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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-99-001]

RIN 0581-AB57

Revision of User Fees for 1999 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is raising user fees for cotton producers for 1999 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1998 user fee for this classification service was \$1.30 per bale. This final rule would raise the fee for the 1999 crop to \$1.35 per bale. The increase in fees resulted from the significant drop in cotton production for the 1998 crop. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202-720-2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on April 2, 1999, (64 FR 15937). A 30-day comment period was provided for interested persons to respond to the proposed rule. One comment, from a grower association, was received in opposition to the increase. No other comments were received in response to the proposed rule. The commentor stated that the fee increase, although

small, would further erode its producers' economic condition when many of its members are in tough economic times. The fee increase is indeed small given the cost-per-unit currently borne by users of the service. The impact on growers should be minimal. In fact, we estimate that the new fee is less than one percent of the value of an average bale of cotton. In addition, this fee was calculated according to the formula provided for and required by the statute and is therefore made final in this rulemaking without change.

This final rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this final rule on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). It has been determined that the implementation of this final rule would not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee increase reflects a very small increase in the cost-per-unit currently borne by those entities

utilizing the services (the 1998 user fee for classification services was \$1.30 per bale; the fee for the 1999 crop would be increased to \$1.35 per bale; the 1999 crop is estimated at 16,810,410 bales);

(2) The cost increase will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1998 crop, 13,467,012 bales were classed out of 13,790,000 bales produced.

(4) Based on the average price paid to growers for cotton from the 1997 crop of 65.2 cents per pound, 500 pound bales of cotton are worth an average of \$326.00 each. The proposed user fee for classification services, \$1.35 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581-0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The changes will be made effective July 1, 1999, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was \$1.30 per bale during the 1998 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102-237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This final rule establishes the user fee charged to producers for HVI classification at \$1.35 per bale during the 1999 harvest season.

Public Law 102-237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of

cotton classification requested by producers in 1998. Therefore, the 1999 producer's user fee for classification service is based on the 1998 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102-237. The 1998 base fee for HVI classification exclusive of adjustments, as provided by the Act, was \$2.12 per bale. A one percent, or two cents per bale increase due to the implicit price deflator of the gross domestic product added to the \$2.12 results in a 1999 base fee of \$2.14 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1999 crop is estimated at 16,810,410 bales. The 1999 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 32 cents per bale reduction and was subtracted from the 1999 base fee of \$2.14 per bale, resulting in a fee of \$1.82 per bale.

With a fee of \$1.82 per bale, the projected operating reserve would be 46.66 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of \$1.82 must be reduced by 47 cents per bale, to \$1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This will establish the 1999 season fee at \$1.35 per bale.

Accordingly, § 28.909, paragraph (b) will be revised to reflect the increase in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10

cents per card in § 28.910 (a) to reflect the costs of providing this service. Requests for punch card classification data represented only 0.7 percent of the total bales classed from the 1998 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer punched cards will continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 will remain at five cents per bale, and it will be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card will be charged. The fee in § 28.910 (b) for an owner receiving classification data from the central database will remain at five cents per bale, and the minimum charge of \$5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be increased from \$1.30 per bale to \$1.35 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is \$1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is \$1.35 per bale.

* * * * *

Dated: May 25, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–13764 Filed 5–27–99; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB76

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Management

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts final investment management regulations that help Farm Credit System (System or FCS) banks and associations respond to rapid and continual changes in financial markets and instruments. The final regulations:

- Expand the list of high-quality investments that System banks and associations can purchase;
- Provide more flexibility to use comprehensive analytical techniques to manage risks at the portfolio or institutional level;
- Strengthen our requirements for sound investment management practices; and
- Streamline the requirements for investments in mortgage securities issued or guaranteed by the Federal Agricultural Mortgage Corporation (Farmer Mac).

EFFECTIVE DATE: These regulations will become effective 30 days after they are published in the **Federal Register** during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; or Richard Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

System banks may purchase eligible investments for the purpose of

maintaining a liquidity reserve, managing interest rate risk, and investing surplus funds. Farm Credit associations have authority to hold eligible investments to manage short-term surplus funds and reduce interest rate risk, subject to the approval of their funding banks.

Eligible investments help FCS banks and associations to control risks that result from their operations as single-industry agricultural lenders. On June 18, 1998, we proposed revisions to our investment management regulations.

The proposal balanced our desire to institute a disciplined investment management framework with the System's desire for more flexibility to respond to changing market conditions and advances in risk management and securities valuation.¹

We proposed two fundamental changes to the existing investment regulations. First, we established guidelines for implementing an effective oversight and risk management process for investment activities. Second, our proposal expanded the list of eligible investments, and it relaxed or repealed many of the restrictions on investments that we previously authorized. For instance, we proposed to expand System bank and association investment authority to include a broader array of money market instruments, mortgage securities, and asset-backed securities.

Our proposal also balanced the System's need for greater flexibility regarding investments with essential safety and soundness controls, such as credit rating and diversification standards. Furthermore, our proposal continued to limit non-agricultural investments to 30 percent of each bank's total outstanding loans.

Overview of the Comments

The Presidents Finance Committee (PFC) for Farm Credit System banks, The Bond Market Association, and Farmer Mac commented on the proposed rule. All eight FCS banks fully supported the PFC's comments. The PFC's letter identified over 20 separate issues concerning investment management and eligible investments that the PFC asked us to address in the final rule. The Bond Market Association, which represents securities firms and investment banks that underwrite and trade debt securities, supported many of the System's positions on eligible investments. Farmer Mac's comments focused primarily on the different regulatory treatment of its mortgage securities and the Federal National Mortgage

Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

Separately, we published a notice in the **Federal Register** that asked the public to identify existing FCA regulations and policies that impose unnecessary regulatory burdens on FCS institutions.² CoBank ACB and four Farm Credit associations asked us to reduce regulatory burden on the System by repealing or revising provisions in the existing investment regulations that pertain to the liquidity reserve requirement, association investments and the portfolio limit on Farmer Mac mortgage securities. We address these regulatory burden comments in the final investment rule.

