees and Charges to provide for exemptions from foreign currency option transition charges for registered traders and specialists respecting transactions executed during the foreign currency option evening trading segment from 6 p.m. (e.s.t.) to 3 a.m. (e.s.t.) and exemptions from the foreign currency option comparison charge for registered traders during the same period. The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Effective at the beginning of business on the evening trading segment for foreign currency options on Monday, February 15, 1993, the PHLX proposes to exempt all registered traders or registered options traders ("ROTs") and specialists from foreign currency option transaction charges and ROTs from the foreign currency option comparison charge for all transactions executed during the evening trading segment from 6 p.m. (e.s.t.) to 3 a.m. (e.s.t.) in order to promote their market participation during this trading segment. The PHLX's other foreign currency option transaction and comparison charges as well as other

miscellaneous charges will remain unchanged.

The purpose of the proposed rule change is to amend the PHLX Schedule of Fees and Charges. The revisions reflect an intention of the PHLX to promote and encourage additional market participation by ROTs and specialists during the evening trading segment in foreign currency options. The proposed exemption addresses the burdens imposed upon members and member organizations respecting staffing and participating in the foreign currency option evening trading segment on the PHLX trading floor.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–04 and should be submitted by April 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–5911 Filed 3–15–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 5, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48675.

Date filed: March 5, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC 23 Mail Vote 615–1, TC MV/P0196, Central Africa to South Asian Subcontinent Fares.

Proposed Effective Date: April 15, 1993

Docket Number: 48676.

Date filed: March 5, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC 3 Mail Vote 619, Reso 010R (New), Japan Korea Fares.

Proposed Effective Date: March 29, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–5917 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 5, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48673.

Date filed: March 4, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 1, 1993.

Description: Application of Servicios Aerolineas Mexicanas, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a Foreign Air Carrier Permit to provide charter foreign air transportation of persons and accompanying baggage to points in the United States and points in Mexico, and subject to applicable Regulations of the Department of Transportation, between points in the United States and other points worldwide.

Docket Number: 48682.

Date filed: March 5, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 2, 1993.

Description: Application of Salair, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of persons, property and mail: Between any point in any State in the United States or District of Columbia, or any Territory or Possession of the United States, and any other point in any State of the United States or District of Columbia or any Territory or Possession of the United States.

Docket Number: 48678.

Date filed: March 5, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 2, 1993.

Description: Application of United Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, for an amendment to United's Certificate of Public

Convenience and Necessity for Route 603 to authorize United to serve transatlantic points which are named on its Certificate of Public Convenience and Necessity for Route 57 but which are not named in Route 603 and to other wise integrate transatlantic authorities on Route 603 with other certificate and exemption authority held by United consistent with applicable international agreements.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93-5916 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order 93-3-13]

Fitness Determination of S.M.A. Airlines, Inc. d/b/a Skymaster d/b/a Atlantic North Airlines

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order to show cause.

SUMMARY: The Department of Transportation is proposing to find S.M.A. Airlines, Inc., d/b/a Skymaster d/b/a Atlantic North Airlines fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act and to receive in transfer the commuter air carrier authority issued to R.I.C., Inc. d/b/a Skymaster Air Taxi d/b/a Skymaster by Order 89-6-37, June 22, 1989.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 22, 1993.

FOR FURTHER INFORMATION CONTACT:

Carol Woods, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: March 9, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-5915 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 7032, February 3, 1993.

PREVIOUSLY ANNOUNCED DATES AND LOCATION OF MEETING: March 11, 1993, 8 a.m. to 11:30 a.m.; Holiday Inn, Maple Room, 800 Rainier Ave. South, Renton, Washington 98055.

CHANGES IN THE MEETING: The meeting date has been changed to April 13, 1993, 9 a.m. to 12 p.m. The meeting location has been changed to room 1010 (The McCracken Room), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Daniel C. Beaudette, Executive Director, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8558.

Daniel C. Beaudette,

Executive Director of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel.

[FR Doc. 93-5990 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application to Impose and Use Passenger Facility Charge (PFC) at Eagle County Regional Airport, Eagle, CO.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule and application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Eagle County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN-ADO, Federal Aviation Administration, 5440 Roslyn, Suite 300, Denver, CO 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jack D. Lewis, County Manager, Eagle County, Colorado, at the following address: 500 Broadway, P.O. Box 850, Eagle, CO 81631.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Board of County Commissioners, Eagle County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286-5525; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, suite 300; Denver, Colorado 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Eagle County Regional Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 9, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Eagle County, Colorado was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 18, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: September 1, 1993

Proposed charge expiration date: March 31, 1998

Total estimated PFC revenue: $572,609.00

Brief description of proposed project: Airport planning studies; purchase safety equipment and building; land acquisition; expand air carrier apron; grade runway 25 safety area; install taxiway guidance signs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., suite 540, Renton, WA 98005-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eagle County Regional Airport.

Issued in Renton, Washington, on March 9, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93-5991 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use Passenger Facility Charge (PFC) at Friedman Memorial Airport, Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Friedman Memorial Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA-ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Todd G. Wirthlin, Director of Aviation, Friedman Memorial Airport, Hailey, Idaho, at the following address: P.O. Box 929, Hailey, Idaho 83333.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Blaine County Airport Commission, Blaine County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra M. Simmons, Civil Engineer, (206) 227-2656; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250; Seattle, Washington 98055-4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Friedman Memorial Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 9, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Blaine County, Idaho was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 29, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: September 1, 1993

Proposed charge expiration date: August 31, 1997

Total estimated PFC revenue: $188,000.00

Brief description of proposed project: Terminal construction project; runway lighting and signage; airport master plan/noise contour maps; non-destructive pavement testing.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 on demand air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Friedman Memorial Airport.

Issued in Renton, Washington on March 9, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93-5992 Filed 3-15-93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application to Use Passenger Facility Charge (PFC) at Great Falls International Airport, Great Falls, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a previously approved PFC at Great Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 15, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager, Helena Airports District Office, HLN-ADO, Federal Aviation Administration, FAA Building, room 2, Helena, MT 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. M.J. Attwood, Airport Director of the Great Falls International Airport, Great Falls, Montana, at the following address: 2800 Terminal Drive, Great Falls, Montana 59404-5599.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Great Falls International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Gabbert, (406) 449-5271; Helena Airports District Office, HLN-ADO; Federal Aviation Administration; FAA Building, room 2; Helena, Montana 59601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use a PFC at Great Falls International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 9, 1993, the FAA determined that the application to use the revenue from a previously approved PFC submitted by Great Falls International Airport Authority, Great Falls, Montana was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 9, 1993.

The following is a brief overview of the application.

Revenue to be used: $157,500.00

Brief description of proposed project: Airport fire station

Brief description of impose-and-use and impose-only application approved August 28, 1992

Level of the approved PFC: $3.00

Approved charge effective date: November 1, 1992

Charge expiration date: July 1, 2002

Total revenue to be collected: $3,010,900.00

Impose-only revenue to be collected: $157,500.00

Class or classes of air carriers which are not required to collect PFCs: Air taxis and charter carriers operating only as on demand carriers which do not provide regularly scheduled air transportation service.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Great Falls International Airport.

Issued in Renton, Washington, on March 9, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–5993 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Marin County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed project in Marin County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John Schultz, Chief, District Operations–A, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) for a proposal to close the gap in the High Occupany Vehicle Lanes (HOVL) on State Route 101, Postmile 8.4/12.7, from Lucky Drive in the Town of Corte Madera to San Pedro Road in the City of San Rafael. Besides the two northbound and southbound HOV lanes, the proposed work includes construction of northbound and southbound auxiliary lanes and improvements to the Route 101/580 Interchange and a new interchange near Irene Street. The purpose of the project is to relieve congestion through Corte Madera and central San Rafael and allow for continuous traffic flow along the existing HOV lanes to the north and south. The project has been broken into four segments for funding purposes. Segment #1 is from Lucky Drive to Bellam Boulevard. Segment #2 is from Bellam Boulevard to Mission Avenue. Segment #3 is from Mission Avenue to San Pedro Road. Segment #4 is on Route 580 from Postmile 3.73 to Route 101 and includes a new interchange near Irene Street. Segment #3 has an east or west side widening alternative with a six foot median, which will be maintained throughout the entire project limits. Segment #3 is the only funded portion. The EIR/EIS will evaluate three project alternatives. Alternative 1 is the ultimate geometrics (Year 2010) for all four segments with and without Light Rail Transit (LRT) on the Northwestern Pacific Railroad (NWPRR) right of way. Alternate 2 is Segment #3 only, for the year 2000; for the year 2010 Segment #3 will be analyzed with and without LRT on the NWPRR right of way. Alternate 3 is the No Build for the year 2000 and 2010. Two bike path alternatives are also included in this HOVL Gap Closure project.

The scoping process includes the distribution of the Notice of Preparation to each responsible and trustee agency pursuant to the California Environmental Quality Act, publication of the Notice of Intent in the **Federal Register**, and a scoping meeting to be held in the City of San Rafael during the Spring of 1993. This scoping meeting will be advertised in advance in local newspapers.

Public meetings will also be held during the course of the environmental studies to inform and receive input from the public. A Draft Environmental Impact Statement will be circulated for public and agency review and comment followed by a public hearing. Public notice will be given regarding the time and place of the meetings and hearing.

To ensure that the full range of issues related to the proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on March 2, 1993.

John Schultz,

Chief, District Operations–A, Sacramento, California.

[FR Doc. 93–5950 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 93–18; Notice 1]

Notice of Receipt of Petition for Determination that Nonconforming 1969 Mercedes-Benz 250C Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1969 Mercedes-Benz 250C passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1969 Mercedes-Benz 250C that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is April 15, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle

Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

ICI International Inc. of Orlando, Florida (ICI) (Registered Importer No. R–90–003) has petitioned NHTSA to determine whether 1969 Mercedes-Benz 250C (Model ID 114.021) passenger cars are eligible for importation into the United States. The vehicle which ICI believes is substantially similar is the 1969 Mercedes-Benz 250C (Model ID 114.023) that was manufactured for importation into and sale in the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 250C to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

ICI submitted information with its petition intended to demonstrate that the non-U.S. certified 1969 model 250C, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1969 model 250C is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence. . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 201 *Occupant Protection in Interior Impact*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, and 301 *Fuel System Integrity*.

Petitioner also contends that the non-U.S. certified 250C is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 202 *Head Restraints:* installation of head restraints at each outboard front seating position.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 15, 1993.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 9, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–5994 Filed 3–15–93; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 49
Tuesday, March 16, 1993

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: 10:30 a.m., Friday, March 19, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3297, 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: March 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-6092 Filed 3-12-93; 11:01 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, March 22, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-6175 Filed 3-12-93; 2:47 pm]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, March 23, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. 444, *Electronic Filing of Tariffs.*

Finance Docket No. 31862, *International Brotherhood of Electrical Workers, Local Union 465—Petition for Declaratory Order—San Diego Trolly, Inc.*

Ex Parte No. 394 (Sub-No. 10), *Railroad Rates on Recyclables—Exemptions.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-6167 Filed 3-12-93; 2:17 pm]

BILLING CODE 7503-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 15, 22, 29, and April 5, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 15

Monday, March 15

9:30 a.m.
Discussion on Full Power Operating License for Comanche Peak (Unit 2) (Public Meeting)
(Contact: Suzanne Black, 301-504-1318)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Environmental and Resources Conservation Organization's Petition for Reconsideration of CLI-93-03 (Rancho Seco) (Tentative)
(Contact: Margaret Doane, 301-504-2001)

2:00 p.m.
Briefing on License Renewal Issues (Public Meeting)
(Contact: William Travers, 301-504-1117)

Week of March 22—Tentative

Friday, March 26

10:00 a.m.
Briefing on Progress of NRC Regulatory Review (Public Meeting)
(Contact: Frank Gillespie, 301-504-1275)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 29—Tentative

Tuesday, March 30

10:00 a.m.
Briefing on Status of Technical Specification Improvement Program (Public Meeting)
(Contact: Chris Grimes, 301-504-1161)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 5—Tentative

Tuesday, April 6

10:00 a.m.
Briefing by IIT on Unauthorized Forced Entry into the Protected Area at TMI-1 (Public Meeting)
(Contact: Sam Collins, 817-860-8183)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5-0 on March 9, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rule that "Affirmation of 'Amendments to 10 CFR Parts 50 and 52 on Training and Qualification of Nuclear Power Plant Personnel' and 'Petition for Late Intervention in the Comanche Peak Unit 2 Operating License Proceeding'" (Public Meeting) be held on March 9, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: March 11, 1993.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 93-6168 Filed 3-12-93; 2:18 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
March 16, 1993

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To List the Mexican Spotted Owl as a Threatened Species

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB 56

Endangered and Threatened Wildlife and Plants; Final Rule To List the Mexican Spotted Owl as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Mexican spotted owl (*Strix occidentalis lucida*) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This medium-sized bird is found from parts of central Colorado and Utah south through Arizona, New Mexico, and western Texas, then south through northwestern Mexico to the State of Michoacan. It commonly inhabits mountains and canyons containing dense, multi-storied forests with closed canopies. The Mexican spotted owl is threatened by destruction and modification of habitat caused by timber harvest and fires, increased predation associated with habitat fragmentation, and lack of adequate protective regulations. This rule implements the protection and recovery provisions afforded by the Act for this subspecies. Designation of critical habitat is prudent, but is not determinable at this time.

EFFECTIVE DATE: April 15, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway NE., suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Field Supervisor at the above address (505/883-7877).

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl is one of three spotted owl subspecies recognized by the American Ornithologists' Union (AOU) (1975:285; 1983:xiii). It was described from a specimen collected at Mount Tancitaro, Michoacan, Mexico, and named *Syrnium occidentale lucidum* (Nelson 1903). The spotted owl was later assigned to the genus *Strix* (Ridgway 1914). Specific and subspecific names were changed to conform to taxonomic standards and became *Strix occidentalis lucida*. Monson and Phillips (1981) regard spotted owls in Arizona as *Strix occidentalis hauchucae*, noting they are paler than *S. o. lucida* from Mexico; however, this taxonomic treatment is not followed by the AOU (1983).

The Mexican spotted owl (*S. o. lucida*) is distinguished from the California (*S. o. occidentalis*) and northern (*S. o. caurina*) subspecies chiefly by geographic distribution and plumage. Generally, the background coloration of the Mexican spotted owl is a darker brown than the California and northern subspecies. The plumage spots are larger, more numerous and whiter in *S. o. lucida*, giving it a lighter appearance overall.

Using starch-gel electrophoresis to examine genetic variability among the three spotted owl subspecies, Barrowclough and Gutierrez (1990) found *S. o. lucida* to be distinguishable from the two other subspecies by a significant difference in allelic frequency at one locus. They concluded that this genetic variation, which suggests prolonged geographic isolation of the Mexican subspecies, indicates that the Mexican spotted owl may represent a species distinct from the California and northern spotted owls.

The Mexican spotted owl has the largest geographic range of the three spotted owl subspecies. Its range extends from the southern Rocky Mountains in Colorado and the Colorado Plateau in southern Utah, southward through Arizona and New Mexico and, discontinuously, through the Sierra Madre Occidental and Oriental to the mountains at the southern end of the Mexican Plateau. There are no estimates of the owl's historic population size. Its historic range and present distribution are thought to be similar. Unless otherwise noted, the terms spotted owl, owl, owls and owlet in this document refer to the Mexican spotted owl.

Utah—The earliest spotted owl record in Utah was from Zion National Park (ZNP) in June 1928 (Hayward *et al.* 1976). The most northerly owl occurrence in the Southwest was recorded September 6, 1958, in the Book Cliffs of northeastern Utah (Behle 1981), where there were two additional unconfirmed reports in 1992 (S. Linner, Service, pers. comm., 1992). The most significant population of spotted owls in Utah occurs in ZNP. Surveys conducted between 1987 and 1990 recorded 6 pairs and 3 single birds (Gutierrez and Rinkevich 1991).

Spotted owls appear to be largely absent from higher elevations in Utah. Records include a 1958 sighting in an aspen grove (Behle 1981), a 1990 calling response at 10,000 feet elevation on the Manti-LaSal National Forest (U.S. Forest Service (Forest Service), *in litt.*, 1990), and a radio-tagged juvenile that moved from its natal territory in ZNP to mixed conifer in the Dixie National Forest 12-15 miles to the northeast (S. Linner, pers. comm., 1992).

Current spotted owl records (*i.e.*, those recorded since 1988) for Utah total 26 pairs and 19 single birds (S. Linner, *in litt.*, 1992).

Colorado—Twenty historic records of spotted owls exist for Colorado (Reynolds 1989); 13 have been accepted as valid by the Colorado Rare Birds Committee. These records were from the San Juan Mountains in southwestern Colorado and from the Front Range as far north as the vicinity of Denver.

Current spotted owl records for Colorado total 2 pairs and 10 single birds.

Arizona—Few early spotted owl records exist for Arizona. The earliest record is of a pair nesting in a cottonwood tree northwest of Tucson in 1872. A pair was found in the foothills of the Huachuca Mountains in 1890 (Bendire 1892).

The historic and current distribution of spotted owls in Arizona coincide, except for the current absence of owls from lower elevation riparian forests. Bendire (1892) found a pair of spotted owls nesting in cottonwoods northwest of Tucson in 1872, and Willit found them in lowland riparian areas in the vicinity of Roosevelt Lake (Salt River) in the 1910s (Phillips *et al.* 1964). These records suggest spotted owls may have formerly occurred in low elevation riparian habitats.

Spotted owls are known from the Colorado Plateau in northern Arizona, the basin and range mountains of the southeastern part of the state, and the rugged transition zone between these provinces in central and east central Arizona. The largest concentration of spotted owls in Arizona occurs in the central and east central forests along the Mogollon Rim, in the White Mountains, and on the volcanic peaks near Flagstaff. This region takes in all or part of five national forests and two Indian reservations. The number of owls reported by various agencies at the end of 1990 from the Mogollon Rim, the White Mountains and the volcanic peaks near Flagstaff totaled 124 pairs and 77 single birds.

Current spotted owl records for Arizona total 153 pairs and 108 single birds.

New Mexico—There are numerous early spotted owl records for New

Mexico. Prior to 1928, spotted owls were known from most of the major New Mexico mountain ranges including the Sangre de Cristo, Jemez, Manzano, Sacramento, Mogollon, Tularosa, San Francisco, San Mateo, and Black Range. Many records from southwest New Mexico were the result of the work of J.S. Ligon, who collected throughout New Mexico from about 1910 through 1930. Ligon observed spotted owls over an extensive range in New Mexico and Arizona, but found them most frequently in south central and southwest New Mexico and at similar latitudes in Arizona (Ligon 1926). Recent historic records documented spotted owls from most other mountain ranges in New Mexico (Ligon 1961, Hubbard 1978).

Current spotted owl records for New Mexico total 129 pairs and 85 single birds.

Texas—All Texas spotted owl records are from the Guadalupe Mountains near the New Mexico border. An owl was first reported in 1901 (Bailey 1928). A pair of owls was observed in the Guadalupe Mountains in 1988 (National Park Service (NPS), *in litt.*, 1990).

Current spotted owl records for Texas total 1 pair of birds.

Mexico—Information on spotted owl occurrence in Mexico is somewhat limited. Nevertheless, specimen and sight records obtained over the past 120 years provide a fair understanding of the owl's general distribution and at least an indirect assessment of relative abundance.

A survey of major museum collections found spotted owl specimens from Mexico collected from about 1870 through 1961, which represented 14 locations in 7 states, as follows: Sonora, 4 specimens from 4 sites; Chihuahua, 13 from 5 sites; Jalisco, 2 from 1 site; Michoacan, 1 from 1 site; Guanajuato, 1 from 1 site; San Luis Potosi, 2 from 1 site; and Nuevo Leon, 1 from 1 site. Sight records exist for an additional 4 localities in Sonora, 3 localities in Chihuahua, and 1 location each from Durango and Coahuila. No specimens were collected in the latter 2 states. A total of 23 owl locations in Mexico were known in 1991 (Service 1991a). The great majority of specimens and sight records were concentrated near the U.S. border in northeastern Sonora and northwestern Chihuahua, with large gaps in the known distribution and very few records south and east of there. Field notes from several trips to various mountain ranges in Mexico during the period 1952–1954 and 1983 (J. Marshall, Smithsonian Institution, *in litt.*, 1992) included observations of owls in 7 mountain ranges in Sonora, one mountain range in Chihuahua, and at one site each in Jalisco, Nuevo Leon, and Coahuila. The New Mexico Department of Game and Fish (NMDGF) is currently funding an owl study in the San Juanito-Creel area of west-central Chihuahua. One pair and four single birds have been found so far in that study. Although accurate numbers of owls in Mexico are not known, the available evidence suggests the species has always been uncommon in that country.

Current spotted owl records for Mexico total 1 pair and 4 additional single birds located in the NMDGF Study (R. Valdez, New Mexico State University, pers. comm., 1992), and 1 additional pair (J.A. Olivo-Martinez, Secretaria de Agricultura Y Recursos Hidraulicos, Subdelegacion Forestal, *in litt.*, 1990).