We respond to these comments by making several substantive changes to the proposed investment management regulations and by rewriting the regulations so they are easier to understand. In addition, we also address commenters' questions and requests for clarification in the preamble.

II. Investment Activities of Associations and Service Corporations

We received several comments and questions about the investment authorities of associations, both in response to the proposed investment rule and our regulatory burden initiative. The PFC asked us to confirm that funding banks still retain the responsibility to review and approve the investments of their affiliated associations. In response to our regulatory burden initiative, three associations stated that the Farm Credit Act of 1971, as amended (Act) does not require the degree of bank oversight that redesignated § 615.5142 imposes on association investment activities. These associations suggested that funding banks should rely on the General Financing Agreements (GFA) to oversee the investment activities of their affiliated associations.

We modified final §§ 615.5131, 615.5133, 615.5140, 615.5141, 615.5142, and 615.5143 to confirm the existing investment authorities of associations and clarify that associations that elect to hold investments are expressly subject to regulations governing investment management, eligible investments, stress tests, and divestiture.

Redesignated § 615.5142 continues to authorize associations to acquire eligible investments that are listed in § 615.5140, with the approval of their funding banks, for the purposes of reducing interest rate risk and investing

surplus funds. The final rule also retains the existing requirement that each System bank annually review the investment portfolio of every association that it funds.

Final § 615.5142 implements sections 2.2(10) and 2.12(18) of the Act, which require each funding bank to supervise and approve the investment activities of its affiliated associations. In response to comments that focused on the scope of bank supervision of association investments, we note that a number of satisfactory methods exist for System banks to oversee association investment activities under our regulatory framework. A bank may take an active role in advising and approving an association's investment decisions and strategies. For example, banks may provide research, analytical or advisory services that help associations to manage their investment portfolios. Alternatively, as suggested by three association commenters, the GFA can be an appropriate tool for funding banks to oversee the investment activities of their affiliated associations.

Bank oversight does not absolve an association's board and managers of their fiduciary duties to manage investments in a safe and sound manner. The fiduciary responsibilities of association boards of directors obligate them to develop appropriate investment management policies and practices to manage the credit, market, liquidity, and operational risks associated with investment activities. Additionally, it is incumbent upon each association's investment managers to fully understand the risks of its investments and make independent and objective evaluations of investments prior to purchase.

We incorporated explicit references to associations into final § 615.5133 to acknowledge the existing responsibility of associations to effectively manage their investments. We recognize, however, that associations have historically maintained few or no investments in non-agricultural financial instruments. The few associations that maintain investment portfolios hold primarily money market instruments and municipal securities. Therefore, the final regulation requires an association's board of directors to develop investment policies that are commensurate with its institution's investment activities.

An association's investment policies should be appropriate for the size, risk characteristics, and complexity of the association's investment portfolio and should be based on an association's unique circumstances, risk tolerances, and objectives. Associations must

¹ See 63 FR 33281.

² See 63 FR 44176 (Aug. 18, 1998); 63 FR 64013 (Nov. 18, 1998).

comply with all the requirements in § 615.5133 if the level or type of their investments could expose their capital to material loss. However, an association's board does not need to develop an investment policy if it elects not to hold non-agricultural investments authorized under § 615.5140.

Final § 615.5140, which lists eligible investments, is modified to clarify that it applies to associations. As noted earlier, associations already have the authority under redesignated § 615.5142 to hold eligible investments that are listed in § 615.5140. This revision more accurately reflects the scope of this regulation.

We take this opportunity to reiterate our long-standing position that service corporations, organized under section 4.25 of the Act, are subject to the investment regulations in subpart E of part 615. Although we have noted on past occasions that § 611.1136 of this chapter applies these investment regulations to both incorporated and unincorporated service organizations, questions about this issue have remained. Final § 615.5131(m) resolves this matter by expressly subjecting FCS service corporations that hold investments to these regulations. Service corporations that hold no investments are not required to develop investment policies or comply with § 615.5133.

III. Investment Management

We proposed significant changes to § 615.5133, which governs investment management practices and internal controls in the FCS. Our objective was to strengthen this regulation so each System institution would follow certain fundamental practices that enable its board and management to fully understand and effectively manage risks in its investment portfolio. An effective risk management process for investments requires financial institutions to establish: (1) Policies; (2) risk limits; (3) a mechanism for identifying, measuring, and reporting risk exposures; and, (4) a system of internal controls. As a result, the proposed rule required each Farm Credit board of directors to adopt policies that establish risk parameters and guide the decisions of investment managers. More specifically, we required board policies to establish objective criteria so investment managers can prudently manage credit, market, liquidity, and operational risks. Additionally, proposed § 615.5133 established other controls that help prevent loss, such as:

- Clear delegation of responsibilities and authorities to investment managers;

- Separation of duties;
- Timely and effective security valuation practices; and,
- Routine reports on investment performance.

A. Requests for Change

Only the PFC commented on proposed § 615.5133. Although the PFC supported the FCA's approach, it requested changes to three provisions of proposed § 615.5133. In response, we revised two of these regulations so they advance our safety and soundness objectives without placing unnecessary burden on the FCS. We resolved the PFC's third concern with a preamble explanation rather than a regulatory change. In addition to the two substantive amendments described above, we reorganized and rewrote this regulation so it is easier to understand and use.

1. Limits on Transactions With Each Securities Firm

The PFC asked us to eliminate the provision in proposed § 615.5133(a)(1)(ii) that requires investment policies to "set limits on the amounts and types of transactions that the bank shall execute with authorized securities firms."³ The PFC believes that this requirement is overly burdensome because the risk of loss from purchase and sale transactions with securities firms is negligible. The commenter also opined that this provision reduces the System's flexibility to trade with the securities firm that provides the best terms and execution for investment transactions.

The PFC persuaded us that some of the requirements in proposed § 615.5133(a)(1)(ii) might have inadvertently reduced the System's flexibility in executing transactions with various securities firms. However, we continue to believe that each System institution must carefully select and properly manage its relationships with securities firms as part of its efforts to manage credit risk associated with settlements on securities transactions. Thus, we respond to the PFC's concerns by revising the regulation so that the necessary safety and soundness constraints do not unreasonably hinder business relationships. In addition, this revision offers System institutions greater flexibility to trade with the securities firms of their choice.

Specifically, final and redesignated § 615.5133(c)(1)(ii) no longer obligates the board of directors to set specific

limits on the amount and types of transactions that its institution executes with authorized securities firms. Instead, the final regulation requires System institutions to buy and sell eligible investments with more than one securities firm. As a result, the final rule still requires System institutions to diversify their exposure to credit risk from brokers, dealers, and investment bankers.

Nevertheless, final and redesignated § 615.5133(c)(1)(ii) still requires board policies to establish the criteria that investment managers will use to select securities firms. We have also retained the regulatory provisions that require each board of directors to:

- Annually review its criteria for selecting securities firms; and
- Determine whether its existing relationships with various securities firms should continue.

2. Reporting Investment Performance to the Board

The PFC expressed concern about a provision in proposed § 615.5133(e) that requires investment managers to report quarterly to the board on the performance and risk of "each" investment in the portfolio. According to the PFC, many FCS banks hold several hundred individual securities in sizeable investment portfolios. Under these circumstances, reporting to the board on every single investment is cumbersome and meaningful board review is difficult. The PFC suggests the reports to the board should summarize the risks associated with investment activities and address compliance with investment policies, objectives, risk limits, and regulatory requirements. The commenter further suggests that managers should report on individual investments only in exceptional circumstances.

We revise this provision to address the PFC's concern. Final and redesignated § 615.5133(g) requires management to report each quarter to its board of directors or a committee thereof on the performance and risk of each class of investments and the entire investment portfolio. Additionally, the final rule continues to require the report to identify all gains and losses that the institution incurs during the quarter on individual securities sold before maturity. We retained a reporting requirement on individual securities because it provides the board important and accurate information relating to the performance of investments and investment activity in general.

This new approach requires investment portfolio managers to provide System boards of directors

³The term "securities firms" in the final rule and this preamble collectively refers to brokers, dealers, and investment banks.

accurate, concise, meaningful, and timely information on the performance and risk of their institution's investments. This information helps the board to understand the risks inherent in the investment portfolio and oversee the investment activities of investment managers. We believe this revision removes burdensome reporting requirements from the final regulation while simultaneously promoting safe and sound investment management practices in the FCS. We have made no other modification to redesignated § 615.5133(g).

3. Securities Valuations

The only comment on securities valuation was from the PFC. The PFC asked us to delete proposed § 615.5133(d)(1), which requires System institutions to verify with an independent source the value of any security (other than a new issue) that they purchase or sell. The PFC interprets proposed § 615.5133(d)(1) as requiring FCS institutions to solicit a second bid for all securities from a competing broker, dealer, or other intermediary. The PFC warns that this requirement would undermine the good reputation of the System and cause its business relationships with securities firms to quickly deteriorate. As a result, the FCS would ultimately pay higher prices for securities and obtain lower yields.

We observe that nothing in the proposed regulation or preamble would require bids on investments from parties who compete with the seller, purchaser, counterparty, or other intermediary to a specific transaction. Instead, our regulation requires System banks, associations, and service corporations to verify the value of a security with an independent source. As the preamble to the proposed regulation notes, "independent verification of a price can be as simple as obtaining a price from an industry recognized information provider." The same preamble passage also states that "although price quotes from information providers are not actual market prices, they confirm whether the broker's price is reasonable."⁴ This regulatory provision allows System institutions to independently verify the price of a security with an on-line market reporting service, such as Bloomberg, Telerate, or Reuters. Additionally, the regulation provides sufficient flexibility for System institutions to use internal valuation models to verify the reasonableness of prices that they pay or receive for securities. Moreover,

independent verification of securities prices is a fundamental component of safe and sound investment management, and ensures that FCS institutions understand the value of their investments at purchase and sale.

In view of these considerations, we conclude that the requirement for independent verification of securities prices is appropriate and should be retained in the final regulation. We also made several stylistic changes to the securities valuation requirements, which we redesignated as final § 615.5133(f)(1).

B. Other Comments and Questions on Investment Management

We offer the following responses to requests for clarification on proposed § 615.5133 and additional guidance regarding investment management.

1. Are the FCA Regulations Consistent With the Federal Financial Institutions Examination Council's Policy on Investment Activities?

Yes. We confirm that § 615.5133 is consistent with the Federal Financial Institutions Examination Council's (FFIEC) "Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities" (Policy Statement).⁵ We used the FFIEC's Policy Statement as a benchmark for developing this regulation. In our opinion, the FFIEC's guidance to other federally regulated financial institutions on sound investment management practices is suitable for the FCS. We encourage System institutions to refer to the FFIEC's Policy Statement when they devise, implement, and review policies that govern their investment management practices pursuant to § 615.5133. Additionally, FCS institutions should refer to our policy statement on interest rate risk management (FCA-PS-74) for further guidance on managing market risks.⁶

2. What Are the Responsibilities of Boards of Directors?

In general, the board of directors of any association or service corporation that holds eligible investments and every bank is responsible for establishing written investment policies that are appropriate for the size, types, and risk characteristics of its investments. Investment policies are a critical aspect of effective risk management and should set appropriate limits on exposure to credit, market, and liquidity risks. We emphasize that investment policies of each Farm Credit

bank and any association or service corporation with significant investments should embody the following key elements.

Investment Objectives. A general explanation of the board's investment objectives, expectations, and performance goals is necessary to guide investment managers.