From 1988 to 1990, spotted owl records for the southwestern United States and Mexico totaled 294 pairs and 214 singles (802 birds). During 1991, 120 additional management territories were established on national forests in New Mexico and Arizona (Forest Service, *in litt.*, 1992).

An estimate of the total spotted owl population in the southwestern United States was derived primarily from data supplied by the Forest Service (Fletcher 1990) and data available in other Forest Service documents. Data considered in the calculations included total estimated timberland within national forests in Arizona and New Mexico, total estimated timberland outside national forests in Arizona and New Mexico, estimated suitable spotted owl habitat on national forests in Arizona and New Mexico, spotted owl sightings on national forests in Arizona and New Mexico, acres searched for spotted owls on national forests in Arizona and New Mexico, site pair occupancy rates reported from formal monitoring on three national forests in Arizona and New Mexico, and records of owl occurrences in Utah and Colorado. These data allowed the Service to estimate a 1990 population of Mexican spotted owls in the southwestern United States of 806 pairs and 548 singles. The total estimated population was 2,160 owls (Service 1991a). Data supplied in response to the proposed rule were too incomplete to produce a revised estimate of the total Mexican spotted owl population in the southwestern United States. Data are insufficient to make an estimate of the total Mexican spotted owl population in Mexico.

The Mexican spotted owl occupies a variety of vegetative habitats but these usually contain certain common characteristics (Ganey *et al.* 1988, Ganey and Balda 1989b, Fletcher 1990). These characteristics include high canopy closure, high stand density, and a multilayered canopy resulting from an uneven-aged stand. Other characteristics include downed logs, snags, and mistletoe infection that are indicative of an old grove and absence of active management. Much of the owl habitat is characterized by steep slopes and canyons with rocky cliffs.

The vegetative communities occupied by the Mexican spotted owl consist primarily of warm-temperate and cold-temperate forests, and, to a lesser extent, woodlands and riparian deciduous forest. The mixed-conifer community appears to be most frequently used.

Mixed-conifer forests contain several species of overstory trees. The most common are white fir (*Abies concolor*), Douglas fir (*Pseudotsuga menziesii*), and ponderosa pine (*Pinus ponderosa*). Less common species are southwestern white pine (*P. strobiformis*), limber pine (*P. Flexilis*), aspen (*Populus tremuloides*), and corkbark fir (*Abies lasiocarpa* var. *arizonica*).

The understory of mixed-conifer provides important roosting sites for Mexican spotted owls. The understory usually contains the same conifer species found in the overstory plus Gambel's oak (*Quercus gambelii*), maples (*Acer grandidentatum* and *A. glabrum*), and New Mexico locust (*Robinia neomexicana*). Montane riparian canyon bottoms used by owls in the mixed-conifer zone may contain box elder (*Acer negundo*), narrowleaf cottonwood (*Populus anqustifolia*), maples (*Acer* spp.), and alders (*Alnus* spp.).

The vegetative communities used by the owl vary across its range. In southeastern Arizona, habitat use is approximately equally split between mixed-conifer and Madrean Evergreen Forest and Woodland (Ganey and Balda 1989b), which occurs below the mixed-conifer zone. There are two series of Madrean Evergreen Woodland: the upper oak-pine occurs at 5,500 to 7,200 feet, and the lower evergreen oak (encinal) occurs at 5,000 to 6,500 feet. Within these vegetative zones, and particularly at lower elevations, Mexican spotted owls are usually found in steep, forested canyons with rocky cliffs.

At the northern edge of their range in northeastern Arizona, southwestern Colorado, and Utah, Mexican spotted owls may occur year-round at 4,400 to 6,800 feet within the pinon-juniper zone (*Pinus edulis* and *Juniperus osteosperma*) below mixed-conifer forests. These habitats often include narrow, shady, cool canyons in

sandstone slickrock (Gutierrez and Rinkevich 1990; NPS, *in litt.*, 1990). Although no studies have been completed, most of the owl's activities during the breeding season are believed to occur within the canyons. Owls roost in riparian vegetation of canyon bottoms, on ledges, or cavities in the slickrock canyon walls (D.W. Willey, NPS, *in litt.*, 1990, Gutierrez and Rinkevich, 1991). Results of the first seasons of an ongoing telemetry study in canyon habitats in southern Utah and Colorado showed that during fall and winter 46 percent of owl locations occurred on mesa-tops, benches and warm slopes above the canyons. Movement out of the canyons indicates a shift during winter from summer-use areas inside the canyons and on cool slopes, to warmer areas (Willey 1992).

The habitat characteristics of high canopy closure, high stand density, a multi-layered canopy, uneven-aged stands, numerous snags, and downed woody matter are best expressed in old-growth mixed-conifer forests (usually more than 200 years old). These characteristics may also develop in younger stands that are unmanaged or minimally managed, especially when the stands contain remnant large trees or patches of large trees from earlier stands. Ganey and Balda (1988) found an average of 995 acres of old-growth forest within the 2,092-acre average home range for three pairs of radio-monitored owls in northern Arizona. Fletcher (1990) reported an average of 154 acres of old-growth forest within the management territories (MTs) of 359 spotted owls or owl pairs in Arizona and New Mexico. Management territories averaged 2,055 acres and were established around owl roost or nest sites based on Forest Service biologists' best judgment of suitable habitat.

Habitats suitable for owl nesting appear to be more restricted than those required for foraging or roosting. Areas with high canopy closure and at least a few old-growth trees are usually selected for nesting. Fletcher (1990) analyzed the characteristics of 22 nest sites in Arizona and New Mexico. Nesting occurred most frequently in the mixed-conifer community type (16) followed by the pine-oak community type (3). The remaining three nest sites occurred in riparian (2) and white fir (1) communities. The mixed-conifer and pine-oak community types were used significantly more than expected based on availability. No nests were found in the ponderosa pine community type in this study although it makes up 40 percent of Forest Service estimated suitable habitat in Arizona and New Mexico. Witches'-broom and tree stick platforms were the most frequently used nesting substrates (12); tree cavities, mostly in Gambel's oak, were also used frequently (8), and two nests were on cliff ledges. Tree species used were Douglas fir (9), Gambel's oak (6), white fir (3), and ponderosa pine (1). Except for the one ponderosa pine, the trees were of moderate to large diameter and height for their species. Most trees were on moderate to steep slopes at elevations ranging from 6,000 to 8,000 feet. Most nest trees occurred on northern or eastern facing slopes indicating a preference for the cooler portion of the habitat.

Limited information is available on the reproductive biology of the Mexican spotted owl. Owls most commonly lay eggs in April (Ligon 1926, Johnson and Johnson 1985, Skaggs 1988), but eggs have been found as early as March 2 (Skaggs 1988). Clutch size varies from 1 to 3 eggs (rarely 4) with most broods containing 1 or 2 owlets (Bendire 1892, Ganey and Balda 1988). However, broods of 3 occur occasionally in southern New Mexico where Skaggs (1988) reported 2 of 13 broods contained 3 owlets.

The incubation period is approximately 30 days and most eggs hatch by the end of May. Incubation is carried out solely by the female. Males provide food for the female and young until the owlets are about 2 weeks old. The female then assists in capturing food for the young (Johnson and Johnson 1985).

The female roosts at the nest until 3 to 6 days before the young fledge. Most owlets fledge in June, 34–36 days after hatching (Ganey and Balda 1988). Owlets are unable to fly when they first leave the nest. Owlets become increasingly proficient at flight throughout the summer and are "semi-independent" by late August or early September although juvenile begging calls have been heard as late as September 30 (Ganey and Balda 1988). Young are fully independent by early October.

A wide range of reproductive rates has been observed between years. Reproductive success on the Coconino, Lincoln, and Santa Fe National Forests was determined by formal monitoring in 1989 and 1990 (Fletcher 1990), and during 1991 on the Gila and Coconino National Forests (Olson *et al.* 1991). In 1989, 39 monitored pairs had an average fecundity (female offspring per pair) of 0.67. In 1990, 18 monitored pairs had an average fecundity of 0.06 female young per pair. In 1991, on the Coconino National Forest, the mean fecundity of 18 paired females was 0.75, and on the Gila National Forest, mean fecundity of 19 paired females was 0.74. The low reproductive rate in 1990 was likely attributable to drought conditions affecting prey availability. Conversely, 1991 was an abnormally wet year which may have resulted in exceptionally favorable conditions for the owls. These disparate data identify the magnitude of variation in productivity through time. Ganey and Balda (1988), in a non-systematic study of nesting success in Arizona from 1984 through 1987 found a reproductive rate of 0.32 female young per pair. Skaggs and Raitt (1988) found a reproductive rate of 0.20 female young per pair during one nesting season on the Lincoln National Forest. No data are available on dispersal and age specific survival of the Mexican spotted owl. During 1991, 3 of 18 paired females on the Coconino National Forest, and 3 of 19 on the Gila National Forest were subadults (Olson *et al.* 1991). No other demographic data are available for the Mexican spotted owl.

The initial information on Mexican spotted owl home range characteristics, size, and use resulted from a telemetry study conducted in northern Arizona on 8 radio-tagged spotted owls (Ganey and Balda 1989a). Home range size for single owls varied from 702 to 2,386 acres, with an average size of 1,601 acres. The combined home ranges occupied by pairs averaged 2,092 acres. An average of 66 percent of a pair's home range was used by both owls. The areas of overlap were the nest area, the primary roost, and the foraging areas. Within the home range, owls appear to have core areas that are consistently used. Core areas of individuals (*i.e.*, where 60 percent of radio responses occurred) averaged 336 acres, and core areas for pairs averaged 398 acres. High use areas tended to correspond to steep slopes (Ganey and Balda 1988). Although seasonal movements varied between owls, most remained within their summer home ranges throughout the year. On the Lincoln National Forest, the mean home range size of 4 pairs was 2,909 acres during winter and spring 1990–1991 (Kroel and Zwank 1991). In Utah, Willey (1992) telemetered 5 male owls from ZNP, Canyonlands National Park, and Capitol Reef National Monument. The mean home range size for the 3 owls from ZNP was 598 acres compared with 1,544 for the other 2 owls.

The diet of the Mexican spotted owl includes a variety of mammals, birds, reptiles, and insects with mammals making up the bulk of the diet throughout the owl's range. Woodrats (*Neotoma* spp.) are the most important prey, especially in rock canyon country (Johnson and Johnson 1985, Ganey and

Balda 1988, Gutierrez and Rinkevich 1991, Ganey 1992).

Ganey and Balda (1988) observed that Mexican spotted owls hunted mainly by moving from tree to tree, spending from a few seconds to several hours watching and listening for prey. Because spotted owls launch their attack at relatively short distances from their prey, a multistoried forest with many potential perches is advantageous to owls seeking food.

Spotted owls have plumage similar to boreal-zone owls, apparently as an adaptation for periods of winter temperatures. They are inefficient at dissipating body heat. Apparently to compensate for this inefficiency, they roost and nest in areas of mature forest with a dense multilayered canopy, often on a north slope, near water, or in a canyon that receives cold air drainage. Such sites are 1 to 6 degrees Celsius cooler than other nearby habitat (Barrows and Barrows 1978, Barrows 1981).

Hawks and great horned owls (*Bubo virginianus*) prey on Mexican spotted owls. Great horned owls were the suspected predators of 3 radio-tagged Mexican spotted owls (Ganey and Balda 1988, Skaggs 1990). There is some habitat overlap between the 2 species, but great horned owls occur most often in areas of low relief in selectively logged forest or along meadow edges, whereas spotted owls occur mainly on steep slopes containing dense forest. Johnson and Johnson (1985, 1990) and Phillips *et al.* (1964) reported circumstantial evidence indicating that Mexican spotted owls abandon habitat invaded by great horned owls.

Young *Strix* owls suffer from avian predation (Southern 1970, Gutierrez *et al.* 1985). Young northern spotted owls are especially vulnerable during development, following fledging, and during early dispersal (Forsman *et al.* 1984, Gutierrez *et al.* 1985, Miller and Meslow 1985). Skaggs (1988) observed a red-tailed hawk (*Buteo jamaicensis*) almost succeed in capturing a Mexican spotted owl. A red-tailed hawk was the suspected predator of a Mexican spotted owl in a radio-monitoring study (Skaggs 1990).

Federal, State, Indian, and private lands contain habitat for the Mexican spotted owl. The Forest Service, Bureau of Indian Affairs (BIA), NPS, and Bureau of Land Management (BLM) are the Federal land managing agencies. Efforts to estimate suitable habitat and survey for owls have varied between agencies with the most intensive work being done by the Forest Service.

In 1990, the Forest Service estimated that it managed 4,698,807 acres of suitable owl habitat (Fletcher 1990; Forest Service, Pike and San Isabel National Forest, *in litt.*, 1990; Forest Service, Intermountain Region, *in litt.*, 1990) on 18 national forests. Along with presently suitable habitat, the Forest Service estimated another 1,040,000 acres of Arizona and New Mexico national forest lands were capable of becoming suitable in the next 10 to 100 years (Fletcher 1990). These lands were suitable in the past but became unsuitable due to timber harvest or natural causes. Timber harvest accounted for the loss of 816,000 acres and natural causes accounted for the loss of 221,000 acres. The Forest Service estimated 79 percent of these lands will require 50+ years to return to suitable owl habitat.

The Forest Service began Mexican spotted owl inventories in New Mexico and Arizona in 1988. Inventories in Colorado and Utah began in 1990. As of 1990, just over 2,000,000 acres had been inventoried (Fletcher 1990; Forest Service, Pike and San Isabel National Forest, *in litt.*, 1990; Forest Service, Intermountain Region, *in litt.*, 1990). Approximately 70 percent of the surveys were on lands available for timber harvest.

Forest Service inventories through 1990 resulted in the establishment of 517 owl MTs in Arizona and New Mexico with each MT representing the occurrence of either a single owl or pair of owls. Approximately half the MTs were established from confirmed nest or roost localities; the other half were established only from night calling responses. On lands unavailable for timber harvest, only 30 percent of the MTs were established from confirmed nest or roost localities. There were 318 MTs (61 percent) on lands available for timber harvest and 199 MTs (39 percent) on lands not available for timber harvest. Among the MTs on lands not available for timber harvest, 102 were on lands unsuitable for timber harvest, 39 were on lands withdrawn from timber harvest, and 58 were on lands such as wilderness areas (Fletcher 1990). The Forest Service reported 620 MTs for Arizona and New Mexico national forests as of 1992, but provided no new information about the area inventoried or distribution of owl MTs by types of land use.

There are potentially up to 878,000 acres of spotted owl habitat on Indian reservations. However, the actual amount of habitat is likely much lower because estimates supplied by the BIA Forestry Divison were developed mostly from timber-type maps containing little information about understory conditions or slope. Also, habitat estimates for the Mescalero Apache, Jicarilla Apache, Southern Ute, and Zuni reservations represent the total commercial forest land for those reservations; no potential habitat estimates were supplied.

Formal owl surveys were conducted on 71,200 acres on four Indian reservations in 1990 and 15 owls were located. In 1990 a total of 5 pairs and 22 single owls were known to occur on Indian reservations. (BIA, Albuquerque Area Office, *in litt.*, 1990; BIA, Navajo Area Office, *in litt.*, 1990; BIA, Phoenix Area Office, *in litt.*, 1990).

A total of 734,000 acres of potential owl habitat occurs on BLM lands in Colorado, Utah, Arizona, and New Mexico (BLM, Colorado State Office, *in litt.*, 1990; BLM, Utah State Office, *in litt.*, 1990; BLM, New Mexico State Office, *in litt.*, 1990; Ted Cordery, Arizona BLM, pers. comm., 1992).

In 1992, a total of 1 pair and 5 single owls were known from BLM lands in Colorado, Utah, Arizona, and New Mexico. There were 6 pairs and 4 singles in Utah, 1 pair and 3 singles in Colorado, and no owls in New Mexico or Arizona.

Most owl habitat on national parks and monuments consists of steep shaded canyons in the northern part of the owl's range. It is difficult to estimate acreage for this type of habitat. The NPS estimated that 23 parks and monuments in the Southwest contained between 238,000 and 438,000 acres of owl habitat (NPS, Southwest Region, *in litt.*, 1990; NPS, Rocky Mountain Region, *in litt.*, 1990; J. Ray, NPS, Grand Canyon National Park, pers. comm., 1990).

In 1990, a total of 8 pairs and 16 single owls were known from NPS lands (NPS, Southwest Region, *in litt.*, 1990; NPS, Rocky Mountain Region, *in litt.*, 1990; J. Ray, NPS, pers. comm., 1990).

Between 177,400 and 202,400 acres of New Mexico State lands contain forests and canyons that could be suitable owl habitat. However, no owl surveys had been conducted as of 1992 (Greg Fitch, New Mexico Forestry Division, pers. comm., 1992). In Arizona, no suitable owl habitat is known to occur on State lands controlled by the Arizona Game and Fish Department (AGFD). No present or historic owl localities are known from State lands in New Mexico or Arizona. No information was obtained on suitable owl habitat on State lands in Utah and Colorado. However, 1 pair was recorded on Utah state lands during 1992.

Ganey and Balda (1988) surveyed throughout Arizona for spotted owls from 1984 through 1987. They reported 3 of 146 owl sites were on private lands, but provided no locations or habitat

information. Skaggs (1988) reported that 7 owl records from southern New Mexico during the period 1900 to 1987 were from private lands. These records from Hidalgo County in southwest New Mexico were from the Animas Mountains, which are on private land. Spotted owls are reported currently present in the Animas Mountains (P. Melhop, Nature Conservancy, pers. comm., 1992).

Suitable spotted owl habitat reported by Federal and State agencies in 1990 totalled about 6,815,557 acres. The Forest Service reported 4,698,807 acres (69 percent), BIA 878,000 acres (13 percent), BLM 711,000 acres (10 percent), NPS between 238,100 and 437,600 acres (about 5 percent), and the State of New Mexico between 177,400 and 202,400 acres (about 3 percent). An estimate of 5,000 acres of suitable owl habitat on private lands is much less than 1 percent of the total.

The proportion of total habitat for each agency is probably fairly accurate. However, the total acreage of suitable habitat is likely overestimated. The error is a consequence of inadequate information on land status and disagreement about the types of communities that provide suitable habitat. For instance, the Forest Service included many acres of the ponderosa pine community type in its estimate of suitable habitat. These acres were excluded from the Service estimate. Several agencies expressed uncertainty about the accuracy of their habitat estimates.

From the data provided by various agencies, it is impossible to develop an accurate estimate of total suitable owl habitat. The Service's best estimate excludes most of the ponderosa pine community type for New Mexico and Arizona national forests because this community type was found to be used insignificantly by nesting and roosting owls. However, it may constitute important wintering or foraging habitat. The Forest Service does consider ponderosa pine forest to be suitable habitat when it has the correct structural attributes (K.W. Fletcher, Forest Service, pers. comm., 1992), but the forest stand maps and inventory databases do not separate suitable from unsuitable stands in ponderosa pine. Forest Service owl inventory data place approximately 50 management territories in ponderosa pine habitat which would add 100,000 acres to the suitable habitat base in Arizona and New Mexico (Forest Service, *in litt.*, 1992). Although the ponderosa pine community type might also be excluded for Colorado national forests and Indian reservations, this was not done because figures from those sources did not report habitat by community type. The Service estimate of total suitable Mexican spotted owl habitat in the United States is 5,489,734 to 5,714,734 acres.

Ninety-one percent of Mexican spotted owls known at the end of 1990 occurred on national forests, 4 percent occurred on Indian reservations, 4 percent occurred on national parks, and 1 percent occurred on BLM lands. Because the Service has received only incomplete 1991 and 1992 survey data, it is not possible to identify exact percentages since 1990.

Management direction for lands with owl habitat varies by agency. A management emphasis for timber production is in force on much of Forest Service and BIA managed land. Much BLM owl habitat is managed primarily for wildlife and recreation but is still available for natural resource extraction, including oil, gas, minerals, and timber. NPS lands are managed for recreation and preservation of natural values. State lands in blocks large enough to support owl populations are usually game management areas. Management of private lands providing owl habitat is unknown.

Forest Service management plans call for suitable timber land in the Southwest to be managed as even-aged stands using a system called shelterwood management. The shelterwood management system begins in a timber stand 100 or more years old with a series of commercial harvests culminating in a regeneration cut. This cut removes most of the timber but leaves some trees to provide shade and a seed source for the newly developing stand. After a new stand of young trees is established in 10 to 40 years, a commercial harvest called a removal cut removes the sheltering overstory trees. Young stands receive pre-commercial thinning to maintain tree spacing for maximum growth. When trees reach commercial size, stands are periodically thinned with commercial harvests called intermediate cuts. There are usually 1 to 3 intermediate cuts prior to the next regeneration cut.

About 95 percent of the Forest Service commercial timber in the Southwest is planned for management under the shelterwood system. Commercial forests on the Navajo Indian Reservation are being converted to shelterwood management (James Carter, BIA, pers. comm., 1990). Other commercial forests on Indian lands in the Southwest are managed as uneven-aged stands by use of selective logging.

Previous Service Actions

On December 22, 1989, the Service received a petition submitted by Dr. Robin D. Silver requesting the listing of the Mexican spotted owl as an endangered or threatened species under the Act. On February 27, 1990, the Service found that the petition presented substantial information indicating that listing might be warranted and initiated a status review.