Risk Tolerance. Risk tolerance should be based on the strength of each institution's capital position and its ability to measure and manage risk. Additionally, risk limits should be consistent with broader business strategies and institutional objectives. Risk tolerance can be expressed through several parameters: duration, convexity, sector distribution, yield curve distribution, credit quality, risk-adjusted return, portfolio size, total return volatility, or value-at-risk.⁷ Each institution should use a combination of parameters to appropriately limit its exposure to credit and market risk.

Asset Allocation. The board's asset allocation policy should ensure appropriate diversification within the various asset classes, as well as across the entire investment portfolio.⁸ Final § 615.5140 eliminates the portfolio limits on many eligible investments, and therefore, we expect each bank, association, and service corporation to establish its own asset allocation guidelines. Investment parameters may include points where the investment portfolio should be reallocated or rebalanced to bring it back in line with the board's strategic asset allocation goals.

Asset Selection. The investment policy should identify the risk characteristics (e.g., credit quality, price sensitivity, maturity, marketability or liquidity, maximum premiums or discounts, etc.) of investments that are suitable for inclusion in the investment portfolio.

Derivatives. Derivative instruments can be used to hedge risk, leverage a position or otherwise modify the risk profile of an investment portfolio. The board's investment policy should address the application of derivatives

⁷ Generically, duration is a measure of a bond or portfolio's price sensitivity to a change in interest rates. Convexity measures the rate of change in duration with respect to a change in interest rates. A sector refers to a broad class of investments with similar characteristics or industry classification. Yield curve distribution refers to the distribution of the portfolio's investments in short-term, intermediate, or long-term investments. Value-at-risk is a methodology used to measure market risk in an investment portfolio.

⁸ Asset allocation is generally defined as the allocation of your investment portfolio across major asset classes, such as United States Treasury, corporate, mortgage or asset-backed securities.

⁴ See 63 FR 33284 (June 18, 1998).

⁵ See 63 FR 20191 (Apr. 23, 1998).

⁶ See 63 FR 69285 (Dec. 10, 1998).

within the portfolio and set appropriate limits on the use of derivatives.

Controls and Reporting Requirements. The investment policy should describe the duties and responsibilities of the investment manager(s), set the delegation of authorities, outline any prohibited investments or activities, and specify the content and frequency of reports to the board on investment activities.

3. What Analysis Must Management Perform on Individual Investments Prior to Purchase and on an Ongoing Basis?

Not all investment instruments need an extensive pre-purchase or post-purchase analysis. Non-complex instruments that have minimal price sensitivity need little or no pre-purchase analysis. Final and redesignated § 615.5133(f) (previously proposed § 615.5133(d)(3)) generally requires System banks to perform an analysis of the credit and market risks on investments prior to purchase and on an ongoing basis. The primary objective of this provision is to ensure that management understands the risks and cashflow characteristics of any investment that it purchases. The board's investment policy should fully address the extent of the pre-purchase analysis that management needs to perform for various classes of instruments. For example, the policy should specifically indicate which stress tests in § 615.5141 should be performed on various types of mortgage securities.

For investments that have unusual, leveraged, or highly variable cashflows, it is especially important for investment managers to exercise diligence and thoroughness in making investment decisions. Managers should have a reasonable and adequate basis, supported by appropriate analysis for their investment decisions, and maintain adequate documentation. The analysis should describe the basic risk characteristics of the investment and include a balanced discussion of risks involved in purchasing the investment. In preparing the analysis, investment managers should consider the current rate of return or yield, expected total return, annual income, the degree of uncertainty associated with the cashflows, the investment's marketability or liquidity, as well as its credit and market risks.

4. What Investment Management Approach Does the FCA Prefer?

The PFC asked us to clarify when we expect System institutions to manage their investments on an individual, portfolio or institutional basis. The

appropriate level of risk management depends on the complexity of instruments and the size of your investment portfolio. A System institution may need to analyze risk on an individual, portfolio, and institutional level. As appropriate, stress testing should be performed on individual investments, the investment portfolio or the entire institution. Additionally, other risk management techniques, such as total return analysis or value-at-risk, may be used to effectively manage risk exposures.

When a new investment position is likely to significantly alter the risk profile of an institution, management should complete an analysis of the potential effects on the portfolio and the entire institution prior to purchasing the investment. Although investors have traditionally looked at investments one at a time, modern portfolio theory suggests that investors should look at the effect of individual investments on the entire portfolio. Often, investments that seem acceptable on an individual basis have a significant exposure to a single risk factor on a cumulative basis. Conversely, under the portfolio approach, financial institutions may hold individual investments that are fairly risky, if the risks are offset by other investments or derivative instruments. As a result, the portfolio approach allows investment managers to achieve higher returns while maintaining overall portfolio risk at a reasonable level.

System institutions should tailor their investment management approach to meet their needs based on the type and level of their investment activities and unique risk profile. Regardless of the approach taken, each Farm Credit bank, association, and service corporation should ensure that it is able to effectively measure, monitor, and control the credit, market, liquidity, and operational risks stemming from its investment activities. This requires an understanding of the source and degree of the institution's risk exposures and how these risk exposures may change under differing economic scenarios.

III. Eligible Investments

A. Overview

System banks may purchase and hold the eligible investments listed in § 615.5140 to maintain liquidity reserves, manage interest rate risk, and invest surplus short-term funds. Similarly, redesignated § 615.5142 (formerly § 615.5141) authorizes FCS associations to hold eligible investments listed in § 615.5140 to invest surplus funds and reduce interest rate risk. Only

investments that can be promptly converted into cash without significant loss are suitable for achieving these objectives. For this reason, the eligible investments listed in § 615.5140 generally have short terms to maturity and high credit ratings from nationally recognized statistical rating organizations (NRSROs). Furthermore, all eligible investments are either traded in active secondary markets or are valuable as collateral.