Section 4(b)(3) of the Act requires the Secretary of the Interior to reach a final decision on any petition accepted for review within 12 months of its receipt. In conducting its review, the Service published a notice in the **Federal Register** (55 FR 11413) on March 28, 1990, requesting public comments and biological data on the status of the Mexican spotted owl. In addition, a status review team of 5 Service biologists and 1 biologist each from the AGFD and the New Mexico Department of Game and Fish (NMDGF) was established. This team organized all comments and information received in response to the March 28 notice as well as other information gathered or in the Service's files.

On December 6, 1990, the team completed a draft status review report on the Mexican spotted owl. On February 20, 1991, the Service made a finding, based on the contents of the report, that listing the Mexican spotted owl, pursuant to section 4(b)(3)(B)(i) of the Act, was warranted. Notice of this finding was published in the **Federal Register** on April 11, 1991.

The entire spotted owl species (*Strix occidentalis*) was listed on the Service's Animal Notice of Review (54 FR 554; January 6, 1989) as a Category 2 species. A Category 2 species is one for which listing may be appropriate but additional biological information is needed to support a proposed rule. The information gathered in the status review for the Mexican spotted owl contributed to the information needed for a decision to propose this subspecies for listing. A proposed rule to list the Mexican spotted owl as threatened without critical habitat was published in the **Federal Register** on November 4, 1991 (56 FR 56344).

Summary of Comments and Recommendations

In the November 4, 1991, proposed rule (56 FR 56344) and associated notifications, all interested parties were requested to submit factual reports or information that might bear on whether the owl should be listed. The comment period originally closed on March 3, 1992, but was reopened from May 11,

1992 to September 1, 1992 (57 FR 20073; May 11, 1992) to allow submission of additional comments. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in Arizona in the Mesa Tribune, Scottsdale Progress, Tucson Citizen, Navajo-Hopi Observer, Eastern Arizona Courier, Lake Powell Chronicle, Kingman Booster-Spirit, Sierra Vista Daily Herald Dispatch, Copper County News, Verde Independent Bugle, Red Rock News, Williams News, Prescott Sun, Holbrook Tribune News & Snowflake Herald, Round Valley Paper, Silver Creek Dispatch, White Mountain Independent, Arizona Daily Sun, Arizona Republic, Arizona Daily Star, in New Mexico in the Albuquerque Journal, Silver City Daily Record, Santa Fe New Mexican, Carlsbad Current Argus, Alamogordo News, in Utah in The Daily Spectrum, Reaper, Salt Lake Tribune, and in Colorado in the Durango Herald, and Rocky Mountain News. The inclusive dates of publication were January 15, 1992 to February 11, 1992 for the initial comment period and hearings and from June 17, 1992 to July 1, 1992 for the second comment period.

Because of anticipated widespread public interest, the Service held 6 public hearings which were announced in the proposed rule. Interested parties were contacted and notified of the hearings. A notice of the hearing dates and locations was published in the Federal Register on January 2, 1992 (57 FR 35). Approximately 883 people attended the hearings. About 68 people attended the hearing in Santa Fe, New Mexico; 42 in Alamogordo, New Mexico; 71 in Silver City, New Mexico; 60 in Tucson, Arizona; 545 in Flagstaff, Arizona; and 97 in Cedar City, Utah. Transcripts of these hearings are available for inspection (see ADDRESSES).

A total of 1,541 written comments were received at the Service's Ecological Services Field Office in Albuquerque, New Mexico: 149 supported the proposed listing; 1,384 opposed the proposed listing; and 8 either commented on information in the proposed rule but expressed neither support nor opposition, provided additional information only, or were non-substantive or irrelevant to the proposed listing.

Oral or written comments were received from 142 parties at the hearings: 33 supported the proposed listing, and 109 opposed the proposed listing.

In total, oral or written comments were received from 12 Federal and State agencies and officials, 25 local officials, and 1,670 private organizations, companies, and individuals. All comments, both oral and written, received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: The Service does not have adequate population trend data to support the conclusion that the Mexican spotted owl is threatened and should be listed under the Act.

Response: The Service concludes, as detailed in the "Summary of Factors" section, that there is sufficient evidence that the status of the Mexican spotted owl meets the standards required for it to receive protection under the Act. The Service studied the trends in habitat loss to determine the effects to the population of the Mexican spotted owl. Approximately 20 percent of owl habitat has been rendered no longer suitable, with one-half of this habitat loss occurring within the last decade, representing a habitat loss rate close to 1 percent year. Forest plans for the next decade for the 11 national forests in New Mexico and Arizona call for continued conversion of habitat to a non-suitable condition at a rate of 0.4 percent per year. The habitat lost under a shelterwood harvest system is permanently maintained in a condition not suitable as owl habitat. This loss of habitat will, in time, result in the endangerment of the owl. Forest plans govern forest practices, and as long as they are in effect, the Service cannot ignore their content.

Issue 2: The habitat requirements of the owl are not adequately understood to justify the Service contention that shelterwood timber management makes habitat unsuitable for owl use. Owls occur in a variety of habitat types across a broad elevational range. Owls require open stands and second-growth, and are not old-growth dependent.

Response: The owl uses a variety of forest types ranging from deciduous riparian woodlands, through pinon-juniper, pine-oak, mixed conifer, and spruce fir. Elevations used usually range from 6,500 to 9,500 feet. Most surveys have been associated with timber sales, and when evaluated with surveys in wilderness areas, other reserved lands, and non-Forest Service land, they present adequate data to characterize habitat. There are common characteristics of almost all occupied forested habitat (Ganey and Balda 1988, Ganey and Balda 1989a, Ganey and balda 1989b, Kroel and Zwank 1991). The characteristics include a significant component of mature trees, high canopy closure, multiple storied forest structure, and abundant dead and down woody material. Single-storied, even-aged stands produced under shelterwood management do not retain the habitat characteristics found in occupied owl habitat. Surveys have not determined occupancy in habitat following significant stand modifying timber harvest. Favorable roost and nest sites are seldom found in significantly altered stands.

Issue 3: Habitat definition is biased because surveys are driven by timber sales. Conversely, old-growth has not been surveyed.

Response: Owl survey efforts have been prioritized to proposed activity sites primarily to determine absence or presence of owls and "clear" those areas. However, a significant and increasing amount of survey effort is directed at reserved lands such as wilderness, stands allocated for old-growth management, and non-activity areas including steep slopes, canyon environments and other areas minimally or not suited for timber harvest. Surveys have examined mature and old-growth habitat on all of the national forests in the Southwest Region.

Issue 4: Ponderosa pine forests are utilized as habitat, and should be adequately protected. Conversely, ponderosa pine forests are not owl habitat, and need not be protected.

Response: The Forest Service estimates the ponderosa pine community type provides 40 percent of habitat in Arizona and New Mexico national forests. Of 22 nest sites for which sufficient data were available to analyze, none occurred in the ponderosa pine type. Of 83 day roost sites with sufficient data to analyze, only one occurred in the ponderosa pine type (Fletcher 1990). The pine-oak community type, which provides only 8 percent of the estimated owl habitat, had 18 percent of the nest sites and 19 percent of the roost trees. Therefore, the pure ponderosa pine type appears to provide only marginal conditions for nest and roost sites. However, where this habitat intergrades with other habitats such as mixed conifer and canyons, it may be used for foraging. Additionally, the habitat may be important for seasonal elevational movements and winter habitat.

Issue 5: Data are inadequate to determine how the Mexican spotted owl uses habitat in southern Utah.

Southwestern Colorado does not include any owl habitat.

Response: Studies in canyon habitats in southern Utah have provided some of the best data available on habitat use and movements by the Mexican spotted owl. Gutierrez and Rinkevich (1991) and Rinkevich (1991a, 1991b) examined distribution, density and food habits of Mexican spotted owls at Zion National Park and on surrounding BLM lands during the period May 1989–August 1990. They found owls at nine different locations within Zion National Park. Their analysis of habitat characteristics identified high humidity, multiple vegetative strata, narrow canyons and high quantities of ground litter as habitat correlates with the presence of Mexican spotted owls. In contrast to forested habitats, canyon habitats frequently contain relatively little or no forest stands other than riparian stringers. Mammals comprised 99 percent of the owl's diet, and bushy-tailed woodrats (*Neotoma cinerea*) comprised 67 percent of the biomass identified at Zion National Park. The bushy-tailed woodrat and the desert woodrat (*N. lepida*) comprised 98 percent of the biomass in the owl's diet on NPS and BLM lands in southern Utah. Surveys in Colorado indicate that owls use canyon habitat types similar to those in Utah. The known range extends from Mesa Verde and the San Juan Mountains northward along the Front Range of central Colorado (Reynolds 1990, Willey 1992).

Issue 6: Data on demography, dispersal and other life history characters are inadequate to allow the development of a population viability model. The presence of single birds on territories should be seen as a warning that the population is in decline because it shows that birds are not able to acquire mates.

Response: There are not adequate data to develop a population viability analysis. Demography studies and other studies to acquire the data necessary to complete a population viability analysis require several years, depending on the longevity of the species. Studies designed to obtain these data are being conducted on the Coconino, Gila and Lincoln National Forests. It will be several years before they produce the necessary data. Single birds on territories may be a cause for concern where singletons reside alone on territories for multiple years as they do at some sites in northern New Mexico. In the southern mountain ranges, where owls are more abundant, additional surveys frequently find that pairs are present, or the unmated birds are subadults. The presence of subadults on territories probably indicates an expanding population. When population data are available, the stability of the populations will be analyzed.

Issue 7: Data on prey base or prey habitat relationships are not available. Spotted owl occurrence is limited by prey availability, not forest environment.

Response: The Service believes that, as with other species, owl populations are limited by prey availability, environment, stochastic events, and other factors. There have been several prey analyses completed at this time including studies on the Coconino National Forest (Ganey 1992), several national forests in New Mexico and Arizona (Duncan 1992), Capitol Reef National Park (Wagner *et. al.* 1982), Zion National Park (Kertell 1977, Rinkevich 1991a) and Bureau of Land Management lands surrounding Zion National Park (Rinkevich 1991b). These studies all have shown that Mexican spotted owls feed on mammals, birds, reptiles and insects. Mammals, woodrats (*Neotoma* spp.) in particular, account for most of the biomass consumed. Another study in progress on the Lincoln National Forest (Pat Ward, Forest Service, pers. comm., 1992) has identified *Peromyscus maniculatus* and *Microtus* spp. as important prey on that forest.

The spotted owl is described as a "perch and dive" predator. Hunting behavior consists of moving from tree to tree, spending a few seconds to several hours watching and listening for prey (Ganey and Balda 1988). Owls have been observed to launch attacks from perches less than 5 meters in height. Because spotted owls dive relatively short distances to their prey, a multi-storied forest with many potential perches is essential to successful foraging. Spotted owls infrequently forage in shrub-sapling habitats, probably due to difficulty in hunting effectively in dense ground cover. California spotted owls also avoid meadows or large open expanses, despite potentially large numbers of prey available (Barrows 1980). The occurrence of spotted owls in canyon habitat with a minimal forest component suggests that the topographical and physical structure of canyons may substitute for the multi-storied structural characteristics of forested habitat (Gutierrez and Rinkevich 1991, Willey 1992).

Issue 8: The Service did not consider the range and population size of the Mexican spotted owl in Mexico.

Response: The proposed rule did consider the range in Mexico, but as pointed out, there is very little information about the owl in Mexico. Sightings in Mexico have been rare despite the fact that many of the observers were explicitly looking for unusual birds, including owls, to collect. The rarity of the sightings suggest that the birds are uncommon in Mexico. The Service is also concerned about the potential for the development of large-scale timber operations in Mexican spotted owl habitat in Mexico. For example, a project proposed by the World Bank would extract four billion board feet from the Barranca del Cobre area of the Sierra Madre Occidental in southern Chihuahua. In 1992, the Service began a cooperative Mexican spotted owl research project with Mexican biologists in this area.

Issue 9: No data are available on owl populations on Indian reservations.

Response: Limited data are available on owls on Native American lands. Until recently, surveys for owls were infrequent on these lands. However, in many cases, that situation has changed and surveys are being conducted. Currently, an estimated 13 percent of owl habitat, and 5 percent of known owls occur on Native American lands. These figures were included in the Service estimate of the total Mexican spotted owl population throughout the southwest.

Issue 10: Loss of riparian habitat has not impacted owls at higher elevations.

Response: Riparian woodlands in the Southwest prior to the twentieth century may have satisfied many of the structural and thermal requirements of owl nest and roost sites. Dense cottonwood canopies and willow/mesquite understories may provide the necessary multi-storied structure and cool microclimate. High diversity and abundance of prey items in these habitats may have made them suitable breeding sites. Loss of riparian habitat has been most extensive at low and middle elevations. In the last century, Arizona has lost 90 percent of its low elevation riparian habitat (Bulmer and Thornburg 1988), and New Mexico has lost 33 percent of its wetlands, including low elevation riparian habitat (Dahl 1990, State of Arizona 1990). The importance of low and mid-elevation riparian woodlands to the owl is unknown. Less high elevation, montane riparian habitat has been lost than lower elevation habitat, with correspondingly lower impacts to owls.

Winter use of low elevation riparian habitat has been documented (Bendire 1892, Phillips *et al.* 1964). Its importance as a seasonal portion of the home range is unclear. Riparian habitat also may provide significant dispersal

corridors between the semi-isolated montane habitat regions. Current studies of dispersal and winter elevational movements will identify the extent and importance of riparian habitat for the owl.

Issue 11: Landscape fragmentation in the southwestern United States is natural and should not adversely affect a species that has evolved in that environment.

Response: Landscapes in the southwestern United States are naturally heterogenous. The natural heterogeneity often leads to isolation of small populations that are individually at greater risk of extinction than larger populations with similar rates of immigration and emigration. Fragmentation of contiguous blocks of habitat further reduces effective population sizes with attendant increases in extinction risk. Because fragmentation results in smaller local populations, even species that are adapted to fragmented landscapes may be jeopardized by additional man-caused fragmentation. Carey *et al.* (1992) demonstrated that northern spotted owls required and traversed significantly more terrain in heavily fragmented ares than in lightly fragmented areas. The consequent expansion of territories in heavily fragmented habitat appeared to adversely impact social structure, as evidenced by the proportion of adult-subadult pairs, degree of adult nomadism, and overlap among home ranges of pairs. Gutierrez and Pritchard (1992), in a study on the insular ecology of the California spotted owl, a subspecies occurring in small populations on isolated mountain ranges, also found that owls in isolated populations experienced lower survival rates and had a greater proportion of subadults. There are no studies on the effects of habitat fragmentation on the Mexican spotted owl.

Issue 12: Disjunct sub-populations on "sky islands" (montane environments) demonstrate that genetic isolation is apparently not a limiting factor to the Mexican spotted owl, and suggests at least minimal dispersion between mountain ranges.

Response: Genetic isolation may not be a limiting factor, but its importance is not known at this time. Currently, one study is investigating the extent of dispersal and the phylogenetic and population affinities of spotted owls. Additional research is needed in other portions of the sub-species range.

Issue 13: The Service states that the populations of great horned owls and red-tailed hawks in New Mexico and Arizona have increased by more than 2 percent annually for the last 22 years. The actual data reported in breeding birds surveys show that great horned owls have increased 2.6 percent annually in Arizona and decreased 4.1 percent annually in New Mexico. In the last ten years red-tailed hawks had an insignificant annual increase of 0.2 percent in Arizona. Furthermore, there is no evidence that these population changes are related to forest fragmentation as suggested in the proposed rule.

Response: The trend data reported in the proposed rule were from a summary of Breeding Bird Survey (BBS) routes in Region 2 (New Mexico, Arizona, Texas, Oklahoma) of the Service, not New Mexico and Arizona. The figures for the 1966–1992 BBS summary are as follows: in New Mexico, great horned owls (*Bubo virginianus*) had a statistically non-significant decline of 2.2 percent per year, and red-tailed hawks (*Buteo Jamaicensis*) had a significant increase of 5.6 percent per year; in Arizona, great horned owls had a non-significant increase of 1.1 percent per year, and red-tailed hawks had a significant increase of 4.3 percent. During the ten-year period of 1982-1991, red-tailed hawks in Arizona showed a non-significant 0.6 percent annual decrease, and in New Mexico, a non-significant 3.3 percent annual increase. During the same period, great horned owls in Arizona showed a non-significant decrease of 2.6 percent per year, and in New Mexico, a significant annual decrease of 11.3 percent. Looking only at the mountainous physiographic unit that includes the upper portion of the Mogollon Rim in Arizona, the Mogollon Mountains and Sacramento Mountains in New Mexico, for the 1982-1991 period, great horned owls showed a significant 4.2 percent annual decline, and red-tailed hawks increased significantly at a rate of 8.6 percent annually. A non-significant rate of change is the same as no change at all. In fact, breeding bird surveys are not a good way to estimate populations of large hawks and owls, because they infrequently nest near roads, and in the case of owls, are nocturnal.

Issue 14: The consequences of human impacts on the environment are impossible to predict and we should not be too eager to interfere with the evolutionary process.

Response: There are frequently unanticipated effects on the environment from human activities, but unfortunately they are not often beneficial to rare species. In most cases these effects result in declining populations and even extinctions. In the case of the Mexican Spotted owl, reduction of habitat is most likely to be harmful to the species because of direct reductions in population size with attendant increase in the probability of extinction. In promulgating the Endangered Species Act, Congress sought to prevent extinction as a consequence of economic growth and development untempered by adequate concern and conservation. Such human activities are additive to and beyond normal ecological processes that may result in extinction.

Issue 15: Increased spotted owl roadkills and use of marginal habitat indicated abundance.

Response: There is no information on trends of spotted owl roadkills as no systematic sampling method has been devised for translating the roadkill reports into relative abundance. The habitat in question may not provide for nesting and roosting, but may be important for foraging and wintering. Research is underway to address the uses of habitats considered atypical for the owl.

Issue 16: The Service neglected the Mexican spotted owl study by Dames and Moore (1990).

Response: The Service evaluated the study and found that it did not contain any information contrary to that in other owl habitat research. The study was inconclusive regarding habitat selection between core and outside-core areas. The second conclusion reached in the study, concerning differences between habitats utilized, supported the accepted view that there is considerable variation in habitat attributes within owls' home ranges. The experimental design sampled only habitat considered suitable and was inadequate to show differences between suitable and unsuitable owl habitat.

Issue 17: The Service has not considered the habitat reserved in areas such as wilderness and old growth allocations.

Response: The Service evaluated the relative threats to the portion of the population subject to past and future habitat loss, and concluded that habitat loss affected a significant part (59 percent of the total owl population.

Issue 18: The listing proposal was based on Ganey's flawed data.

Response: Ganey has conducted some of the most extensive research on the Mexican spotted owl, and is considered an authority on the species. His published studies, which the Service has cited, are available for public and peer review. The Service has not found Ganey's experimental design or conclusions to be flawed.

Issue 19: The Service should submit its findings to peer review.

Response: The data and information that were used to evaluate the petition, compile the status review, and determine the threats detailed in the proposed rule, are all referenced in the status review and proposed rule. The proposed rule, which was published in the **Federal Register** on November 4, 1991, is similar to a draft document. The extensive comment periods provided opportunities for peer review by both the scientific community and the interested public. The comments addressed here summarize that review. Where information was presented in error in the proposed rule, or where new information was provided, the comment information has been incorporated into this final rule.

Issue 20: Service biologists who wrote the status review and proposed rule are not trained in silviculture or forestry, and therefore have no business analyzing silvicultural practices.

Response: The Service biologists who wrote the status review and proposed rule are primarily trained in ecology and wildlife biology; however, some do have training in silviculture. The purpose of the review was to evaluate the effects of habitat change on the Mexican spotted owl, not to evaluate the assumptions of the silviculture treatments and whether the treatments would result in the foresters' desired future conditions. The Service assumed that those conditions would be met. A threat to the owl was identified based on the incompatibility of the desired conditions with maintenance of owl habitat.

Issue 21: The Mexican spotted owl is a subspecies, not a species, so it cannot be listed.

Response: Section 3(15) of the Act defines species to include "any subspecies of fish or wildlife or plants", and the criterion of a listable population as "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature". The Mexican subspecies of the spotted owl does not overlap the ranges of either of the other two subspecies. Furthermore, Barrowclough and Gutierrez (1990) conducted a genetic analysis of the three subspecies and found no variation between the coastal subspecies. However, their data do indicate that the Mexican spotted owl is distinct and has been genetically isolated from the other two subspecies for a long period of time. That study provided information supporting the determination that the Mexican spotted owl meets the taxonomic criteria for listing under the Act.

Issue 22: Current protection guidelines under Forest Service Interim Directive No. 2 are excessive/adequate/inadequate. Unoccupied habitat is important.

Response: The Service is concerned that management of national forests to protect individual owls or pairs of owls, by designating individual management territories, does not provide adequate protection for the species. The Service is concerned that forest fragmentation between management territories may increase rates of predation, reduce the amount of habitat available for recruitment of owls into new territories, and reduce the ability of dispersing owls to move across the forests. Because the size of the management territories is based on the mean of a small sample of home ranges, adequate habitat may not be provided by current management guidelines. At this time, it is not known to what extent owls move from their management territories during winter. If habitat surrounding management territories is not maintained, and owls require it, even seasonally, the birds may not survive. In telemetry studies in Arizona and Utah, 2 of 5, and 1 of 5 Mexican spotted owls, respectively, moved off their territories during winter and returned prior to breeding in the spring (Ganey and Balda 1989b, Willey 1992). Management for the northern spotted owl is developed around large blocks of habitat, referred to in the northern spotted owl draft recovery plan as Designated Conservation Areas. The management plan for the California spotted owl calls for management of high quality and low quality habitat on a forest-wide basis (Verner *et al.* 1992). The Service believes that either of these strategies are preferable to the single territory management under the current Region 3 (Arizona and New Mexico) Forest Service Interim Directive No. 2.

Issue 23: The sizes of management territories and core areas established by the Forest Service are excessive/inadequate.

Response: The Forest Service derived its estimate of management territories and cores based on Ganey and Balda's (1988) study, which at the time, was the only study that provided information on home range size for the Mexican spotted owl. The study sampled mixed conifer forest habitat use by radio-monitored owl pairs. Additional sampling in mixed conifer forest has been done by Kroel and Zwank (1991) with similar results. The Forest Service use of the average rather than maximum size, or the mean size plus two standard deviations for the establishment of management territory size, resulted in management territories that meet size and habitat requirements for only about 50 percent of owl pairs. Core area size was determined by delineating an activity area in which 60 percent of radio signals occurred, and centering the area around the known roost, nest or detection locations. The use of averages probably underestimates the size of activity areas for a significant portion of the population.

Issue 24: Owl habitat on BLM and State land is inadequately protected.

Response: The timber programs on BLM and State lands in the southwest are small and are not considered a threat to the owl. Most owl habitat on BLM lands is mixed-conifer and hardwood riparian stringers in canyons, so it is unlikely to be used for commercial timber production. Proposed actions on BLM lands follow a clearance and impact analysis conducted in accordance with the Endangered Species Act and the National Environmental Policy Act (BLM, *in litt.*, 1992). Any activity that may affect a listed species triggers consultation with the Service. Additional policies for each state BLM office further limit activities. However, the policies are too general to ensure adequate spotted owl protection on BLM lands.

The State of Arizona lists the Mexican spotted owl as threatened (AGFD 1988). The State of New Mexico is considering adding the owl to its endangered species list. However, protection by both states is limited to the capture, handling, transportation, and take of the owl as regulated by game laws and special licenses for live wildlife, and only affects recreation, hunting, and scientific investigation. The owl has no endangered species status or special protection in Colorado, Texas, or Utah.

Issue 25: The Endangered Species Act requires management of single species. What happens when there is a conflict with other sensitive or listed species? For example, northern goshawk and Mexican spotted owl management needs conflict.

Response: The Endangered Species Act does not stipulate single species management. The Act states section 2(b): "The purposes of this act are to provide a means whereby the ecosystems upon which endangered species and threatened species may be conserved * * *" However, because the northern goshawk (*Accipiter gentilis*) is not a listed species and the owl will be listed as threatened, if a conflict arises, the owl's needs will take precedence. The Service believes that if the national forests are managed as natural ecosystems, a variety of habitats will be maintained that will provide for both of these as well as other species.

Issue 26: The Mexican spotted owl should be listed as endangered. Emergency listing is needed.

Response: The Act defines an endangered species as one that is in danger of extinction. A threatened species is one that is likely to become endangered in the foreseeable future. At this time there is no indication that the owl is presently in danger of extinction. However, because of conversion of habitat identified in the proposed rule, it is likely to become endangered in the foreseeable future unless habitat management changes are implemented. Thus, the species fits the category of threatened, but not endangered. Emergency listing is not justified unless the threats to the species create an emergency posing a significant risk to the well-being of the species, such as large population losses or extinction.

Issue 27: The Service illegally delayed the Mexican spotted owl listing process.

Response: The Service regrets the delay in completing the listing process for this species.

Issue 28: Critical habitat is mandated by the Endangered Species Act, and it should be added in the final rule listing the owl.

Response: At the time of publication of the proposed rule the Service believed that the designation of critical habitat was not prudent because it appeared that consultation under the jeopardy standard in section 7 of the Act would provide the same level of protection for the species as would be derived from the designation of critical habitat. Because consultation would apply forest-wide, and would not be limited to areas within critical habitat boundaries, the Service concluded that designating critical habitat would not provide any additional benefit to the species. Subsequently, however, the Service's experience in informal conferences with the Forest Service under section 7(a)(4) has demonstrated this conclusion was mistaken and that section 7 consultation under the jeopardy standard is not adequate as the sole means to protect the owl and its habitat. Therefore, this final rule calls for designation of critical habitat. However, critical habitat is not determinable at this time.

Issue 29: Conferences on forest activities should be initiated immediately.

Response: Under section 7(a)(4) of the Act, the action agency, in this case the Forest Service, is responsible for determining whether a proposed action is likely to jeopardize a species proposed for listing and, if so, for initiating an informal conference with the Service on the proposed action. The Forest Service has decided that no proposed actions in National Forests in New Mexico and Arizona meet this standard and so has not requested conferences. However, now that the owl is listed, the Forest Service is required, under section 7(a)(2) to request formal consultation on any action that may affect the owl. The Service expects such consultations to be initiated in the immediate future.

Issue 30: Economic considerations should be given more weight when communities may be affected. The Service did not follow legal procedures in the listing process. It failed to consult with county governments as required by Executive Order 12291.

Response: The Act identifies 5 factors which are considered to determine whether a species should be listed as threatened or endangered. These are: the present or threatened destruction, modification or curtailment of its habitat or range; over-utilization for commercial, recreational scientific or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms, and other natural or man-made factors affecting the species continued existence. The Act requires that only scientific and commercial data may be used to make that determination, and prohibits the Service from considering economic factors. As a result, Executive Order 12291 does not apply to rulemakings to list species under the Act. However, because economics are considered in the designation of critical habitat, the Service will comply with Executive Order 12291 in designating critical habitat for the owl.

Issue 31: The Service needs to ensure public input before listing the Mexican spotted owl. The Service is required to notify counties and other affected parties to solicit their input prior to listing a species under the Act. The Service failed to meet this obligation.

Response: The Service has fully met or surpassed the requirements of the Administrative Procedure Act and the Endangered Species Act for public notification. On December 22, 1989, the Service received a petition to list the Mexican spotted owl as threatened or endangered under the Endangered Species Act of 1973, as amended. The Service evaluated the information in the petition and other materials in making a finding that the petition may be warranted. An announcement of the 90-day finding was published in the **Federal Register** on March 28, 1990 (55 FR 11413). That same announcement also stated that the Service was initiating the status review of the species. The **Federal Register** is the instrument that must be used by all Federal agencies for such notices. Additionally, the Service sent notices of the petition finding and the status review initiation on April 9, 1990, to newspapers in New Mexico, Arizona, Utah and Colorado. Following the completion of the status review and the 12-month finding by the Service that the petitioned action was warranted, the Service provided public notice in the **Federal Register** on April 11, 1991 (56 FR 14678). The Service published the proposal to list the owl as threatened in the **Federal Register** on November 4, 1991 (56 FR 56344) with a 120-day public comment period open until March 3, 1992. The notice of six proposed public hearings was published in the **Federal Register** on January 2, 1992 (57 FR 35). Legal notices of the proposed public hearings were again sent to newspapers throughout the southwest and to all agencies and individuals who had previously expressed interest in the owl at the time of the proposal to list. In addition to the notices, regional news releases dated October 21, 1991, and January 7, 1992, were released. The Service held six public hearings to solicit information from the public on the proposal to list the owl. The hearings were held in Santa Fe, Alamogordo and Silver City, New Mexico, on January 21–23, 1992; in Tucson and Flagstaff, Arizona, and Cedar City, Utah, on February 4–6, 1992, respectively. Notices of the proposed rule and solicitation for comments were sent to affected counties and government agencies in February. The notice for a second public comment period open from May 11 to September 1, 1992, was published in the **Federal Register** on May 11, 1992 (57 FR 20073). More than 1,500 letters addressing the listing of the owl were received during the comment periods. The correspondence and comments received at the public hearings have been evaluated in the decision whether to list the owl.

Issue 32: Those who are advocating listing the Mexican spotted owl as a threatened species are a vocal minority with an agenda to remove the human species from public lands. Mexican spotted owl protection under the Act is an environmentalist trick to destroy local rural economies.

Response: The Service cannot speak for the motivation of those individuals who petitioned or who advocate listing the Mexican spotted owl as a threatened species under the Endangered Species Act. Advocate motivation was not considered when the Service proposed to list the owl, and is not considered when a final determination is made on whether or not to list. As stated above, the Service considers only scientific and commercial information relating to the

five factors for listing in making its determination.

Issue 33: The covert purpose of listing the Mexican spotted owl is to force the Forest Service to alter its silvicultural practices. Listing is an excuse for the Service to take over management of public lands managed by other agencies.

Response: The Service has determined that listing of the Mexican spotted owl is warranted based on the available scientific and commercial information relating to the five factors for listing. Even-aged management applied extensively on public lands has been identified as the major threat to the species. Removal of this threat will entail modification of these silviculture practices. However, the land management agencies—Forest Service, Bureau of Land Management, Bureau of Indian Affairs and National Park Service—will continue to be managers of land under their respective jurisdictions.

Issue 34: Habitat loss rates are negligible.

Response: The Forest Service estimates 40 percent of the habitat that has been lost was lost since 1980 (Fletcher 1990). This represents a loss of habitat at a rate of 0.98 percent per year over the last decade. The Service estimate of habitat loss in the next decade, based on forest plan schedules, is 0.4 percent per year. This rate of habitat loss is of great concern because continued shelterwood management will prevent its return to suitability.

Issue 35: Harvest rates are declining, and thus, are not a threat to the owl.

Response: Timber harvest rates remain a controversial issue. The Service is concerned about the current level and intensity of timber harvest. Forest plans on five national forests in Arizona and New Mexico are presently being reviewed by the Forest Service because of concern the allowable sale quantity (ASQ) can not be sustained while meeting other forest plan standards and guidelines. The timber volume sold gradually increased from 334 million board feet (MMBF) in 1971 to 447 MMBF in 1986 and slowly decreased to 282 MMBF in 1991. The reductions in harvest in 1991 and 1992 reflected difficulties met in adjusting to new management practices, including conservation of owl habitat. The future short-term projected sale volume is about 300 MMBF annually (L. Henson, Forest Service, *in litt.*, 1992). Mexican spotted owl habitat faces destruction and modification at a rate close to that of the past decade. Based on information in forest plans, the Forest Service predicts timber demand will increase 30 percent over the next 50 years and that national forests will attempt to meet the demand. If this increase is realized, future harvest entry and corresponding owl habitat loss will be greater than the estimates derived from projected even-age treatments and harvest volume.

Issue 36: Forest management practices have improved the quality and increased the acreage of Mexican spotted owl habitat.

Response: In some areas, railroad logging removed vast quantities of timber at the beginning of the twentieth century. The quality of those sites for Mexican spotted owls prior to treatment probably varied, but the pre-treatment situation is unclear and subject to debate (White 1985, Covington and Moore 1992). Following treatment, most of these areas did not provide suitable conditions for Mexican spotted owls. On some forests, most notably the Lincoln National Forest in New Mexico, some of these sites do provide suitable habitat for owls today. In these instances, the habitat has improved. These sites have had little or no management other than fire suppression since they were railroad logged. The trees were mostly too small to harvest until recently. Although these forest stands primarily consist of young trees, there are small groups of older trees in most stands of owl habitat. These older trees provide an important component of owl habitat because most summer day roost and nest trees are found in such older groups. The Service is concerned that timber harvest programs which focus on forest health usually target older trees for removal, despite their value to wildlife such as the Mexican spotted owl.

Issue 37: The national forests are in a healthy condition because of sound forestry practices.

Response: The national forests of the southwest are generally in good health. However, many old-growth stands have been removed, and many stands now date from this century. With the notable exception of the Lincoln National Forest, the majority of Mexican spotted owls are clearly associated with mature to old-growth stands of pine-oak or mixed conifer. Those stands contain the largest, oldest and most valuable trees for the timber industry. They are also often infected with dwarf mistletoe, which is perceived as a threat to forest health. This combination has resulted in great pressure to remove the oldest remaining stands in the name of forest health. However, these stands are extremely valuable to the Mexican spotted owl and other wildlife species, and are in short supply. The Service believes that, until there are more mature stands that provide high quality habitat, the remaining mature and old-growth stands should be retained in their present condition. Development of management techniques to remove serious infection foci, to thin, and to prevent the threat of habitat destroying wildfires while retaining habitat suitability is possible.

Issue 38: Forest resource mismanagement has impacted ecosystem health.

Response: Ecosystem health means different things to different people. Management during the previous century has had a variety of effects on forest ecosystems. Stands of old-growth have been removed and replaced with young trees which are sometimes of different species. Some wildlife species now have less habitat available than before, and their populations have declined, while other species are more abundant. Fire suppression during the past 80 years has resulted in many stands exhibiting high tree density and competition that suppresses tree growth. Fire suppression has also resulted in extensive tracts of small trees at high density that are now dangerously susceptible to stand destroying wildfires. Some of these consequences are beneficial to the Mexican spotted owl, and others are, or may be, harmful. Given the paucity of information on the needs of the Mexican spotted owl, the Service encourages research which will identify management that will benefit the owl and other species.

Issue 39: Timber management and fire suppression are needed to maintain forest health.

Response: As stated in the previous comment, forest health means different things to different people. Forest Service management has attempted to limit the spread of parasites and disease through silvicultural treatments with varying degrees of success. According to the Forest Service, and in accord with epidemiological theory, stands that have higher tree densities are most susceptible to parasites, disease and stand destroying wildfires. Fire suppression has been widely practiced by the Forest Service resulting in an important suite of problems in forest health, timber productivity, and fire danger. The present condition of forest ecosystems will, in many cases, require management to restore natural processes. The Service encourages the Forest Service to continue research and development of management techniques that will mimic natural forest ecosystem processes. The Service also believes that new ideas and techniques should be tested for unexpected adverse effects prior to wholesale adoption.

Issue 40: The Service incorrectly interprets that habitat made "capable" (temporarily not suitable) is lost habitat.

Response: The Service considers habitat made "capable" by even-age timber harvest methods to be habitat lost indefinitely. The shelterwood system is the even-age harvest method primarily used by the Forest Service in Region 3. For example, a regenerating, middle-aged stand of "capable" habitat might be within 50 years of recovering to a condition suitable as owl habitat. Under the shelterwood system, the stand will receive intermediate cuts before then, which will prevent its return to suitable condition. Ultimately, the stand will receive another regeneration cut where all but a few of the overstory trees are removed. Thus, after the critical attributes of owl habitat have been lost, shelterwood acres are held in even-age conditions perpetually unless silvicultural management is altered or deferred. Suitability as owl habitat is never recovered or, at best, is recovered only briefly before the forest is re-entered and returned to "capable" status.

Issue 41: More than one half of shelterwood timber management is in ponderosa pine forest that is not suitable for Mexican spotted owls. Shelterwood management is in decline in Region 3 and does not threaten owl habitat.

Response: The conversion of complex structured forest stands to even-aged stands was identified by the Service (1991a, 1991b) as the greatest threat facing the Mexican spotted owl. Half of all shelterwood management is occurring in unsuitable forest (primarily pure ponderosa pine) habitat, and the other half in suitable forest habitat. The Service has determined habitat loss trends from current forest plans which provide the only available data on timber harvest trends into the future. An estimated 0.4 percent of Mexican spotted owl habitat will be made unsuitable each year in the future. Because timber harvest will occur in stands that are most valuable to owls, a serious threat exists to Mexican spotted owl persistence. The Forest Service considers that pure ponderosa pine habitat is suitable habitat when it has multi-storied structure. Thus, even-age management in this forest type may also pose a threat to the owl. The capability of most ponderosa pine stands to meet owl habitat needs is limited by young stand age and possibly other limitations, such as low prey densities and inappropriate thermal conditions. However, pure ponderosa pine stands may be capable of developing complex structure, and thus represent important potential habitat for the future. Shelterwood management will prevent pure ponderosa pine from attaining its potential as owl habitat.

Issue 42: The Mexican spotted owl can be found in selectively harvested areas. Uneven-aged timber harvest management is needed to protect owl habitat.

Response: The overall effects of selective harvest methods on the owl are currently unknown. Selective harvest methods probably have lesser impacts on habitat than do large-scale even-aged techniques. The Service understands that Indian reservations (with the exception of the Navajo Reservation) primarily use individual tree selection harvest methods. Owls do occur on these Native American lands, but systematic surveys have only recently been initiated. Historically, the Lincoln National Forest has been harvested in a manner that retained some of the structural components of owl habitat and allowed for a relatively rapid return to a suitable condition. Selective harvest techniques and their attendant effects on owl habitat should be examined as alternatives to current harvest techniques. However, the use of selective harvest must be experimentally implemented and closely monitored to determine appropriate intensities of harvest prior to wholesale application.

Issue 43: The Service overestimated the amount of steep slope logging in the southwest. Steep slope logging is insignificant at this time, and because of economic considerations, will never be important.

Response: The Service utilized forest plans to identify the extent and likely impact of steep-slope logging in owl habitat. At the beginning of this century most of the gentle topography was intensively logged. Forests that remained intact were largely on steep slopes which probably served as refugia while the railroad-logged forests regrew. Today, much of the best owl habitat, which consists of mature and old-growth forest, occurs on steep slopes. Additionally, analyses of nest sites in New Mexico and Arizona indicate that steep slopes are preferentially selected by owls for nest and roost sites. Because steep slopes were minimally logged, the largest and most desirable trees occur in these areas. Forest plans on 5 of 11 Arizona and New Mexico forests allow cable or skyline logging of steep slopes. The Service considers steep slope logging to constitute a serious threat to the owl.

Issue 44: Forests should be managed on a longer harvest rotation cycle.

Response: The Service agrees. At this time, most of the timber produced in New Mexico and Arizona comes from forests that are managed under an even-aged system and harvested with a rotation cycle of 120 years or less. This cycle may maximize timber production but will not provide enough time for stands to reach the mature to old-growth conditions characteristic of forested spotted owl habitat. Region 3 of the Forest Service has recognized that a 120-year cycle is too short in its management guidelines for the northern goshawk (Reynolds *et al.* 1991), and, in discussions with the Service, has stated its intention to adopt longer rotation cycles across the Region.

Issue 45: The Service states that diminishing yields of ponderosa pine are causing the Forest Service to increase harvest rates in mixed conifer in order to maintain timber output at present levels. No data or references are cited to support this allegation.

Response: The Forest Service has estimated that approximately 50 percent of current timber yields could be obtained from harvest in unsuitable owl habitat. Therefore, any additional volume must come from other forest types, including mixed conifer, which compose owl habitat. The proportions vary among forests.

Issue 46: The Service implies that timber yields in ponderosa pine are diminishing. There are no data to support this allegation. In Arizona there is considerable effort to harvest smaller diameter ponderosa pine. This has made large volumes of ponderosa pine available and resulted in improvements in forest health and reduced fire risk.

Response: The Service recognizes that a tremendous production of small diameter ponderosa pine exists in Arizona and New Mexico. Forest Service silviculturalists have informed Service biologists that they consider increasing densities of small ponderosa pine a serious threat to forest health as well as a fire hazard. They report that they have had difficulty finding a market for these small products, and because most mills are not tooled to handle small logs, harvest is concentrated on larger trees. Forest Service data (Henson, *in litt.*, 1992) show decreased availability of large trees. Therefore, yields of ponderosa pine are expected to decrease unless greater use is made of small diameter trees.

Issue 47: The timber industry needs to retool its mills to handle smaller, second growth trees. Large trees in the Southwest are not a renewable resource.

Response: According to Forest Service data, the growing stock level (GSL) on

national forests in New Mexico and Arizona currently exceeds 700 MMBF per year, and the planned 1992 harvest will be less than 300 MMBF. Part of the reason for the difference is that much of the growth occurs in young dense stands that cannot be efficiently harvested or marketed at this time. The decrease of late successional forests has reduced the availability of large trees, and the GSL is almost entirely concentrated in the young tree size classes. If the timber industry could develop a market for small trees, a tremendous resource would be available. As more mills are retooled to handle small trees the need to remove large trees from Mexican spotted owl habitat will diminish. The Service encourages this change in harvest emphasis.

Issue 48: The decline of the timber industry is related/unrelated to Mexican spotted owl habitat protection.

Response: The Forest Service estimated (Fletcher 1990) 59 percent (1,977,226 acres) of owl habitat is available for timber harvest. Protection of occupied owl territories has precluded the harvest of some of this suitable timber acreage, particularly in forests with a high density of territories such as the Lincoln National Forest. However, as suggested by communication from the AGFD (*in litt.*, 1990) and Forest Service memos (Forest Service, *in litt.*, 1989, *in litt.*, 1989, *in litt.*, 1989, *in litt.*, 1990, *in litt.*, 1990), ASQ levels are not sustainable. The Region 3 Forest Service ASQ is based on suitable timber acreage, rather than viable timber acreage. Accelerated harvest, accelerated stand reentries, inappropriate harvest methods, and a harvest rotation cycle of 120 years or less promoted forest ecosystem health problems which resulted in jeopardy to species dependent on late successional forest habitat.