We proposed to amend § 615.5140 so System banks and associations could purchase and hold a broader array of high-quality and liquid investments. As a result, the proposed regulations expanded the list of eligible investments and relaxed or repealed certain restrictions in § 615.5140. These revisions reflect changes in the financial markets and help fulfill our objective of developing a regulatory framework that can more readily accommodate innovations in financial products and analytical tools.

Two commenters, the PFC and The Bond Market Association, generally supported our proposal to amend § 615.5140. The commenters also asked us to approve other instruments that would offer higher yields and further diversify the investment portfolios of System institutions. As we explain in greater detail below, we incorporated many of the commenters' suggestions into final § 615.5140. In addition, as part of our efforts to write regulations that are easier to understand and use, we converted most of § 615.5140 into a chart.

We received no comments on proposed § 615.5140(a)(1), (a)(3), (a)(7), and (a)(8), which respectively authorize FCS banks and associations to invest in:

- Securities that are issued or guaranteed by the United States, its agencies, or instrumentalities;
- Obligations of international and multilateral development banks;
- Corporate debt obligations; and
- Shares of investment companies that register under the Investment Company Act of 1940 (e.g., money market mutual funds).

Accordingly, we made no substantive changes to § 615.5140(a)(1), (a)(3), (a)(7), and (a)(8).

State and Municipal Securities

Existing § 615.5140(a)(10) authorizes System banks and associations to invest in the general obligations of State and municipal governments. We proposed to redesignate this provision as § 615.5140(a)(2) without significant change. However, we added a definition of "general obligation of a State or political subdivision" to § 615.5131 to

codify our recent guidance on bonds guaranteed by the full faith and credit of a State or local government.⁹ We rewrote the definition to make it clear and we now adopt §§ 615.5140(a)(2) and 615.5131(e) as final regulations.

Prior to this rulemaking, System banks requested authority to invest in revenue bonds. Revenue bonds are not supported by the taxation powers of the obligor, and are repayable from fee income and other sources of revenue. We requested input on how the final regulation could authorize investments in revenue bonds while limiting risks to System institutions. More specifically, we solicited comments on how the final regulation could establish:

- Criteria for determining which revenue bonds meet the investment purposes in § 615.5132; and
- Appropriate limits on the amount of these investments.

We received only one comment concerning municipal securities. The PFC suggested that all highly rated revenue bonds should be eligible investments. The PFC believes that highly rated revenue bonds are suitable for meeting liquidity and interest rate risk management objectives.

Municipal revenue bonds may provide FCS banks and associations with another suitable investment to diversify their portfolios. The universe of municipal revenue bonds is diverse and some, but not all, of these instruments are actively traded in established secondary markets. Although the full faith and credit of a governmental entity with taxation powers does not back municipal revenue bonds, these instruments usually enjoy an implicit guarantee of the State government. For these reasons, we add municipal revenue bonds as eligible investments, subject to certain safety and soundness controls. Final § 615.5140(a)(2) authorizes FCS banks and associations to invest in municipal revenue bonds that are rated in the highest investment rating category by an NRSRO and mature within 5 years or less. The final regulation requires the investing System bank or association to document, at the time of purchase, that the particular issue is actively traded in an established secondary market. Additionally, these investments are subject to a 15-percent portfolio limit. We also added a conforming definition of "revenue bonds" to final § 615.5131.

C. Money Market Instruments

We proposed several changes to the provisions in § 615.5140 that authorize

FCS banks and associations to invest in money market instruments. Under our proposal, all money market instruments were grouped together into a single regulatory provision, § 615.5140(a)(4). We proposed to repeal existing limitations on the amounts of negotiable certificates of deposit, Federal funds (Fed Funds), bankers acceptances, and prime commercial paper that each FCS institution can hold in its investment portfolio. We also added Eurodollar time deposits and master notes to the list of eligible money market investments.

Only the PFC commented on proposed § 615.5140(a)(4). The commenter asked us to: (1) Repeal the "callable" requirement for Term Federal Funds; and (2) clarify the credit rating requirements for repurchase agreements and master notes.

1. Term Federal Funds

From the commenter's perspective, our insistence that System institutions invest only in negotiable Term Fed Funds is inconsistent with our approach toward Eurodollar time deposits. The PFC pointed out that proposed § 615.5140(a)(4) granted System institutions new authority to invest in non-negotiable Eurodollar time deposits, which are very similar to Term Fed Funds in terms of credit, liquidity, and market risks. The PFC asserts that Term Fed Funds do not need a "callable" feature to make them liquid because our regulation already requires them to maintain a high credit rating and mature within 100 days. Thus, the PFC urges us to delete the provision in § 615.5140(a)(4)(i) that requires all Term Fed Funds to be "callable."

The PFC persuaded us that highly rated Term Fed Funds that mature within 100 days are suitable investments, even if they are not "callable." Thus, we amended this provision so final § 615.5140(a)(4) no longer requires System banks and associations to invest only in "callable" Term Fed funds.¹⁰ This change will provide System institutions with additional flexibility to invest with counterparties that do not offer "callable" features on Term Fed Funds.

In addition, the final regulations apply consistent treatment of investments in Term Fed Funds and Eurodollar time deposits. Final § 615.5140 subjects non-callable Term Fed Funds to the same 20-percent portfolio limit as Eurodollar time deposits. From a safety and soundness

perspective, this portfolio limit is necessary to limit the amount of non-negotiable instruments that are held in bank and association investment portfolios. The final regulation continues to place no portfolio limit on the amount of "continuously callable" Term Fed Funds that FCS banks and associations can hold. Like Eurodollar time deposits, non-callable Term Fed Funds must also be invested at depository institutions with the highest short-term credit rating from an NRSRO.