The timber extraction industry in the Southwest has declined and experienced reductions in jobs over the long term. The decline is unrelated to the Mexican spotted owl or other threatened, endangered and sensitive species issues. Employment in the timber industry in New Mexico and Arizona has declined since the mid-1950s in real numbers as well as in percentage of the labor force. In 1956, timber harvest and sawmills employed about 3,672 people. Between 1956 and 1978 employment rose and fell between 2,500 and 4,000 people. In the late 1970s, employment in the timber industry peaked at 4,281. The numbers then dropped in the early 1980s as the lumber market fell. The level of employment reached a low of 2,009 employees in 1985 (several years prior to the adoption by the Forest Service of Interim Directive No. 1 in 1989 and No. 2 in 1990). By 1986, the market had recovered, and the New Mexico timber industry began to produce lumber at the same volumes it had in the late 1970s, but employment never recovered. By 1988, the employment figure stood at 2,400 people. Restructuring and automation in the industry had permanently eliminated more than 1,000 jobs (L. Krahl, Forest Trust, Santa Fe, New Mexico, *in litt.*, 1991).

Issue 49: Listing the owl and protecting its habitat will limit recreational access.

Response: The owl is being listed primarily due to the threat of loss of suitable habitat as a result of even-age timber harvest systems. Recreational use of national forests and other public lands would not be limited to any great extent as a result of the listing action. As with protection of other sensitive species, a small number of conflicts between needs of the owl and human recreation may be expected. These conflicts would be site-specific and would not affect any comprehensive recreational programs.

Issue 50: The national forests should be managed for multiple-use. The forest should be managed for all animals, not simply a single species.

Response: The Service agrees.

Issue 51: Forest Service inventories now indicate 620 Mexican spotted owl territories. This is an increase of 103 over the 517 indicated in the listing proposal. The Forest Service attributes the increase to new inventories conducted primarily in proposed timber sale areas. About 25–30 percent of the Forest Service inventory has been done in wilderness or other areas withdrawn from timber production.

Response: This new information is incorporated into the final rule.

Issue 52: The listing proposal stated that the forest plan management emphasis is timber production. In fact most analysis areas in Forest Service forest plans have management emphases other than timber and none are entirely timber oriented. When carrying out projects within a given management emphasis, decisions result from site specific environmental analysis required for timber sales. In these decisions, high timber emphasis is almost never selected for implementation on the ground.

Response: Although timber production *per se* may not be the management emphasis for many of the Forest Service's timber sales, timber harvest is the result, and treatments that result in even-aged stands destroy habitat for owls regardless of the emphasis.

Issue 53: The Forest Service forest plans not make irreversible and irretrievable commitments of resources.

Response: The Service understands this.

Issue 54: Forest plans provide guidelines, not hard rules for management.

Response: The Forest Service has been discussing alternative silviculture practices for use in Mexican spotted owl habitat, but, at this time, there is no binding direction to eliminate even-aged management. Forest Service timber sales during 1992 on the Apache-Sitgreaves, Carson, and Lincoln National Forests and the Environmental Analysis for the Region 3 1992 timber program continue to call for even-aged management in terms of shelterwood seed cuts and overstory removal cuts. The forests continue to manage for a 120-year harvest rotation cycle, as called for in forest plans. The forest plans for the Lincoln and Santa Fe National Forests call for harvest on steep slopes with cable logging techniques. All of these practices were identified by the Service (1991a, 1991b) as likely to jeopardize the continued existence of the Mexican spotted owl. Until policy changes are made formally, the Service believes that guidance provided in forest plans will continue to be followed.

Issue 55: Forest plans have a limited lifetime and cannot be extrapolated 50 to 100 years into the future.

Response: Forest plans set the policy for management on the national forests for the duration for which they are written, usually 10 to 15 years. The Forest Service is not committed to following forest plan guidelines beyond the lifetime of the plan. Conversely, the Forest Service is also not obligated to reverse its policy in subsequent plans. The management of forests with average tree lifetimes in excess of 200 years demands long-term management planning. Such long term planning is implied in the shelterwood silviculture method recommended in Region 3 forest plans. Because no other direction for management is proposed for the future, and until formal policies change, the Service believes that it must assume that practices recommended in forest plans will continue.

Issue 56: Estimates are made in the proposal on the changing of suitable owl habitat to capable and the length of time needed to regain suitability. These are in need of modification based on what the Forest Service has learned about the stand conditions where many of the owls live, analysis of stand growth patterns and the recognition that multi-

storied stand structure does not always mean wide differences in tree age. Projections of 100 years and upward for regaining suitability of modified owl habitat appear to be a large part of the rationale for the listing proposal.

Response: Two aspects of the recovery from "capable" to suitable habitat were considered in the proposed rule. If shelterwood management is continued, management will be directed at retaining the even-aged structure through pre-commercial and commercial thinning and other intermediate cuts followed by partial overstory and final removal cuts. These management treatments will result in maintaining stands in even-aged, simple structured condition as long as management continues. Time is required for even-aged stands to attain the complex canopy structure that is most used by Mexican spotted owls. If trees are left after regeneration cuts, complex structure will occur more rapidly than with complete overstory removal. In addition, if those trees left are the oldest and largest, complexity will be restored at an accelerated rate.

Issue 57: The estimates of time of recovery in the Forest Service data cited in the listing proposal (Fletcher 1990) were extremely conservative and made when views tended towards a need for "old growth conditions". However, Ganey and Balda (1988) found that, when owls had various foraging habitats available, only 2 of 6 owls used old growth more than in proportion to availability. Additionally, estimates in the report by Fletcher were made by a variety of individuals on the various national forests without review of experts in forest growth and silviculture. Forest Service timber stand data evaluated since the report by Fletcher shows that much occupied suitable owl habitat is relatively young, multi-storied stands. Detailed examination of stand data on the Lincoln National Forest shows owl territories comprised of many stands that meet criteria for suitability as habitat but are immature, dating from the extensive logging that took place in the 1920s and 1930s.

The Lincoln National Forest was almost completely logged over in the first 40 years of this century. Based on the historical record, most of this forest would have been considered unsuitable for spotted owls (under today's standards) by 1940. The harvest was made with cuts equivalent to clearcuts, seed tree cuts, or shelterwood seed cuts. Some logging has continued ever since. The record is also clear that the spotted owl was abundant to the point of near saturation of the forested area by the late 1980's. Although we do not have good records of when Mexican spotted owls appeared in number (or for that matter that they ever were scarce) it is certain that suitability was regained in substantially less than 60 years following timber cutting that was much more extensive than modern management predicts for the future.

Response: Ganey and Balda (1988) identified non-random use of old-growth stands for two pairs of owls. The remaining owls had mature and old-growth stands available, and they used those stands in proportion to their abundance on their territories. In the Lincoln, Gila, Coconino, Apache-Sitgreaves and Tonto National Forest, owls are found most consistently where mature and old-growth stands of mixed conifer or pine-oak are present. Based on the investory figures that are summarized in Appendix 8 of the Forest Service comments, significant numbers of trees were left after cutting on the Lincoln National Forest. Appendix 8 shows approximately 15 percent of the stand density index in Mexican spotted owl cores is made up of trees greater than 18 inch diameter at breast height. Even on the Lincoln National Forest with its high site index, these trees date from prior to 1900. The assertion is made that suitable habitat has returned to areas that were heavily harvested as late as 1940. Most of the heavy logging on the Lincoln occurred early in the century. Thus, most stands have had more than 80 years to recover. Eighty years is a period consistent with Fletcher (1990) and the Service (1991a, 1991b) expectation for the time required for habitat to recover to suitable condition after being made "capable."

Issue 58: The proposal implies that all the steep slopes on five national forests are fully subject to logging. It also states that these slopes have not been logged in the past. Neither assertion is correct. The amount of steep slope logging is now limited to a very small fraction of the steep slopes on the national forests in question. Further, the best population of spotted owls known to exist occurs on the Lincoln National Forest where most steep slopes were logged using steam powered cable yarders and crawler tractors in the first 40 years of this century. Many timbered, steep slopes elsewhere in the Southwest were logged in the early part of this century and to a much lesser degree since then. The photographic records indicate that the methods of harvest on steep slopes were most nearly like shelterwood seed cuts, seed tree cuts, and clearcuts.

Response: The Service has not stated that all steep slopes on five national forests are fully subject to logging. What the Service did assert (Service 1991b, pp 56349) was "Forest plans for 5 of the 11 New Mexico and Arizona national forests now contain provisions to allow cable or skyline logging on slopes greater than 40 percent. The Gila National Forest Plan (Forest Service 1986a) suggests total timber harvest for that forest could be maintained at the present 30 MMBF per year ASQ by entering steep slopes, with as much as 50 percent of the forest's total timber volume coming from this habitat in five decades." The population of owls on the Cloudcroft and Mayhill Districts of the Lincoln National Forest is high. Steep slopes in these districts were harvested during the early decades of this century, but enough habitat probably remained on steep slopes to sustain the species while the trees on the gentler slopes grew back. Large, old trees that date from before 1900 remain today on most spotted owl territories on the Lincoln National Forest. The presence of these large old trees leads to the conclusion that the forest was not harvested as completely as is generally believed. On the Gila, Coconino, Tonto, and Apache-Sitgreaves National Forests the greatest Mexican spotted owl concentrations occur in canyons and on steep slopes which have experienced less intensive harvests than the flatter surrounding terrain (Forest Service, *in litt.*, 1992).

Issue 59: The proposal states that Mexican spotted owl habitat faces destruction at a rate equal to or exceeding that of recent decades. The assertion is without merit. The record clearly shows that Mexican Spotted owl habitat is not facing destruction, but is improving with each passing year.

The current amount of timber harvested and programmed for harvest is not increasing but rather is considerably less than that of recent decades. The timber sold in each of the 3 years since 1989 was less than any of the preceding 20 years. Timber sales are projected to be about 300 MMBF which is less than the levels of more than 400 MMBF in the late 1980s.

Response: The Service is not concerned with the rate of harvest; it is concerned about the rate of conversion of suitable habitat to a condition that will not support Mexican spotted owls. Even-aged management, as identified in Region 3 forest plans, has only been in widespread use since about the mid-1970s, so harvests prior to that time are not an issue. As stated in the Mexican spotted owl status review (Service 1991a) and the proposed rule (Service 1991b), past and projected management under the shelterwood system is identified as leading to increased rates of habitat conversion into the

foreseeable future. Furthermore, there is no documentation of future direction that obligates or directs the forests to reverse that trend. Figures provided by the Forest Service show an increase in harvest, region-wide, from 334 MMBF in 1971 to 447 MMBF in 1986, followed by a decrease to 282 MMBF in 1991. The reductions in harvest in 1991 and 1992 reflect difficulties met in adjusting to new management practices.

Issue 60: Habitat conditions are much improved over that recorded in early descriptions and surveys. In the mixed conifer type, they indicate that it was variously thinned by fire and/or that fire had swept enormous areas, killing nearly all the trees in the burned areas. Many of these burns supported good cover of aspen or young conifers. Pearson in 1931 noted some aspen stands and prairies within the mixed conifer zone without young conifers and questioned if they really would succeed to mixed conifer. Today, little evidence of such conditions remain due primarily to control of fire losses and ecological succession. Enormous areas of aspen stands no longer exist and young conifer stands have matured substantially. Forest Service forest inventories indicate that most aspen stands remaining in the southwest have an understory of conifers that will eventually replace them. Meadow conditions persist within the mixed conifer type, but these too are being replaced by conifers and none remain so extensive in area that could be described as prairies. Almost all meadows in the mixed conifer zone show evidence of conifer invasion at their margins.

The listing proposal presents no evidence to show that there has been a recent decline in Mexican spotted owl habitat. While it is true that every year some suitable habitat has been changed to capable, there is also a substantial regrowth of areas into suitability. Information from forest inventories indicates that a net gain in suitable habitat for Mexican spotted owl is occurring. It is certain that this has occurred on the Lincoln National Forest and the ecological changes reflected in forest inventories make it clear that such changes have occurred throughout the Region. The table in Appendix 7 of the Forest Service Region 3 comment letter summaries forest inventory information showing how rapidly change is occurring. Comparing inventories from 1962 and 1987–1988, it shows that in Arizona and New Mexico the acreage of mixed conifer (generally considered suitable habitat) has increased by [not included] acres or 81 percent. This equates to approximately 40 thousand acres per year. Proportioned at the ratio of commercial forest land ownership, about 24,006 acres would be attributable to Forest Service lands and exceeds the area of suitable habitat annually impacted by Forest Service timber sale programs. This is a strong indication that suitable habitat for the Mexican Spotted Owl is increasing rather than decreasing.

Response: Appendix 7, provided by the Forest Service, shows an increase in mixed conifer habitat at the expense of aspen and ponderosa pine stands. However, it does not demonstrate increases in suitable habitat. Much of the increase in mixed conifer is a result of invasion of ponderosa pine by young white fir. These stands will not have attributes of suitable Mexican spotted owl habitat for many years. If fire suppression is relaxed, many of these stands will revert back to pure ponderosa pine, or aspen, forest types that are not generally suitable for Mexican spotted owls. The assertion that the Service has not presented any evidence of Mexican spotted owl habitat loss is in error. In the status review and in the proposed rule (Service 1991a, 1991b) the Service cites Forest Service data which show a loss of 10 percent of suitable Mexican spotted owl habitat between 1980 and 1990.

Issue 61: Forest Service inventory comparisons show an increase of 1,920,000 acres (210 percent) in forested area classified as wilderness or other areas permanently reserved from timber cutting on the national forests in Arizona and New Mexico. These forested areas are not subject to logging. In a more specific example, a recent comparison of inventory information on the Apache-Sitgreaves National Forest for a mid-1970's inventory and a 1988 inventory shows the following information. Timber lands increased from 812,000 acres to 823,000 acres (+1 percent). Total live stems per acre increased from 650 to 854 (31 percent) and cubic foot volume increased from 800 million cubic feet to 1.3 billion cubic feet (64 percent). In contrast, the description of this forest in 1904 contained the following: "throughout the area in which yellow pine predominated the amount of litter and underbrush is very small, the forest floor being very clean, with a scanty covering of humus".

Response: The Service recognized the withdrawal of timberlands in its analysis of impacts to the owl. The increase in stem density, mentioned above, does not identify an increase in suitable habitat. It indicates an increase in the acreage in seedling/sapling size trees on the forest, which result from removal of mature and old-growth overstory. Contrary to the implication that this increased density is indicative of improved conditions, it indicates that suitable habitat is being converted to unsuitable.

Issue 62: Like the mixed conifer forests, ponderosa pine forest were much less dense in the past than they are today.

Response: This comment is difficult to respond to because no evidence has been presented to indicate that mature and old-growth mixed conifer stands are more dense today than they were previous to timber management. As indicated in the preceding comment, the increase in average stem density is a result of replacing old stands with regenerating stands of seedlings and saplings. Young stands composed of small trees can sustain considerably higher densities than stands composed of large old trees.

Issue 63: Early descriptions characterize ponderosa pine forests as open forests. Such descriptions indicate the average condition had always been unsuitable as owl habitat and less dense than the ponderosa pine forest we have today. This is additional evidence that the modern, denser ponderosa pine forests on capable habitat are progressing towards suitable habitat rather than away from it.

Response: The assertion that forests were open has been supported for ponderosa pine, not mixed conifer. Open stands of pure ponderosa pine do not have the attributes of suitable Mexican spotted owl habitat, and dense even-aged stands of ponderosa pine usually lack those characteristics.

Issue 64: The long history of partial cutting, extensive areas of forests reserved from cutting and successful fire control in Region 3 has allowed ecological succession to increase the conifer cover. It has increased the proportion of mixed conifer species such as white fir at the expense of successional tree species such as aspen and ponderosa pine. The experience is in accordance with expectations developed from ecological studies where mixed conifers and aspen occur. Neither aspen nor ponderosa pine are well suited to regenerating under shaded conditions. Ponderosa pine in the Southwest has tended to increase in extent and density at its ecotone with grasslands and oak due to grazing and fire. Both of these trends continue to increase the potential suitability for owl habitat in part because the current and projected timber sale program is too small in amount and the disturbances associated with the timber harvests are not severe enough to mimic the wild

fires that had historically maintained the early successional cover types in the southwestern forest ecosystems.

Response: The Service agrees with the Forest Service that widespread fire suppression has caused many changes in forest community types. The Service also is in general agreement with the Forest Service efforts to identify management practices which emulate and will return the forests to natural ecological processes. Pure aspen and pure ponderosa pine stands may have been more widespread in the past than they are today because of the factors identified above. However, mixed conifer and pine oak are also community types that occur naturally, usually on wetter sites than those occupied by pure ponderosa pine. Because mixed conifer and pine oak occur on wetter sites they experienced less frequent fires, with resultant higher density stands. As noted above in the Forest Service comments, when fires occurred naturally in mixed conifer they were often stand destroying and succeeded by aspen, Current and historical fire suppression efforts are largely responsible for the demise of aspen in southwestern forests but may be of little importance in controlling tree density *per se* in mixed conifer.

Issue 65: The listing proposal fails to consider that the net annual growth of sawtimber (gross growth minus mortality and defect) on national forests in Region 3 is 701 million board feet. This growth does not include wood products such as posts and cordwood. However, the timber sale program does include such convertible products. The total sale program is projected to be 310 million board feet in 1993 and to remain at this low level until the needs of sensitive species such as the Mexican spotted owl indicate otherwise. It includes about 60 million board feet equivalent of other wood products, mostly pinyon-juniper firewood and posts cut from non-suitable owl habitat and pulpwood less than 9 inches in diameter sold by the cord. The current annual increase in timber volume in the forests is approximately the difference between the 701 million board feet of growth in sawtimber and the sale of about 250 (310 minus 60 other wood products) million board feet of sawtimber. This difference is the excess over and above depletion from logging, fire, and pathogens and has produced a net increase in volume in the forest for each or the last five decades. Because the timber sale program has been significantly reduced beginning between (date not provided) and 1990. The increase in inventory is expected to be by even greater margins in the future. The excess of timber growth can only manifest itself as an increase in tree size, an increase in stand density or both, all of which favors spotted owl habitat. About half of the sawtimber sold is expected to come from potentially suitable owl habitat and about half of the growth as well. If so, the net effect in suitable owl habitat will be improvement not worsened habitat for Mexican spotted owls.

Response: The Service does not disagree with the Forest Service that there is timber available on national forests for harvest. The concern for the owl is that the Forest Service harvests are focused, not on small sawtimber that is found in stands of unsuitable habitat, but rather on the oldest stands that are most important to the owl. In addition, the harvest techniques proposed in suitable Mexican spotted owl habitat by the Forest Service are not benign to the owl. They have essentially the same effect as stand destroying fires. They convert mature, complexly structured forests into young stands with simple structure that are no longer suitable for Mexican spotted owls. The acreage of mature and old-growth forests on suitable timberlands were not presented in this comment letter, but in the Service's reviews of the 1992 timber sale programs on the Apache-Sitgreaves, Carson, Santa Fe, Lincoln and Tonto National Forests it was clear that such stands are under-represented across the landscape. The Service encourages the Forest Service to increase its stand allocations to maintain old-growth and mature forests.

Issue 66: The listing proposal cited estimates of timber offered and sold in the report by Fletcher (1990). This report did not include the substantial reductions in sales offered and sold that were subsequently modified to eliminate cutting that would adversely affect owls or goshawks. When owls or goshawks are found, the Forest Service continues to cancel portions of timber sales that were included in past statistics of offered or sold timber. Based on interpretation of forest plans, the listing proposal projects an annual rate of loss of suitable habitat of 0.4 percent. However, the proposal ignores the record of actual practice which has been and will continue to be substantially less than the upper limits set forth in the forest plans. The proposal dwells exclusively on erroneously projected potential habitat losses and ignores the record of growth and ecological changes which, as shown above, indicates a net improvement in spotted owl habitat is occurring rather than destruction or an increased rate of loss.

Response: The Service acknowledges that the Forest Service has eliminated, reduced, or modified many timber sale activities in Region 3, particularly in 1992. However, the Environmental Assessment for the Region 3 1992 timber program (Forest Service, *in litt.*, 1992) still contains activities that will convert suitable habitat to even-age, and that will maintain even-age conditions in stands that were formerly converted from suitable habitat. Final environmental impact statements on individual timber sales on the Carson and Lincoln National Forests (Forest Service 1992a, 1992b) also retain even age treatments in suitable habitats. Furthermore, the Forest Service does not have any formal published policy direction that will prevent it from continuing or resuming these practices in the future.

Issue 67: The proposal states that allowable sale quantities (ASQ) were not scientifically derived. The allowable sale quantities were based on models of timber growth derived from scientific studies (Edminster 1978). The projections match experienced growth and growth on research plots much more closely than could reasonably be attributed to chance. As noted in the background discussion, the variance with planning criteria is related to evolving standards and criteria that can change rapidly in today's world. Standards for spotted owls and goshawks are two recent examples that continue to develop. Further, ASQ functions as an upper limit on timber sales not as a minimum to be achieved. The record indicates that Region 3 has operated its timber program at a level substantially less than the allowable sale quantity and will continue to do so.

Response: Whether the ASQ amounts were scientifically derived or not, they were sufficiently incorrect on five forests to require review and modification (D. Jolly, Forest Service, *in litt.*, 1990) by the Forest Service. Furthermore, at a meeting with the Forest Service (August 14, 1992), the Service was told that Region 3 of the Forest Service has a goal for 1993 and beyond of 300 MMBF per year.

These ASQ levels are primarily from growth estimates on suitable timberland. They do not account for the extent of acreage set aside for such allocations as old-growth management or threatened, endangered or sensitive species habitat protection. Forest Service data indicate the remaining suitable timberland (viable timberland) is currently estimated to be about two-thirds of the figure used to calculate ASQ. The viable timber growth is estimated as less than one-half the

growth used to calculate the ASQ levels identified in current forest plans. In other words, the current ASQ level is allowing harvests at twice the viable level, and thus is biologically unsound and unsustainable. In addition to negative impacts to the owl from even-aged management, the Service considers the excessive ASQ levels to constitute a serious threat to sustainability of owl habitat.

Issue 68: The proposal speculates that demand projections show an increase in future decades and that means future habitat loss at even greater rates than the proposal projects. Aside from the data that indicated that habitat can be expected to increase rather than decrease, an increase in timber demand does not mean an increase in supply from the national forests. The record clearly indicates a willingness of the Forest Service to limit the availability of timber supply from its land in the face of high demand for it. The concept of sensitive species and development of guidelines to meet their needs were initiated by means of the forest plans prior to petitions for listing to the Fish and Wildlife Service. The effects of identifying sensitive species in the forest plans and applying management guidelines contained in the Forest Service manual was overlooked in the way the listing proposal portrayed the content and probable effects of the forest plan guidance.

Response: The Service understands that forest plans provide management guidance to the forests. Service interpretations of forest plans is based upon their content, not on how they may be altered at some time in the future.

Issue 69: Fragmentation was stated as a problem but appears to be a declared one without a clear statement of reasons of how the proposed activities would do this. Projections of perceived effects of shelterwood cutting are simply declared to have this effect. There is no statement that this has indeed occurred and our view is that the fabric of the whole forest is largely intact. Although there are openings in the forest canopy, they are not dominant, not substantially out of scale with the landscape and probably less abundant than before the era of fire control. The photographic record of early day scenes from the Lincoln National Forest and elsewhere in the Southwest indicate this to be true (Glover 1984, Glover 1990, Glover and Hereford 1990). The small amount of and timing control of timber harvests that are likely to occur will not result in habitat fragmentation.

Response: When trees are removed from a forest, the canopy is opened up. This results in a change or discontinuity in the forest. If enough trees are removed, the habitat may change so that it becomes suitable for species that would not otherwise have occurred there. These new species may be plants, animals, fungi, protists, or procaryotes. When changes in habitat result in new conditions which allow invasion by species that would not normally occur there, the formerly homogeneous habitat is fragmented. When the forest receives a shelterwood regeneration cut or a final removal cut the overstory changes in a manner that is visible to humans. There are also correlated changes in the fauna from which biologists may infer that a habitat change has occurred. This is a form of fragmentation. When large areas of mature and old growth, or young dense forest habitat, like that which is identified as suitable on the Lincoln National Forest, are fragmented, the incidence of red tailed hawks and great horned owls may increase, and both of those species are implicated predators of Mexican spotted owls. Fragmentation may also remove acreage that can be used by the owls, resulting in lower density. This has been demonstrated for the northern spotted owl (Carey *et al.* 1992).

Issue 70: The listing proposal makes some assumptions about present and future conditions in Mexico. Forest Service experience indicates the listing proposal misrepresents the situation there. Much of the forest is inaccessible, isolated economically, and likely to remain so. There are many steep canyons and the people there do not have ready access to technology needed to conduct steep slope logging. The lands are not suitable for agriculture and not subject to conversion to other uses. Where forestry is practiced, most logging is done with horses and mules with partial cutting methods and natural regeneration is abundant. There is little waste. Fire control has improved. They also manage their young stands at higher stand densities than is the usual practice in the United States. Widespread deforestation is not a reasonable expectation. The listing proposal essentially writes off the Mexican spotted owl and its habitat in Mexico on the basis of assumptions that are incorrect, inadequately supported by data, or are misrepresentative of the situation there. The listing proposal misrepresents both the speed of change and perhaps the direction in which the habitat is changing.

Response: The Service reviewed available literature and notes taken by biologists on Mexican spotted owls in Mexico, and solicited information from the Mexican Government. The available information all indicated that the Mexican spotted owl is rare throughout its range in Mexico. In addition, other species which are dependent on the same kinds of forest habitat, the imperial woodpecker, the thick-billed parrot and the maroon-fronted parrot are either extinct or in decline, largely because of habitat alteration and pressures from increased human populations. The Secretaria de Desarrollo Urbano y Ecologia, Mexico, stated that the species is considered rare and imperilled by the Mexican government (Graciela de la Garza Garcia, Secretaria de Desarrollo Urbano y Ecologia *in litt.*, 1990)

Issue 71: As noted in the listing proposal, under the threat category of over-utilization for commercial, recreational, scientific or educational purposes, the major effect appears to be scientific research. Research, not conducted by the Forest Service, is permitted by special use permits issued by the national forests in which the research occurs. Forest Service permits cover any stand disturbing activities, camp sites, or other exclusive uses of national forest resources necessary in conducting the research. In addition permits from state and federal wildlife agencies may be required depending on how the work affects the birds themselves. We have not noted major changes in educational or recreational uses of the spotted owl although it may occur in the future. We are aware of two pairs of owls and their fledglings that have been subject to many "show me" trips throughout the 1992 breeding season and appear to have suffered no ill effects. Young were successfully raised by both pairs this year.

Response: The Service does not disagree with this comment. This issue is of minor consequence for the Mexican spotted owl and did not influence the listing decision.

Issue 72: The proposal cites upward great horned owl population trends over the last 22 years as a concern. The Forest Service shares the concern about predation. However, it disagrees with the proposal which flatly declares that this is evidence that the stands are opening up. This is conjecture, not evidence. The evidence based on records and measurements of timber stands themselves indicates the opposite to be true (Covington and Moore 1992).

Response: Covington and Moore's work was in ponderosa pine, and the Service acknowledges that tree density in ponderosa pine has increased as a result of fire suppression. The increased closure within mixed conifer stands is a result of tree growth and is not an

issue. The Service concern is that imposition of management which might be appropriate for pure ponderosa pine stands, generally not suitable habitat, with removal of forest overstory in suitable Mexican spotted owl habitat may expose the owls to increased rates of predation by creating conditions that are suitable for great horned owls and red-tailed hawks. The Service is also concerned that these openings may increase exposure to parasites and or diseases, which the owls would not otherwise encounter. See Service responses to Issue 11 and 13 above.

Issue 73: Thirty years ago the great horned owl and hawks in general were commonly considered as varmints and it was not uncommon for hunters and other rural residents to shoot them at every opportunity. Both are now protected species. Chlorinated hydrocarbon pesticides were found to have adverse effects on reproduction on birds of prey and these are no longer in use. Such factors could have a bearing on long term upward population trends for both the red-tailed hawk and great horned owls cited as predators of spotted owls. Even if they do not, such assertions are no more speculative than those cited in the listing proposal and illustrate that there are certainly many factors involved in populations of predator species. The conclusions reached in the proposal about open stand conditions are incorrect and inconsistent with the historical record.

Response: The causes of increased populations of red-tailed hawks and great horned owls are not an issue. The Service's concern is that when the Forest Service opens gaps in the forest canopy in suitable Mexican spotted owl habitat it creates opportunities for increased contact between these species and Mexican spotted owls. The result of increased contact is likely to be increased predation on the Mexican spotted owls. Juvenile Mexican spotted owls are particularly vulnerable to predation when their exposure increases.

Issue 74: The listing proposal also takes issue with existing Forest Service regulatory mechanisms. The Forest Service has issued a Notice of Intent to prepare an environmental impact statement and decision which will amend forest plans to include guidelines that will be developed in a conservation strategy for the Mexican spotted owl. This will close the loop and all of our control mechanisms will include consistent information. Management has been responsive to a rapidly changing and growing body of information. All Forest Service units are consistently applying the latest guidelines. The net result has been a dramatic shift in the way timber sales are designed. This further supports the Forest Service's earlier discussion about why decisions on owl habitat cannot be made based on assumptions about forest plan implementation. Actual practice reflects an extraordinary commitment to owl habitat protection that has been responsive to new information as it develops. The regulatory mechanism implemented within the Forest Service through its guidelines and directives assures the continued existence of the spotted owl throughout its range in Region 3. This is certainly true within the relatively short time needed to develop and implement a conservation strategy. There is also a strong record of Forest Service effort to develop new information, sponsor research and to spend millions of dollars on spotted owl inventories prior to project implementation. The information will be used to further develop direction for the management of the spotted owl and its habitat. This is a very reasonable approach in light of the long term ecological changes that are improving owl habitat, especially when combined with the over-estimation of the amount and nature of disturbance to habitat that was outlined in the listing proposal.

Response: The Service recognizes and appreciates the efforts that the Forest Service has taken to reduce the impacts of its management on the Mexican spotted owl. However, the Service does not believe that the Forest Service's interim directives provide adequate protection to guarantee the long-term existence of the owl across its range. The Forest Service has not yet been able to develop and adopt a conservation strategy that the Service believes will adequately protect the owl.

Issue 75: The proposal cites the effect of forest fires as a concern in loss of habitat. The Forest Service shares this concern and acknowledges that fire can be expected to destroy habitat for the Mexican Spotted owl more completely, in large areas, for longer periods of time than do any of the management practices it proposes to implement as discussed in preceding sections. Unlike timber management and other activities, the Forest Service cannot control where fires occur and therefore cannot avoid owl habitat or nesting areas. Wildfires and the activities needed to suppress them cannot be scheduled to avoid the breeding season for the bird and almost always occur during this time. Of particular concern is that fires in steep, dense, or multi-storied stands of mixed species are difficult to fight and tend to be large and stand consuming. Forest Service recent experience with the Dude fire on the Tonto National Forest certainly bears out this observation with the total loss of five owl territories for the foreseeable future.

Response: The Service has identified wildfires as the cause of some loss of suitable habitat in New Mexico and Arizona. The Service disagrees with the Forest Service assertion that the losses will be of longer duration than the forestry practices promulgated in the forest plans. As stated previously (Service 1991a, 1991b), as long as shelterwood management is maintained it will prevent habitat from returning to suitability. Additionally, the Forest Service noted that 221,000 acres (5 percent) of suitable habitat has been converted to unsuitable condition by fires in recent years (Fletcher 1990). If recent years means the past 20 years, then suitable habitat has been converted at the rate of 0.25 percent per year. If the period was longer than 20 years (some of these acres were burned 50 years ago), the annual burn would be smaller and the rotation length longer. A burn rate of 0.25 percent per year translates to a rotation cycle of approximately 400 years which is close to many estimates of the age of virgin old-growth mixed conifer stands in the southwest. This rate of burning would also result in approximately 20 percent of mixed conifer habitat being in aspen at any given time.

Issue 76: In mixed conifer, the predominant tree species is white fir, easily killed by fire, as is white pine and blue spruce. The fire resistance of Douglas-fir is not high enough to survive fire in a dense multi-storied stand. Forest lands also have experienced long term loss of site occupancy by trees in shrub fields on the Lincoln National Forest and elsewhere created by high intensity fire in mixed conifer stands that had shrubs or oak in the understory. Even the fire resistant ponderosa pine often suffers stand destroying fire intensities when grown in dense, multi-storied stands. Experience and scientific information also indicates that extensive tree mortality due to bark beetles can be expected if stand density is uncontrolled. Loss of significant amounts of habitat to bark beetles such as Ipps, mountain pine beetle, western pine beetle, roundheaded pine beetle, Douglas-fir beetle, and Scolytus beetles is certain and these losses are likely to be associated with drought periods when soil moisture is not adequate to support a high density of trees. Numerous researchers have reported an increasing risk of bark beetle epidemics with increasing stand density, increasing tree diameter and high

moisture stress. It is also expected that defoliation by spruce budworm will be a chronic problem. This insect is strongly associated with multi-storied stand of white fir and Douglas-fir throughout the southwest. Management toward dense, multi-storied stand conditions in ponderosa pine and Douglas-fir has and will continue to increase the intensity of dwarf mistletoe infection.

This parasitic plant spreads by expelling seed that fall on nearby and understory trees. This parasite reduces growth eventually killing the tree and preventing the small trees from ever reaching large sizes and greatly reducing stand density. High levels of infection eventually eliminate high stand densities and large trees and this makes the stand unsuitable as spotted owl habitat. Open stands of small infected trees can be expected to persist indefinitely until replaced by means of a stand destroying event such as fire or clearcutting. If timber and prescribed fire activities are completely foregone in owl habitat, dwarf mistletoe infestation can be expected to intensify over time. Two region-wide surveys for dwarf mistletoe conducted thirty years apart indicate that this has happened in recent history as modern forests have become more dense and have been managed through harvest methods that emphasize partial cutting. In 1950's surveys, 30 percent of the commercial forest acres were found to be infected, and in the 1980's it was 39 percent.

The listing proposal underestimates the vulnerability of extensive areas of dense, multi-storied stands to sudden and catastrophic losses of habitat to fire, insects or disease. Likewise it overlooks the beneficial effect of a diversity of stand conditions and cover type mixes that are essential to stable ecosystems needed by the Mexican spotted owl and other wildlife species. The listing proposal ignores the consequences of allowing an excess of timber growth over removal to persist indefinitely. Short term and uncertain improvement in spotted owl habitat is being proposed that assures extensive, catastrophic losses of habitat in the longer term.

Response: The Service has not underestimated the vulnerability of the forests to fire, pests and disease. The Service recognizes the importance of fire ecology in forested habitats. Moreover, the Service appreciates that the function of fires differs among different forest community types. The Service analysis of fire in mixed conifer is that it will result in longer lived forests with greater structural and species diversity than what will be attained under current Forest Service management guidelines. Under current guidelines, mixed conifer stands will be destroyed 3.3 times as frequently (every 120 years as opposed to every 400 years) by regeneration cuts as they would be if natural fire is permitted to determine stand longevity. Parasites and diseases are also an integral part of forest ecosystems and contribute to the maintenance of species diversity and structural diversity in forests. The increases in parasite and diseases intensity is compared to younger stands, not naturally occurring old-growth forests. If mixed conifer stands are composed of multiple species, the close juxtaposition of many tree species will impede the transmission of parasites and diseases which are species specific. The Service reiterates, it is not advocating that management of forests and timber harvests must stop. There is a tremendous resource increment available for harvest, but that resource does not reside in the already over-harvested mature and old-growth stands that are needed by the Mexican spotted owl. It is in the young forest stands often identified as vegetation structural stage three. If the Forest Service adapted its sale program to harvest small saw-timber which is over-abundant, and to retain mature and old-growth stands until they are adequately represented across the landscape, a significant threat to owl habitat would be removed.

Issue 77: The predominant reason for proposing listing of the Mexican spotted owl by the Service was the perceived current and projected future loss of suitable habitat. The Forest Service has shown clearly that: (a) Changes from suitable to capable habitat have been minimized with a net gain in suitable habitat being much more probable than a net loss of habitat; (b) there is no present or projected over-utilization of the bird for recreational, scientific or educational purposes; (c) Forest Service actions have not had and will continue to have no measurable effect on diseases and predation of the owls; (d) Regulatory mechanisms are in place to assure that habitat for the owl will be protected; (e) emphasis on short term gains in habitat will assure substantial and uncontrolled future losses of spotted owl habitat.

Response: The Service does not agree that suitable habitat is being gained faster than lost. Service analysis of Forest Service data indicate that the forest increment is occurring mostly in stands that are not yet suitable for owls and that harvest is aimed at the very limited mature and old-growth stands. When combined with even-aged management practices identified in the forest plans, there is a steady loss of suitable habitat into the foreseeable future.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Mexican spotted owl should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to 1 or more of the 5 factors described in section 4(a)(1). These factors and their application to the Mexican spotted owl (*Strix occidentalis lucida*) are as follows:

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

Recent surveys have shown Mexican spotted owls occur most frequently in forests with distinct "mature forest" characteristics. Owls are usually associated with forested mountains and canyons containing dense uneven-aged stands with a closed canopy, as is typically found in the mixed-conifer community type. Although these characteristics are mostly found in mixed-conifer forests, ponderosa pine/Gambel's oak forests are also used if they are old enough to exhibit a high incidence of large cavity trees, broken tops, numerous snags, and a heavy accumulation of downed woody material.

Significant portions of Mexican spotted owl habitat have been lost or modified. Several factors are responsible and represent continually increasing pressures from local and regional human populations. Cumulatively, they have reduced spotted owl habitat significantly throughout its range.

Fletcher (1990) provided an estimate of spotted owl habitat loss on Forest Service lands in Arizona and New Mexico, expressing it as habitat "made capable." He defined "capable habitat" as habitat that was "* * * suitable at some time in the past and became unsuitable due to natural or man-caused events * * * and it is capable of becoming suitable Mexican spotted owl habitat at some time in the future." An estimated 1,037,000 acres of owl habitat have been converted from suitable to capable. Of this, 816,000 acres (78.7 percent) were due to human activities (primarily timber harvest) and 221,000 acres (21.3 percent) were due to natural causes (primarily fire).

Fletcher (1990) also provided an analysis of the length of time required for capable habitat to return to suitable. However, recovery periods for the habitat "made capable" due to timber harvest (78.7 percent) are irrelevant because any acreage placed under the even-aged shelterwood management system used on Forest Service timberlands in the Southwest must be considered indefinitely unsuitable as spotted owl habitat. For example, a regenerating, middle-aged stand of "capable" habitat might be within 50 years of returning to suitable status. Under the shelterwood system, the stand will receive intermediate cuts before then, which sets back the time to return to suitable conditions. Ultimately, the stand will be re-entered with another regeneration cut where all but a few trees are removed. Thus, after the critical attributes of owl habitat have been lost, shelterwood acres are held perpetually as "capable habitat" unless silvicultural management is altered. Suitability as owl habitat is never recovered or, at best, is recovered only briefly before the forest is re-entered and returned "capable" status. Therefore, all past and projected acres of owl habitat placed under shelterwood management are considered lost indefinitely as owl habitat. According to current forest plans, and assuming that present management direction continues, about 95 percent of Forest Service commercial timberland in the Southwest is projected for management using the shelterwood system. Commercial timberland on the Navajo Indian Reservation is being converted to shelterwood management. Commercial timberland on other Indian reservations in the Southwest is managed predominately through selective logging to produce uneven-aged stands (S. Haglund, BIA, pers. comm., 1992).

Fletcher (1990) reported 3,365,000 acres of currently suitable habitat exist in New Mexico and Arizona national forests. Conversion of 1,037,000 acres from suitable to capable represents a 23.5 percent loss of suitable habitat over an unspecified, but recent, number of years. Forty percent of the loss occurred since 1980 (Fletcher 1990), which represents a rate of habitat loss of approximately 10 percent in the last decade on Arizona and New Mexico national forests.

Data are not available on owl habitat loss from lands other than Arizona and New Mexico national forests. National forests in Arizona and New Mexico account for approximately 90 percent of known owl locations.

There are some indications that the spotted owl historically ranged into middle and low elevations in well developed riparian woodland communities. Bendire's (1892) location for nesting owls northwest of Tucson was in the extensive historical riparian gallery forests of the Santa Cruz River and its major tributaries. His sighting near the confluence of the Santa Cruz River, Rillito Creek, and Canada del Oro was also at the base of the Santa Catalina Mountains which contain typical conifer forest habitat currently occupied by owls.

Riparian woodlands in the Southwest prior to the twentieth century may have satisfied many of the structural and thermal requirements of owl nest and roost sites. Dense cottonwood canopies and willow/mesquite understories could have provided a multistoried structure and cool microclimate. The historical presence of surface water below these gallery forests probably ameliorated the surrounding desert thermal regime. The high diversity and abundance of potential prey items may have made these middle and low elevation riparian habitats suitable breeding locations.

Duncan (1990) documented a recent breeding season owl location in a mid-elevation riparian area, also in southeastern Arizona. Single owls have been observed in winter in mid-elevation riparian areas in central Arizona (J. Ganey, Nothern Arizona University, pers. comm., 1989; T. Lister, AGFD, pers. comm., 1989). Winter locations at low elevations have also been recorded in New Mexico (Skaggs, New Mexico State University, pers. comm., 1989). These contemporary records suggest riparian habitats could indeed have provided suitable owl habitat in the past.

Southwestern national forests primarily use the shelterwood harvest technique, which manages for even-aged stands. Thus, the uneven-aged, multistoried stands comprising primary owl roost and nest sites will be converted to unsuitable even-aged stands with reduced structural diversity if management practices remain unchanged.