2. Response to Comments on Credit Ratings

a. *When are short-term or long-term credit ratings appropriate for the collateral securing repurchase agreements?* Final § 615.5140(a)(4) allows System banks and associations to invest in repurchase agreements that are backed either by: (1) Eligible investments; or (2) other marketable securities that are rated in the highest credit rating category by an NRSRO. The type of collateral should determine whether a short-term or a long-term credit rating is appropriate. System banks and associations may use an equivalent long-term rating if it is the only credit rating available for a short-term financial instrument held as collateral in a repurchase agreement.

b. *Are long-term credit ratings appropriate when no short-term ratings are available for counterparties to master note agreements?* Yes. We recognize that certain institutions that are counterparties to master note agreements may only have long-term credit ratings from an NRSRO. When short-term credit ratings are unavailable, System institutions may use an equivalent long-term rating to determine if the money market instrument is eligible under our regulations. For example, we consider an "A-1" short-term rating from Standard and Poor's (S&P) to be the equivalent to a "AA" or higher long-term S&P rating.

D. Mortgage Securities

1. Overview

We proposed significant changes to the authority of FCS institutions to invest in mortgage securities. The proposal expanded the list of eligible investments to include certain non-agency mortgage securities and stripped mortgage-backed securities (SMBS). We proposed these amendments to grant FCS banks and associations more options for managing risks and diversifying their portfolios.

Both the PFC and The Bond Market Association suggested additional revisions to the regulation, and asked us

⁹ See FCA BL-038, "Guidance Relating to Investment Activities," Nov. 26, 1997).

¹⁰ In the final regulations, Term Fed Funds are defined as having a maturity between 2 and 100 business days.

several questions about the proposed requirements. They recommend that we grant FCS banks and associations authority to invest in: (1) Mortgage securities that are rated within the two highest rating categories by an NRSRO, (2) multifamily mortgage securities, and (3) non-agency commercial mortgage-backed securities (CMBS). In response to these comments, we revised § 615.5140(a)(5) so System banks and associations can invest in a broader array of mortgage securities.

2. Credit Ratings

Both the PFC and The Bond Market Association asked us to authorize investments in mortgage securities that are rated in the "two" highest (rather than only the highest) credit rating categories of an NRSRO. The commenters assert that investment grade mortgage securities in general have exhibited a remarkable credit performance history. Over the past 20 years, few mortgage security issues have experienced credit-related problems. Furthermore, the two highest credit ratings would correspond with the criteria in the Secondary Mortgage Market Enhancement Act of 1984.¹¹

After carefully considering the commenters' input and weighing the potential risks, we did not adopt the suggestion to lower the credit rating for mortgage securities. There is an ample assortment of mortgage securities in the highest investment credit rating category that System banks and associations can use for liquidity, cash and interest rate risk management. We believe the final regulation maintains the high credit quality of System investments without depriving System institutions of any significant opportunity to invest in mortgage securities.

3. Mortgage Securities that are Issued or Guaranteed by the United States

We made a technical correction to the provision that allows FCS banks and associations to invest in mortgage securities that are issued or fully guaranteed by the United States. Our proposal omitted language in the former regulations that authorize investment in securities that are backed by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States. Final § 615.5140(a)(5) allows System banks and associations to invest in mortgage securities that are:

- Issued or guaranteed by the Government National Mortgage Association (GNMA); or

- Secured by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States.

This provision extends to mortgage securities issued by the Small Business Administration (SBA) or other Federal government agencies if the full faith and credit of the United States back the principal and interest payment of the underlying mortgages. All mortgage securities that System banks and associations purchase under § 615.5140(a)(5) must comply with the stress-testing requirements in § 615.5141.

4. Agency Mortgage Securities

We made no changes to FCS institutions' authorities to invest in residential mortgage securities that are:

- Issued by Fannie Mae and the Freddie Mac; or
- Issued under a private label but are collateralized by Fannie Mae or Freddie Mac mortgage-backed securities.

System banks, however, suggested that we add Fannie Mae Delegated Underwriting and Servicing (DUS) bonds to the list of eligible investments. Fannie Mae DUS bonds are mortgage securities backed by multifamily mortgage loans. They carry the Fannie Mae guarantee on the timely payment of principal and interest. They also have low prepayment risk due to yield maintenance agreements, prepayment lockouts, and prepayment fees. We agree that agency mortgage securities backed by multifamily loans are suitable investments for FCS institutions. Therefore, we amended the definition of "mortgage securities" in § 615.5131(i) to clarify that FCS banks and associations have the authority to invest in Fannie Mae DUS bonds and other mortgage securities on multifamily residential properties that are issued or guaranteed by Federal agencies and instrumentalities. Agency mortgage securities that are secured by multifamily loans must meet the stress-testing requirements of § 615.5141.

5. Portfolio Limits on Fannie Mae and Freddie Mac Mortgage Securities

Two commenters, the PFC and The Bond Market Association, asserted that the 50-percent portfolio limit on Fannie Mae and Freddie Mac mortgage securities is overly restrictive and unprecedented. According to these commenters, the credit risk on these securities is almost non-existent and no other financial regulatory agency places any restrictions on the amount of these securities.

After a thorough evaluation of these comments, we decided not to eliminate

the portfolio limit on Fannie Mae and Freddie Mac mortgage securities. We believe that regulatory portfolio limits enhance safety and soundness by promoting diversification of System investment portfolios and curtailing investments in securities that may exhibit considerable interest rate risk. The final regulation greatly expands the types of mortgage securities that are eligible investments. Under the circumstances, we believe portfolio limits are an appropriate regulatory tool for controlling the System's market risk exposure from these instruments.

We did, however, make one important modification to the proposed portfolio limits in response to the commenters' concerns. Under the final regulations, the 50-percent limit on agency mortgage securities is now separate from the 15-percent limit on non-agency residential and commercial mortgage securities. The new portfolio limits accommodate the System's desire for greater opportunities to invest in mortgage securities.