Forest plans for 5 of the 11 New Mexico and Arizona national forests now contain provisions to allow cable or skyline logging on slopes greater than 40 percent. The Gila National Forest Plan (Forest Service 1986a) suggests total timber harvest for the forest could be maintained at the present 30 MMBF per year ASQ by entering steep slopes, with as much as 50 percent of the forest's total timber volume coming from steep slope habitats in 5 decades. The Lincoln National Forest Plan (Forest Service 1986b) specifies 5,054 acres of steep-slope logging during the 10 years covered by the plan, and the Sante Fe National Forest Plan (Forest Service 1987) calls for harvest of 1.5 MMBF annually by skyline logging. The Apache-Sitgreaves and Tonto National Forests do not identify specific plans for cable logging, but the practice is not precluded in the forest plans.

Most steep slopes have not been harvested to any significant degree in the Southwest in the past. Steep slopes typically provide superior spotted owl habitat by virtue of the owl's preference for the topography, rock outcrops and/or cliffs, and the generally cooler microclimates often supporting multilayered mixed-conifer forest. Steep slopes may be particularly important in maintaining owl populations where they occur at the lower elevational limits of the owl's range. Steep slopes and deep canyons often provide pockets of mixed-conifer within wider areas dominated by vegetation considered inferior as spotted owl habitat (e.g. ponderosa pine or pinyon-juniper). Thus, harvest of steep slopes could impact habitat that is very limited and critical to maintaining spotted owls in an area.

Entering steeper slopes will result in a larger proportion of harvest in mixed-conifer, the primary owl habitat. Historically, timber harvest in the Southwest was concentrated in the high value, easily accessed ponderosa pine forests on relatively flat or rolling terrain on plateaus or mesa tops. With continued timber demands and decreased availability of that resource in large tree sizes, harvest is now moving increasingly into mixed-conifer and steep terrain.

According to current forest plans, in the 10-year planning period from 1987 through 1996, Arizona and New Mexico national forests will enter 7.48 percent of harvest-suitable land with regeneration cuts (this is the cut in the shelterwood management system that removes the largest volume of wood per acre and initiates regeneration of a new stand from tree seedlings). At this harvest rate, in 100 years 74.8 percent of harvest-suitable acres will be placed under the even-aged shelterwood system and many of these acres will receive subsequent intermediate cuts to thin the stands for maintenance of maximum timber productivity. Of the estimated suitable owl habitat on Arizona and New Mexico national forests, 59 percent (1,987,000 acres) is available for harvest (Fletcher 1990). Assuming equal distribution across forest types, 74 percent of this figure represents a 44 percent loss of total suitable owl habitat (1,486,267 of 3,365,000 acres) on national forest lands

in Arizona and New Mexico. Based on information in forest plans, the Forest Service predicts forest timber demand will increase 30 percent in 50 years. If this increase is realized, future harvest entry and corresponding owl habitat loss will be considerably greater than these figures indicate.

Timber harvest rates remain controversial in southwestern forests. While the Forest Service (Fletcher 1990) reported yearly decreases in total numbers of acres entered from 1980 through 1990 in New Mexico and Arizona national forests, average board feet harvested per acre has increased each year from approximately 2,750 board feet per acre to almost 4,000 board feet per arce. Forest plans are being reviewed by the Forest Service on 5 national forests in Arizona and New Mexico because of concern the ASQ can not be maintained while meeting other forest plan standards and guidelines. The Coconino, Apache-Sitgreaves, and Kaibab National Forests reduced the volume of timber offered for sale by about 15 percent while conducting these reviews (D. Jolly, *in litt.*, 1990). It is unknown how forest management recommendations from the reviews will affect rates of spotted owl habitat loss.

The Service (1991a, 1991b) and the AGFD have repeatedly expressed concern that current ASQs are not biologically realistic figures, as have Forest Service District Rangers and others (Forest Service, *in litt.*, 1989a, 1989b, 1989c, 1990a, 1990b). The concerns are that biological diversity, timber yield and other values are not being sustained as required by the National Forest Management Act. If harvests are too intensive in owl habitat, the habitat will be opened too much and become degraded. At a meeting with the Forest Service on August 14, 1992, the Service was told that the Forest Service intends to meet a region-wide timber harvest of 300 MMBF in 1993 and future years.

Forest plans indicate recreational use of most national forests will increase significantly in future decades. This use will increase various activities that often occur in owl habitat. The severity of impact will vary with the type of activity (e.g. road and trail building, camping, picnicking, shooting, hiking, hunting, skiing, and ORV-riding). Cumulatively, these activities may affect local owl populations and their habitat near public access areas.

Specific data on habitat loss in Mexico are not available. The few owls recorded were, as in the United States, closely associated with relatively undisturbed, forested mountains and canyons. The protection once afforded the species in Mexico by the remote rugged habitat is disappearing due to a rapidly growing human population, expanding road system, and increased mechanization of harvest techniques.

An estimated 2,191,000 acres of habitat, or 39 percent of the total currently suitable Mexican spotted owl habitat in the United States, is not available for timber harvest. However, these lands are often scattered small units incapable by themselves of supporting a viable spotted owl population. Within Forest Service lands in Arizona and New Mexico, Fletcher (1990) reported 1,378,000 acres of suitable owl habitat is not available for harvest. Fifty-three percent of this land is on 2 forests (Gila National Forest, 453,000 acres; Santa Fe National Forest, 288,000 acres). There are about 550,000 acres of spotted owl habitat in national forest wilderness areas in New Mexico and Arizona. No information is available regarding the amount of owl habitat in wilderness areas in Utah and Colorado..

Except for Forest Service wilderness areas, NPS lands are the only other contiguous units of habitat excluded from timber harvest. The NPS reported that an estimated 238,000 to 438,000 acres of spotted owl habitat is managed to preserve natural values. The wide range in the estimate reflects NPS uncertainty about which habitats are actually suitable for owls. This is partly because known NPS owl habitat is predominantly in canyonlands, which are often at the northern limits of the Mexican spotted owl's range where owl occurrence is more difficult to predict.

Bureau of Land Management lands have been harvested minimally, if at all, in the past. Pressure to harvest timber on BLM lands could increase if available timber in national forests decreases.

Habitat fragmentation is often the result of conversion of forest habitat from large contiguous tracts into smaller parcels through the creation of openings. Fragmentation may isolate stands from one another. Most Forest Service timber harvest in the Southwest is done in relatively small cutting units using even-aged management under the shelterwood system (Fletcher 1990). The spotted owl is an interior forest bird largely dependent on uneven-aged forests. By modifying and fragmenting uneven-aged forests, timber harvest as currently practiced in the Southwest will likely decrease habitat suitability for supporting self-sustaining and well distributed populations of the spotted owl (Green 1988, Harris 1984, Harris *et al.* 1982, Meslow *et al.* 1981, Thomas *et al.* 1988).

At a large scale, fragmentation may isolate larger contiguous populations into increasingly smaller and more isolated clusters of breeding pairs by reducing the overall quality of available suitable nesting, roosting, and foraging habitat. In addition to reducing total owl numbers, this isolation may create genetic problems that result from inbreeding as well as dispersal problems. A portion of the overall Mexican spotted owl population already exists in relatively isolated clusters of birds in the Colorado Plateau canyonlands of the north and the basin-and-range mountains of the south. These sections of the owl's range fall outside the relatively contiguous and more densely populated habitat of south-central Arizona and New Mexico. Habitat fragmentation for this core population in central Arizona and New Mexico could have serious implications for the stability of the spotted owl population as a whole.

Small-scale fragmentation will erode the quality of home range habitat for individual owls (Carey *et al.* 1992). Fragmentation on a cutting-unit level can degrade habitat for spotted owls by affecting prey availability, interfering with the owl's primary hunting technique, and destroying the crucial microclimate attributes of the nest/roost sites. Simultaneously, this level of fragmentation will likely enhance habitat quality for spotted owl predators such as great horned owls and red-tailed hawks. Increased predation may combine with decreased nesting success (due to habitat degradation and reduced prey availability, especially in the first weeks after owlets have hatched) to severely impact the Mexican spotted owl.

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

The greatest potential for overutilization of the Mexican spotted owl is through scientific activities that will likely increase with increasing interest and funds available for owl studies. In one instance, the NMDGF (*in litt.*, 1990) withdrew a permit to capture and radio-tag several owls because simultaneous Forest Service owl surveys documented their scarcity. The permit was revoked after it became apparent that the owl population was too small to support the research activities. These situations may become more common for the spotted owl, which sometimes exists in small populations on isolated mountain ranges.

Recreational (bird watching), educational (classroom field trips), and

public relations (agency "show me" trips for public and press) activities are also likely to increase as this owl becomes better known. The owl is relatively easy to observe from close distances. Numerous authors have noted the bird's affinity for secluded old-growth habitat infrequently visited by man. Except for a few individuals, the owls' tolerance of frequent human disturbance is unknown (Johnson and Johnson 1990).

C. Disease or Predation

Great horned owls are a suspected major cause of mortality in Mexican spotted owls (Ganey and Balda 1988, Skaggs 1990). The two species are sympatric, but habitat use has probably separated them ecologically. However, present forest management is changing traditional spotted owl habitat to resemble the "open" forest typically used by great horned owls. Such management usually results in patches distributed throughout the forest (fragmentation), which creates edge (ecotone) suitable to the great horned owl and increases the likelihood of contact between the two species. Spotted owls appear to avoid areas used by great horned owls (Johnson and Johnson 1985, 1990).

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Migratory Bird Treaty Act (MBTA) it is unlawful to pursue, hunt, take, capture, or kill in any manner any migratory bird. Although the Mexican spotted owl remains in its summer range throughout the year, it is included on the list of birds protected under the MBTA.

An interagency agreement with the purpose of ensuring population viability of the spotted owl (*Strix occidentalis*), including the Mexican spotted owl, was signed by the Service, BLM, NPS, and Forest Service on August 12, 1988 (U.S. Department of Interior 1988). Under this agreement, each agency agreed to manage its land to provide owl habitat, to carry out habitat and population inventories sufficient to indicate long term trends, and to carry out research activities sufficient to provide empirical information on the validity of planning assumptions. The degree to which this agreement has been implemented has varied among agencies. Coordination among agencies under the agreement has been minimal.

Only the State of Arizona recognizes the owl as a threatened species (AGFD 1988). Capture, handling, transportation, and take of the owl are regulated by game laws and special licenses for live wildlife. Thus, Arizona only regulates hunting, recreation, and scientific investigation. New Mexico is considering placing the owl on its list of endangered species at this time.

Most Federal agencies have policies to protect state threatened or endangered species and some agencies also protect species that are candidates for Federal listing. The National Park Service Organic Act protects all wildlife on national parks and monuments. However, these general policies lack standards and guidelines that can be used to measure policy success. Until agencies develop specific protection guidelines, evaluate them for adequacy, and test them through implementation, it is uncertain whether any general agency policies will adequately protect the Mexican spotted owl.

Specific management policies for the spotted owl have been developed by BLM in Colorado and New Mexico. The policy in Colorado states, "* * * In areas with a confirmed nest or roost site, surface management activities will be limited and will be determined on a case by case basis to allow as much flexibility as possible outside of the core area." Management policy in New Mexico states that habitat core areas and territories of appropriate size will be established and preserved wherever owls are found. These policies are too general to ensure the spotted owl will be adequately protected on BLM lands.

Spotted owl protection guidelines have been developed by only one Indian nation. The guidelines for the Mescalero Apache Reservation establish a 72-acre buffer zone around owl roost or nest sites. No management activities can occur within the buffer zone during the reproductive season. After the reproductive season, the buffer is reduced to a 150-foot radius (5.1 acres) around significant roost areas and a 200-foot radius (9 acres) around nests. It is unclear these guidelines provide significant protection for spotted owl pairs, which have an average home range of more than 2,000 acres.

Detailed guidelines for spotted owl management have been developed by the Forest Service Southwest Region. The guidelines were first issued as Mexican spotted owl Interim Directive No. 1 (ID No. 1) in June, 1989, and reissued as Mexican spotted owl Interim Directive No. 2 (ID No. 2) in June, 1990. The guidelines expired December 26, 1991, but the Forest Service is continuing to manage under ID No. 2. The IDs apply only to national forests in New Mexico and Arizona. No spotted owl management guidelines have been developed for Colorado or Utah national forests. The IDs require establishment of a Mexican Spotted Owl Management Territory (MT) around each spotted owl nest or roost site. Each MT (except those on the Gila and Lincoln National Forests) has a core area of 450 acres and an overall size of 2,000 acres. Activities within the core area are limited to road construction. Within the MT, activities, including timber harvest, are limited to a maximum of 775 acres. The intent of the guidelines is to retain at least 1,000 acres of suitable habitat within the MT after proposed management activities are identified and located. Forest Service estimates indicate suitable habitat within MTs currently averages 1,150 acres.

The MT size and entry limitations were based on average home range values found by Ganey and Balda (1988) for radio-monitored birds. Ganey and Balda's work was the only study of its type for the Mexican spotted owl when ID No. 2 was adopted. The Forest Service uses average rather than maximum values for MT size, thereby establishing MTs that are expected to meet size and habitat requirements for only about 50 percent of spotted owls.

Application of the IDs has not been uniform on all forests. Guidelines on two forests were modified. ID No. 1 reduced the core area size to 300 acres for the Lincoln National Forest. ID No. 2 established a core area size of 450 acres for all forests but reduced the overall territory size to 1,500 acres for the Lincoln and Gila National Forests. Both forests have significant owl populations which have resulted in severe conflicts with planned timber harvest volumes. The IDs provide no protection for unoccupied suitable owl habitat.

E. Other Natural or Manmade Factors Affecting the Owl's Continued Existence

Forest fires have destroyed approximately 221,000 acres of suitable spotted owl habitat in New Mexico and Arizona national forests in recent years (Fletcher 1990). This acreage represents a loss of approximately 5 percent of the 4,402,000 acres Fletcher (1990) considered spotted owl habitat, and approximately 21 percent of the owl habitat recently made unsuitable. Fletcher estimated that 79 percent of the lost acres would require more than 50 years to return to suitable habitat. The future incidence of fire can be expected to remain fairly constant.

Malicious and accidental harm to spotted owls has rarely been documented. Several road-killed owls have been found in Arizona and New Mexico, perhaps reflecting increasing human activities in owl habitat. No reports of accidental shooting are known. Malicious harm to owls has not

been documented. However, as conflicts over spotted owls and forest management increase, and the methods for locating owls become widely known, the potential for malicious harm will increase.

The barred owl has undergone rapid range expansion over the past 20 years into the range of the northern spotted owl (Hamer 1988) and has replaced the northern spotted owl in some areas (Forsman *et al.* 1984). The barred owl has taken advantage of habitat modifications, such as those resulting from present forest management (fragmentation), to expand its range into areas where it may compete with the spotted owl. There are no records of barred owls in the U.S. range of the Mexican spotted owl, but the range and numerical expansion of the great horned owl and red-tailed hawk in the Southwest suggest that the barred owl could do the same. The Mexican subspecies of the barred owl (*Strix varia sartorii*) is known from much of the Mexican spotted owl's historic range in central Mexico (AOU 1983); the ecological relationship between the two there is unknown. The potential for interbreeding between Mexican spotted owls and barred owls merits concern and monitoring where the two species overlap. Such interbreeding is reported with the northern spotted owl (K. Fletcher, Forest Service, pers. comm., 1990).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Mexican spotted owl (*Strix occidentalis lucida*) as threatened throughout its range. Suitable habitat for this subspecies has been reduced by timber harvest and fires. Habitat fragmentation as a consequence of forest management practices increases the threat of predation and inhibits dispersal. An estimated 2,160 Mexican spotted owls exist. Endangered status would no be appropriate because the available data do not indicate that extinction throughout all or a significant portion of the range is an imminent possibility.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that the Secretary of Interior designate critical habitat at the time a species is determined to be endangered or threatened, to the maximum extent prudent and determinable. In the proposed rule for this listing, the Service stated that designating critical habitat for the Mexican spotted owl was not prudent. This decision was based on the conclusion that because habitat destruction was the principal threat to the owl, the jeopardy standard for the species under section 7 of the Act would be as stringent as the adverse modification of critical habitat would be if critical habitat were designated. The Service thus found it would not be prudent to designate critical habitat, because this would provide no additional conservation benefit to the species. The Service has since concluded that designation of critical habitat for the Mexican spotted owl will indeed provide benefits to the species greater than those provided by listing alone. Primarily, the designation of critical habitat will facilitate management and recovery planning by the Forest Service and other agencies in a way that could not be accomplished solely through listing.

Although the Service has concluded that designation of critical habitat is prudent, it also finds that critical habitat is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of the area as critical habitat. Although considerable knowledge of Mexican spotted owl habitat needs has been gathered in recent years, maps in sufficient detail to accurately delineate these areas on the ground are not presently available. The Service has initiated the studies needed to ascertain critical habitat areas and will publish, in the **Federal Register**, a final rule to designate critical habitat for the Mexican spotted owl by November 4, 1993.

Available Conservation Measures

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

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

The U.S. Forest Service and some Indian nations have active timber sale programs in the Southwest. The BLM also participates in timber sale programs to a lesser degree. Because habitat loss and modification resulting from timber harvesting activities represent primary threats to the Mexican spotted owl, most timber sales administered by Federal agencies will be subject to section 7 consultation. Other actions that may affect the Mexican spotted owl such as road building, trail building, pipeline construction, powerline construction, mining, or construction of recreation facilities will likely require section 7 consultation between the Service and the appropriate Federal agency.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For

threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the intent of the Act.

On June 28, 1979, the order Strigiformes, which includes all owls, was included in appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that export permits are generally required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the export cannot be allowed if it is primarily for commercial purposes.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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

Authors

The primary authors of this final rule are Dr. Jack Cully (see ADDRESSES section) and Dr. William Austin, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3616 West Thomas Road, suite 6, Phoenix, Arizona 58019 (602/379–4720).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Birds", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	*	*	*	*	*		*
Mexican spotted owl	*Strix occidentalis lucida*	U.S.A. (NM, AZ, TX, CO, UT), Mexico.	NA	T	494	NA	NA
*	*	*	*	*	*		*

Dated: January 6, 1993.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 93–5782 Filed 3–15–93; 8:45 am]

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federal register

Tuesday
March 16, 1993

Part III

Department of Education

Fund for Innovation in Education (FIE): Innovation in Education Program; Field-Testing and Demonstrations of New or Improved Assessments of K–12 Student Academic Performance; Notice

DEPARTMENT OF EDUCATION

Fund for Innovation in Education (FIE): Innovation in Education Program—Field-Testing and Demonstrations of New or Improved Assessments of K–12 Student Academic Performance

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal years 1993 and 1994.

SUMMARY: Under the Fund for Innovation in Education: Innovation in Education Program, the Secretary of Education proposes a priority for fiscal years 1993 and 1994 for projects that will support field-testing and demonstrations of new or improved assessments of student academic performance in kindergarten through grade 12 (K–12). This action is part of an overall strategy to support systemic reform; that is, changes in practices and requirements throughout the educational system to enable all children to achieve the National Education Goals. Other components of the strategy are the establishment of World Class Standards by professional organizations in mathematics, history, geography, science, English, civics, the arts, and foreign languages, and the establishment of curriculum frameworks for grades K–12 to move students toward those standards.

DATES: Comments must be received on or before April 15, 1993.

ADDRESSES: All comments concerning this proposed priority should be addressed to Janice K. Anderson, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Sherrin Marshall, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Deaf and hearing impaired individuals may call 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 Secretary's Fund for Innovation in Education (FIE): Innovation in Education Program supports programs and projects that show promise of identifying and disseminating innovative educational approaches at the elementary and secondary levels. The third National Education Goal states that "American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy." A system of improved assessments tied to standards in all of these disciplines, as well as civics, the arts, and foreign languages, is necessary to help measure students' progress.

The feasibility of setting national standards and their effectiveness in encouraging State and local reform have been demonstrated by a number of national professional organizations. In 1989, the National Council of Teachers of Mathematics developed national standards for what students should know and be able to do in mathematics. While there do not exist fully developed national standards for K–12 in English, science, history, geography, civics, foreign languages, and the arts, considerable work is being done by a variety of organizations toward development of such standards. Projects are underway in history, by the National Center for History in the Schools at UCLA; science, by a coalition of science groups including the National Academy of Sciences, the American Association for the Advancement of Science, and the National Science Teachers' Association; civics, by the Center for Civic Education; geography, by the National Council of Geographic Education, in coordination with the Association of American Geographers, the National Geographic Society, and the American Geographical Society; English, by the Center for the Study of Reading, in coordination with the National Council of Teachers of English and the International Reading Association; the arts, by Music Educators National Conference, in coordination with the American Alliance for Theater and Education, the National Art Education Association, and the National Dance Association; and foreign languages, by the American Council on the Teaching of Foreign Languages.

Efforts are similarly underway for the development of State curriculum frameworks in these subject areas. These frameworks will embody coherent, non-repetitive curricula designed to ensure that all children study challenging subject material in every grade, K–12. Along with the frameworks, model guidelines for effective approaches to teacher education, certification, and recertification are being developed, all based on world-class standards.

In its report of January 24, 1992, the National Council on Education Standards and Testing, a congressionally created group charged with investigating the desirability and feasibility of national standards and improved assessments, called for the development of such standards and an accompanying system of assessments as urgently needed steps in reforming American education. Representatives of the President, the Secretary, and the Congress served as members of the Council.