We emphasize that the board and management of each System bank, association, or service corporation are responsible for establishing exposure limits on all types of mortgage securities. Regulatory portfolio limits on certain mortgage securities do not absolve an institution's board or management of its responsibility to set limits based on its unique risk-bearing capacity, management capabilities, and objectives. Moreover, the board of directors of each System bank or association has a fiduciary duty to maintain a well-diversified investment portfolio to reduce the risk of substantial loss. We also expect FCS banks and associations to diversify their investments within each major asset class.

6. Non-Agency Mortgage Securities

Our proposal would authorize System institutions to invest in mortgage securities that are offered by private entities.¹² Under the proposal, only the highest rated privately issued securities that are collateralized by qualifying residential mortgages meeting the collateral requirements of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA), would be eligible investments.¹³ SMMEA securities must generally be secured by a first lien on

¹² See proposed § 615.5140(a)(5)(ii).

¹³ The proposed rule allows investments in mortgage securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5) or are residential mortgage-related securities within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41).

¹¹ See Pub. L. 98-440, 98 Stat. 1689 (Oct. 3, 1984).

a single parcel of real estate (residential or mixed residential commercial structure) and originated by a qualifying financial institution.¹⁴ Our proposal required System banks and associations to subject these mortgage securities to a stress test under § 615.5141 prior to purchase.

System banks requested additional authority to invest in mortgage securities that are collateralized by mortgages on commercial properties, such as apartment buildings, shopping centers, office buildings, and hotels. CMBS typically have yield maintenance provisions or other features that provide greater prepayment protection to investors than residential mortgage securities.¹⁵ However, CMBS are more difficult to analyze in terms of credit risk. The structure of CMBS securities can vary widely and the more unique structures may contain additional risks that need to be thoroughly evaluated. The CMBS market is relatively young and has recently experienced liquidity problems.

On balance, we conclude CMBS with appropriate safety and soundness controls may help Farm Credit banks achieve greater portfolio diversification and risk-adjusted returns. We, therefore, authorized investments in CMBS that are rated in the highest credit rating category by an NRSRO and supported by no less than 100 mortgage loans that are geographically dispersed. Additionally, no single obligor can be the mortgagor on more than 5 percent of the loans in the entire mortgage pool. The final regulation subjects CMBS to the same portfolio cap as non-agency mortgage securities. As a result, the combined investment in CMBS and non-agency mortgage securities cannot exceed 15 percent of the total investment portfolio.

Prudent investment practices require investment managers to fully understand the cashflow characteristics and price sensitivity of CMBS investments. Thus, we require System institutions to subject CMBS investments to stress testing in accordance with § 615.5141. Furthermore, System banks should rely on evaluation methodologies that take into account all the risk elements in CMBS investments. In this regard, we stress the importance of making an independent and critical evaluation of

the security's credit and liquidity risks prior to purchase, and on an ongoing basis.

7. Other Mortgage-Derivative Products

The FCA proposed to repeal existing §§ 615.5131(r) and (s), 615.5140(a)(2)(v), and certain provisions in § 615.5174(c) that explicitly ban investments in SMBS and inverse floating-rate debt classes. We concluded that the explicit regulatory ban on certain mortgage-derivative products (MDP) is unnecessary because all mortgage securities are subject to stress-testing requirements. We received no comments regarding these proposed changes, and therefore adopt this provision as a final rule.

However, certain MDP (such as SMBS) may pose substantial risks to the System institutions, and, therefore we take this opportunity to reiterate the importance of effective risk management and to provide additional guidance. Although we recognize that MDP can be useful tools for reducing interest rate risk, certain MDP are risky because their prices may be subject to substantial fluctuations. Successful risk management of these instruments requires a thorough understanding of the principles that govern the pricing of these instruments. The degree of price sensitivity that a mortgage security exhibits to changes in market interest rates is influenced by its unique characteristics. A System institution should determine whether a particular mortgage security meets its risk management objectives by using analytical techniques and methodologies that effectively evaluate how interest rate changes will affect prepayments and cashflows of the instrument.

Investment managers must have a reasonable basis for making investments in MDP that exhibit significant price sensitivity and maintain appropriate records to support their investment decisions. In general, the FCA would view it as an unsafe and unsound practice for FCS banks and associations to hold highly price-sensitive MDPs, such as interest-only or principal-only SMBS, for any purpose other than to reduce specific interest rate risks. Managers must document, prior to purchase and each quarter thereafter, that the MDP is reducing the interest rate risk of a designated group of assets or liabilities and the interest rate risk of the institution.

E. Asset-Backed Securities

1. An Overview of Our Proposal and Summary of Comments

Our proposal expanded the collateral for eligible asset-backed securities (ABS) to include student loans, manufactured housing loans, wholesale dealer automobile loans, equipment loans and home equity loans. Under these regulations, securities collateralized by home equity loans qualify as ABS, not mortgage securities. Proposed § 615.5140(a)(6) specified that the weighted average life (WAL) for all eligible ABS could not exceed 5 years and the final maturity could not exceed 7 years. We further proposed that all eligible ABS achieve the highest credit rating from an NRSRO, and we suggested a 20-percent portfolio cap on these investments. We also solicited your comments on how we could develop a more flexible regulatory framework that could effectively respond to new innovations in the ABS market.

The PFC and The Bond Market Association responded to our proposal on ABS. They asked us to revise the provisions in proposed § 615.5140(a)(6) relating to ABS maturity, collateral, and credit rating requirements and the portfolio limit. In response, we made several modifications to these proposed provisions, which are explained below.

2. Final Maturity

The PFC and The Bond Market Association advised us that the combination of a 5-year WAL and a final maturity of 7 years would effectively prevent System banks and associations from investing in some of the most liquid segments of the ABS markets. As a result, both commenters asked us to omit the provision that establishes a final maturity for ABS from final § 615.5140(a)(6).