The Council recommended a system of multiple assessments linked to the national standards that would have two major components: (1) Individual student assessments and (2) large-scale assessments of representative samples of students from which inferences about the quality of programs or educational systems could be made. The National Assessment of Educational Progress is an example of a large-scale assessment that is used to monitor educational systems.

This priority is directed toward the first component of a system of multiple assessments: Assessments of individual students, attending either public or private schools, that provide information to students, parents, and teachers about student progress toward achieving national standards. Some schools, localities, and States, as well as organizations, have developed assessments that show promise of being valid and useful measures of student academic performance. The proposed priority would support demonstrations of these instruments and approaches; that is, field-testing and replication in a number of differing locales with rigorous documentation and evaluation of their effectiveness. Under the proposed priority State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), private schools, and other public and private agencies, organizations and institutions, working alone or in cooperation with other eligible applicants, will apply for funding to support the objectives and activities described in this notice.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority: Field-Testing and Demonstration of New or Improved Assessments of Kindergarten through Grade 12 Student Academic Performance.

Projects will be supported that field-test innovative assessment methods, practices, and strategies to measure student learning in core subjects, particularly at the fourth, eighth and twelfth grade levels.

Projects must include all of the following elements:

(a) Provision for measuring learning outcomes linked to high standards and challenging curricula in one or more of the following subjects: English, mathematics, science, history, geography, civics, the arts, and foreign languages.

(b) Provision for developing and implementing strategies for widespread field testing of the assessment instruments and approaches, including those that are sensitive to student differences, in a variety of school settings.

(c) Provision for collaboration with teachers and specialists in both subject matter and assessment to ensure that the assessments are thoroughly integrated with curricular goals and objectives.

(d) Provision for qualified personnel specifically trained to administer, score, and interpret the assessments of student learning outcomes and to evaluate the quality of those assessments.

(e) Provision for thoroughly evaluating the assessment strategy or strategies so as to document cost-effectiveness and quality in measuring different levels of student achievement, in a manner that will allow others to use project results.

Applications must contain a description of the assessment innovation or innovations to be demonstrated and rationale for selection, including information about prior use in other settings and research findings.

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.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 3151.

(Catalog of Federal Domestic Assistance Number: 84.215H Secretary's Fund for Innovation in Education: Innovation in Education Program)

Dated: February 12, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–5930 Filed 3–15–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 16, 1993

Part IV

Department of Education

Life Skills for Prisoners; Notice Inviting Applications for Awards

DEPARTMENT OF EDUCATION

[CFDA No.: 84.255A]

Life Skills for State and Local Prisoners Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, regulations, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Life Skills for State and Local Prisoners Program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

The Life Skills for State and Local Prisoners Program directly supports National Education Goal 5—ensuring that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: A State correctional agency, local correctional agency, State correctional education agency, or local correctional education agency is eligible for a grant under this program.

Definitions: "Life skills" includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

"Local correctional agency" means any agency of local government that provides corrections services to incarcerated adults.

"Local correctional education agency" means any agency of local government, other than a local correction agency, that provides educational services to incarcerated adults.

"State correctional agency" means any agency of State government that provides corrections services to incarcerated adults.

"State correctional education agency" means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

Deadline for Transmittal of Applications: May 15, 1993.

Deadline for Intergovernmental Review: July 16, 1993.

Available Funds: $4,910,400 for the first 12 months. Funding for the second and third 12 months is subject to availability of funds and to a grantee meeting the requirements of CFR 75.253.

Estimated Range of Awards: $100,000–$300,000 (funding for first 12 months).

Estimated Average Size of Awards: $204,600.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months (3 twelve-month grant cycles).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR part 490 (as published in the June 5, 1992 **Federal Register** (57 FR 24107)).

Invitational Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that propose to increase the ability of incarcerated adults to read, write, and speak in English, compute, and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and to develop one's knowledge and potential.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The program regulations in 34 CFR 490.20(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the reserved 15 points as follows:

Program Factors (34 CFR 490.21(a)). Ten points are added to this criterion for a possible total of 25 points.

Educational Significance (34 CFR 490.21(b)). Five points are added to this criterion for a possible total of 20 points.

In addition to the points awarded under the selection criteria in 34 CFR 490.21, the program regulations in 34 CFR 490.22 provide that the Secretary awards up to five points to applications for projects that have the greatest potential for innovation, effectiveness, and replication in other systems, jails, and detention centers.

(a) *Program factors.* (25 points) The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered; and

(2) Life skills education designed to prepare adult offenders to reintegrate successfully into communities, schools, and the workplace.

(b) *Educational significance.* (20 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of life skills;

(2) To use unique and innovative techniques to produce benefits that address life skills problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during

each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving life skills of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. The evaluation must be designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design. (Review criteria for the Program Effectiveness Panel are provided in 34 CFR 786.12.);

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 21, 1992 (57 FR 43525–43526).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA No. 84.255A, U.S. Department of

Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.255A), Washington, DC 20202–4725, or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.255A), room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The CFDA number—and suffix letter, if any—of the competition under which the application is being submitted, must be indicated on the outside of the envelope and in Item 10 of the application for Federal assistance (Standard Form 424).

Application Instructions and Forms: To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL–A) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

All applicants must submit one *original signed application*, including ink signatures on all forms and assurances and six *copies of the application*. Please mark each application as original or copy.

No grant may be awarded unless a *completed* application form has been received.

For Further Information Contact: Christopher Koch, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4512—MES), Washington, DC 20202–7242. Telephone (202) 205–5621. Deaf and hearing impaired individuals may call 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.

Program Authority: 20 U.S.C. 1211–2.

Dated: March 8, 1993.

Ricky Takai,

Acting Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000–01–U

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code)

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 5
TITLE: LIFE SKILLS FOR STATE AND LOCAL PRISONERS

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE_____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

SECTION C - Budget Estimates (Federal Funds Only) For Balance of Project

Budget Periods

Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This SECTION does not apply to projects that are full-funded.

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Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly requests you to limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively all pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that—

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0512, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0512. Expiration date: 12/31/95.)

BILLING CODE 4000–01–U

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

ote: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the Natior Historic Preservation Act of 1966, as amended U.S.C. 470), EO 11593 (identification anu protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyis. has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues 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 the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

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ASSURANCE

I assure that I will report annually to the Secretary on the participation rate, cost, and effectiveness of the program and any other aspect of the program on which the Secretary may request information.

_____ _____

(signature of authorized representative) (date)

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the requirements of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Life Skills for State and Local Prisoners Program (CFDA No.: 84.255A).

(2) Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

(3) 34 CFR part 490—Life Skills for State and Local Prisoners Program (57 FR 24107-24109).

(4) 34 CFR part 460—Adult Education—General Provisions.

(5) National Literacy Act Amendments Pub. L. 102–103, title III, sec. 313, Aug. 17, 1991, 105 Stat. 505.

[FR Doc. 93–5931 Filed 3–15–93; 8:45 am]

BILLING CODE 4000-01-U

federal register

Tuesday
March 16, 1993

Part V

Department of the Interior

Bureau of Indian Affairs

Absentee Shawnee Tribe of Oklahoma Alcohol Regulations; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Absentee Shawnee Tribe of Oklahoma Alcohol Regulations

February 26, 1993.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. L-AS-91-68, was duly adopted by the Executive Committee of the Absentee Shawnee Tribe of Oklahoma on June 12, 1991. This Ordinance provides for the regulation of the sale, possession, consumption, distribution and manufacture of liquor in the area of Indian Country under the jurisdiction of the Absentee Shawnee Tribe of Oklahoma.

DATES: This Ordinance is effective as of March 16, 1993.

FOR FURTHER INFORMATION CONTACT: Branch of Judicial Services, Division of Tribal Government Services, 1849 C St., NW., mail-stop 2611-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

SUPPLEMENTARY INFORMATION: The Ordinance reads as follows: The Absentee Tribe of Oklahoma Executive Committee deems it essential to the health, security and general welfare of the Tribe and its members to enact a comprehensive liquor ordinance relating to the sale and distribution of liquor products and confering a tax upon such sale and distribution on the tribal trust lands of the Absentee Shawnee Tribe of Oklahoma.

1-01 Title and Purpose

1-01.01—This document shall be known as the Absentee Shawnee Tribe of Oklahoma Alcohol Regulations. These regulations are enacted to regulate the sale and distribution of liquor and beer products on Tribal Trust lands of the Absentee Shawnee Tribe of Oklahoma, and to generate revenues to fund needed tribal programs and services.

1-02 Definitions

1-02.01—Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

(1). *Tribe* shall mean the Absentee Shawnee Tribe of Oklahoma, 2025 South Gordon Cooper Drive, Shawnee, Oklahoma, 74801.

(2). *Executive Committee* shall mean the Absentee Shawnee Tribe of Oklahoma Executive Committee as constituted by Article IV, Section 2 of the Constitution of the Absentee Shawnee Tribe of Oklahoma.

(3). *Tribal Trust Lands* shall mean the lands and waters lying within the boundaries of the property described below:

The jurisdiction of the Absentee Shawnee Tribe shall extend to all tribally owned land and all restricted or trust land belonging to tribal members within the boundary of the reservation established by Agreement dated June 26, 1980, and ratified by the Act of March 3, 1891 (26 Stat. 1091), and such other land, or interest in land, which may be subsequently acquired.

(4). *Member* shall mean any person whose name appears on the official roll of the Absentee Shawnee Tribe of Oklahoma.

(5). *Commercial Sale* shall mean the transfer, exchange or barter, in any way or by any means whatsoever, for a consideration by any person, association, partnership, or corporation, of liquor and/or beer products.

(6). *Wholesale Price* shall mean the established price for which liquor and/or beer products are sold to the Absentee Shawnee Tribe of Oklahoma or to any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(7). *Alcohol* is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(8). *Beer* means any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hops, or pure extract of hops, and malt and sugar in pure water containing not more than 6% of alcohol by weight.

(9). *Liquor Outlet* shall mean a Tribally licensed retail sales business selling liquor or beer on Tribal Trust lands.

(10). *Operator* shall mean an enrolled member of the Absentee Shawnee Tribe of Oklahoma, an enrolled member of another federally recognized Tribe of American Indians, or other person properly licensed by the Absentee Shawnee Tribe of Oklahoma to operate a liquor and/or beer outlet.

(11). *Commission* shall mean the Tax Commission of the Absentee Shawnee Tribe of Oklahoma.

1-03 Licensing of Liquor and/or Beer Outlet

1-03.01—Licensing. The Absentee Shawnee Tax Commission shall have jurisdiction over liquor and beer licensing. The Commission is empowered to:

(1). Administer these Regulations by exercising general control, management, and supervision of all liquor and/or beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of these Regulations.

(2). Adopt and enforce rules and regulations in furtherance of the purposes of these Regulations and in the performance of its administrative functions.

(3). Each application for license must be advertised by the Commission in at least one major publication in the county where the business is to be located. The application also must be posted in at least two (2) public places for twenty (20) calendar days, during which time any protests must be made to be valid.

1-04 Nature of Outlet

1-04.01—Nature of Outlet. Each liquor and/or beer outlet, licensed hereunder shall be managed by an operator pursuant to a license granted by the Absentee Shawnee Tax Commission.

1-05 Application for Liquor and/or Beer Outlet License

1-05.01—Application. Any enrolled member of the Absentee Shawnee Tribe of Oklahoma, an enrolled member of a federally recognized Tribe, or other person may apply to the Commission for liquor and/or beer outlet license.

1-05.02—Processing of Application. The Commission shall receive and process applications, and be the official representative of the Tribe and Executive Committee in matters relating to liquor and beer excise tax collections and related matters. The Commission, or its authorized representative, shall obtain additional information as deemed appropriate. If the Commission, or its authorized representative, is satisfied that the applicant is a suitable and reputable person, the Commission or its authorized representative, may issue a license for the sale of liquor and beer products.

1-05.03—Application Fee. Each application shall be accompanied by a non-refundable application charge or fee of Twenty-Five Dollars and No Cents ($25.00).

1-05.04—The Absentee Shawnee Tax Commission will be responsible for

approval or disapproval of all applications.

(1). Guidelines for Zoning.

(a) No license will be issued for a business within 300 feet of a church.

(b) No license will be issued for a business within 300 feet of a school.

(c) No license will be issued to a convicted felon.

(d) The Absentee Shawnee Tax Commission has full power to deny any applicant for any of the above and/or for any other reason where it would be to the detriment of the Tribe.

1-06 Liquor and Beer Licenses

1-06.01—Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer outlet license for one (1) year from the date of issuance. This license shall not be transferable. It shall be renewable at the discretion of the Commission by submission of the licensee of subsequent application form and payment of application fee as provided in Section 1-05.

1-07 Regarding Sales by Liquor Wholesalers and Transport of Liquors Upon Tribal Trust Lands

1-07.01—Right of Commission to Scrutinize Suppliers. The operator of any licensed outlet shall keep the Commission informed in writing of the identity of suppliers and/or wholesalers who supply or are expected to supply stock to the outlet(s). The Commission may, at its discretion, for any reasonable cause, limit or prohibit the purchase of said stock from a supplier or wholesaler.

1-07.02—Freedom of Information From Suppliers. Operators shall in their purchase of stock and in their business relations with suppliers, cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales to and business arrangements between the suppliers and operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the operator.

1-08 Sales by Retail Operators

1-08.01—Commission Regulations. The Commission shall adopt procedures which shall supplement these Regulations and facilitate their enforcement. These procedures shall include limitations on sales to minors, where liquor may be consumed, persons not allowed to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

1-08.02—Sales to Minors. No operator shall give, sell or otherwise supply liquor to any person under twenty-one (21) years of age either for his or her own use or his or her parents or for the use of any other person.

1-08.03—Consumption of Liquor Upon Licensed Premises. No operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto in his or her control; PROVIDED, the Commission may, at its discretion, identify specific locations upon Tribal Trust lands where beer may be consumed.

1-08.04—Conduct on Licensed Premises.

(1). No operator shall be disorderly, boisterous or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(2). No operator or employee shall consume liquor of any kind while working on the licensed premises.

(3). No operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd, or obscene acts or conduct shall be those acts or conduct identified as such by the laws of the Absentee Shawnee Tribe of Oklahoma.

1-08.05—Employment of Minors. No person under the age of twenty-one (21) years shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis, except as otherwise provided herein. Employees eighteen (18) years of age or older may sell or handle beer or wine not to be consumed on the premises provided that there is direct supervision by an adult twenty-one (21) years of age or older.

1-08.06—Display of License. Any operator issued a license shall frame, under glass, and display the license on the premises.

1-08.07—Operator's Premises Open to Commission Inspection. The premises of all operators, including vehicles used in connection with liquor sales, shall be open at all times to inspection by the absentee Shawnee Tax Commission or its designated representative.

1-08.08—Operators Records. The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor by operators shall be kept on file in the retail premises of the operator purchasing the same for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records and, as nearly as possible, shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All canceled checks, bank statements and books of accounting covering or involving the purchase of liquor, and all memoranda, if any, showing payment of money for liquor other than by check, shall be likewise preserved for availability for inspection and checking.

1-08.09—Records Confidential. All records of the Absentee Shawnee Tribe of Oklahoma Tax Commission showing purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representative.

1-08.10—Conformity with State Law. Operators shall comply with State of Oklahoma liquor standards to the extent required by 18 U.S.C. 1161. Tribal licensees are subject to all of the enumerated prohibited acts contained in 37 Okl. St. Ann. 537, and failure of the operator to observe state law will subject said licensee to federal prosecution under 18 U.S.C. 1181.

1-09 Tribal Excise Tax Imposed Upon Distribution of Liquor

1-09.01—Tribal Excise Tax. The Commission shall by resolution, include a provision for the taxing of sales of liquor and beer products to the consumer or purchasers. Such tax shall be in amounts equal to at least 5% of all retail sales prices, but the Commission may establish tax rates in excess of 5% for any given class of merchandise.

1-09.02—Added To Retail Price. The excise tax levied hereunder shall be added to the retail selling price of liquor and beer products sold to the ultimate consumer.

1-10 Liability for Bills

1-10.01—Liability for Bills. The Tribe shall have absolutely no legal responsibility for any unpaid bills owed by a liquor and/or beer outlet to a wholesale supplier or any other person.

1-11 Other Business by Operator

1-11.01—Other Business by Operator. An operator may conduct another business simultaneously with managing a liquor and/or beer outlet, PROVIDED, such other business must be approved prior to initiation by majority vote of the Absentee Shawnee Tribe of Oklahoma Executive Committee. Said other business may be conducted on the same premises as a liquor and/or beer outlet, but the operator shall be required to

maintain subsidiary books of account to insure accountability of liquor and/or beer sales and other business operations.

1–11.02—Excise Taxes For Other Business. The Absentee Shawnee Tax Commission may make provision for an excise or sales tax to be charged customers or purchasers of items held for sale on such other business.

1–12 Tribal Liability and Credit

1–12.01—Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Tribe or the Tax Commission authorized to pledge Tribal credit or financial responsibility for any of the expenses of his or her business operation. The operator shall hold the Absentee Shawnee Tribe of Oklahoma harmless from all claims and liability of whatever nature. The Commission shall revoke an operator's outlet license(s) if said outlet(s) is(are) not operated in a businesslike manner or if it(they) does(do) not remain financially solvent or does not pay its(their) operating expenses and bills before they become delinquent.

1–12.02—Insurance. The operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks. The Tax Commission or the Executive Committee may establish, as a condition of any license, the required insurance limits and any additional coverage deemed advisable.

1–13—Audit and Inspection

1–13.01—All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative at any reasonable time.

1–13.02—Bond for Tax. The tax, together with reports on forms to be supplied by the Commission, shall be remitted to the Tribal office monthly unless otherwise specified, in writing, by the Commission. The operator shall furnish a satisfactory bond to the Tribe in an amount to be specified by the Tax Commission guaranteeing his or her payment of taxes.

1–14 Revocation Of Operator's License

1–14.01—Revocation of Operator's License. Failure of an operator to abide by the provisions of these Regulations and any additional regulations or requirements imposed by the Commission, will constitute grounds for revocation of the operator's license as well as enforcement of the penalties provided in 1.15.

(1). To appeal having license revoked for reasons other than violation of the rules of this ordinance, operator may use the same procedures as outlined in Sub-Chapter 1.3 Rules of the Absentee Shawnee Tax Commission, to wit:

(a) Appeal to the Tax Commission;

(b) Appeal to the Tribal Court;

(c) Appeal to the Tribal Supreme Court;

(d) Appeal to the U.S. Federal Court.

(2). The Tax Commission will be required to submit substantive proof to revoke any license issued by the Commission. The burden of proof is upon the Tax Commission to substantiate any and/or all charges.

1–15 Violation—Penalties

1–15.01—Any person violating these Regulations shall be guilty of an offense and subject to a fine of not less than fifty dollars ($50.00) and not to exceed a maximum of two hundred and fifty dollars ($250.00). Any operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Tribe shall be empowered to seize forfeited products.

1–16 Separability

1–16.01—If any provision of the Regulations in its application to any person or circumstance is held invalid, the remainder of the Regulations and their application to other persons or circumstances is not affected.

Stan Speaks,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 93–5940 Filed 3–15–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Tuesday
March 16, 1993

Part VI

Department of Transportation

Federal Aviation Administration

Draft Environmental Impact Statement; Changes in Aircraft Flight Program Over the State of New Jersey; Reopening of Comment Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26987]

Draft Environmental Impact Statement; Changes in Aircraft Flight Patterns Over the State of New Jersey; Reopening of Comment Period

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Reopening of comment period.

SUMMARY: On November 12, 1992, the FAA issued a Draft Environmental Impact Statement (DEIS) to assess the impact of changes in aircraft flight patterns caused by the implementation of the Expanded East Coast Plan (EECP) over the State of New Jersey for public review and comment. The DEIS evaluates the EECP and alternatives to its continued use.

In December, 1992, the FAA extended the final date for public comment from January 22, 1993 to March 5, 1993 because of the technical complexity of the DEIS. The FAA is reopening the comment period on March 15, 1993, for 90 days in response to a request from the New Jersey Citizens for Environmental Research (NJCER) and a joint request from the Governor of New Jersey, and the Chairman of the Port Authority of New York and New Jersey. The 90 day extension should facilitate public review. This extension will also enable the New Jersey Citizens Against Aircraft Noise to obtain technical assistance to assess the DEIS using the $50,000 provided under the Department of the Transportation Fiscal Year 1993 Appropriations Act, Public Law 102–388.

COMMENT PERIOD: The comment period is reopened on March 15, 1993 to extend until June 14, 1993.

ADDRESSES: Written comments on the document should be addressed to: Federal Aviation Administration, Office of the Chief Counsel: Docket Number 26987, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The FAA will consider and respond to all comments within the scope of the DEIS. The most useful comments are those which provide facts and analyses to support the reviewer's recommendations or conclusions. The FAA cannot assure that any comments received after the close of the comment period will be considered or addressed in the Final EIS. The FAA will issue a final EIS that includes corrections, clarifications and responses to comments on the DEIS.

Issued in Washington, DC on March 11, 1993.

Daniel C. Beaudette,

Acting Deputy Associate Administrator for Air Traffic.

[FR Doc. 93–5987 Filed 3–12–93; 8:45 am]

BILLING CODE 4910–13–M

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