We conclude that the commenters' suggestion has merit. Generally, the WAL is the average amount of time required for each dollar of invested principal to be repaid, based on the cashflow structure of an ABS and an assumed level of prepayments. In contrast, the final maturity of an ABS refers to the date that the final principal payment on the underlying collateral is due. Nearly all ABS are priced and traded on the basis of their WAL. We agree that the 7-year final maturity restriction in the proposed rule would have effectively foreclosed the System's ability to invest in ABS that are backed by certain types of collateral, especially manufactured housing and home equity loans. Therefore, the final rule does not

¹⁴ See SMMEA amended section 3(a)(41) of the Securities Exchange Act of 1934.

¹⁵ "CMBS" refers only to non-mortgage securities on commercial real estate. This term does not cover Fannie Mae mortgage securities on mixed residential and commercial properties or mortgage securities on commercial real estate that the SBA issues or guarantees.

impose a maximum final maturity on ABS.

3. Adjustable Rate ABS

The PFC also asked us to modify the maturity guidelines for adjustable rate ABS so that they are more consistent with the criteria for adjustable rate mortgage securities. The preamble to the proposed rule noted that repricing frequency, periodic life caps, and the underlying index are important determinants of how a floating rate ABS performs and its interest rate risk profile.¹⁶ Although the PFC generally agreed with this statement, it pointed out that the maturity (whether defined as WAL, expected final or legal final maturity) will not provide much insight into the interest rate risk profile of the instrument. The PFC also noted that these securities have minimal price sensitivity and interest rate risk because most adjustable rate ABS: (1) Frequently reprice off a recognized index; (2) are uncapped; or (3) have very high lifetime interest rate caps. We agree and we have modified the regulations to address these concerns. Under the final regulations, the expected WAL on eligible ABS must not exceed:

- Five (5) years for a fixed rate security or floating rate security at its contractual interest rate cap;
- Seven (7) years for a floating rate security without a cap or floating rate security that remains below its contractual interest rate cap.

4. Collateral and Credit Ratings

The PFC suggests that final § 615.5140(a)(6) authorizes System banks to invest in any ABS that is rated in the two highest credit rating categories by an NRSRO once a liquid market is established. The PFC believes that its suggestion would expand the System's opportunities to invest in the ABS market while preventing System banks and associations from acquiring individual securities that are illiquid. The PFC asserts that a high credit rating is indicative of whether an ABS is liquid. The commenter supports its position by pointing out that the secondary market for ABS is now larger than the secondary market for Collateralized Mortgage Obligations (CMOs). If we adopted this approach, the final regulation would not restrict the types of collateral that back eligible ABS.

We did not incorporate the PFC's suggestion into final § 615.5140(a)(6). This regulation allows System banks and associations to invest in most ABS that are available in the financial

markets. Although the ABS market now outpaces the CMO market, the secondary market for ABS issues secured by other types of collateral is more limited. The PFC acknowledges in its comment letter that its suggestion may not necessarily be a reliable gauge of liquidity in ABS markets. Final § 615.5140(a)(6) provides System institutions ample opportunities to invest in highly rated, fixed-income ABS that offer stable cashflows. Furthermore, the FCA will consider approval of other types of ABS on a case-by-case basis under final § 615.5140(e).

5. Portfolio Limit

We did not incorporate The Bond Market Association's suggestion to increase the portfolio limit on ABS from 20 to 50 percent. The ABS market primarily developed during a period of prolonged economic growth, and, for the most part, the performance of the ABS market has not been tested under significant economic stress. For this reason, we are reluctant to increase the System's exposure to ABS investments at this time.

Separately, System institutions asked us to explain how § 615.5140 applies to senior ABS that are secured by student loans the United States Department of Education conditionally guarantees. These securities are backed by loans that are conditionally guaranteed by the United States Department of Education through a program that reinsures the guarantees of loans by State and nonprofit agencies. The portion of the security that the United States Department of Education does not conditionally guarantee must be counted toward the 20-percent ABS limit. The portfolio limit does not apply to the portion of the security that the United States guarantees. This treatment is consistent with our approach of placing no portfolio restrictions on investments in obligations that are insured or guaranteed by the United States or its agencies. Obligations that are insured or guaranteed by the United States or its agencies are authorized under § 615.5140(a)(1).

F. Approval Process for Other Investments

We solicited comments on how final § 615.5140 could permit FCS banks and associations to invest in highly rated marketable securities that are not expressly authorized by § 615.5140 without requiring FCA approval. System banks suggested that the FCA should pursue a more general and broader approach to risk management and establish a set of price volatility

guidelines that could be applied to all types of investments. After considering this suggestion, we concluded, for the reasons explained below, that this suggestion is not an effective replacement for the prior approval requirement in § 615.5140.

We make no changes in our process for approving investments not listed in § 615.5140 for several reasons. We designed final regulations that would grant FCS banks more flexibility to manage risk in accordance with their own unique risk tolerance and objectives. For example, FCS institutions now have the option under § 615.5141 to establish their own internal price volatility guidelines for mortgage securities. Furthermore, the final regulations expand the list of eligible investments and remove or relax regulatory restrictions on other authorized investments. Together, these amendments provide each FCS bank with a broader selection of investments so it can establish a well diversified investment portfolio that will enable it to maintain a liquidity reserve, invest surplus funds, and manage interest rate risks. Similarly, § 615.5133 places the primary responsibility for identifying, measuring, and managing risk with each System institution. This provision allows each FCS institution to set its own risk tolerance levels based on its unique circumstances.

Furthermore, establishing a single set of price volatility guidelines that applies to all types of investments and all System banks and associations is inconsistent with our new regulatory approach. We believe we can achieve our safety and soundness objectives by placing greater emphasis on effective investment and risk management practices within the System. Therefore, the final regulations continue to require System institutions to seek our approval before they purchase investments not listed in § 615.5140.

G. Equity Investments

CoBank, ACB, responded to our initiative on regulatory burden by suggesting that we amend § 615.5140 so FCS banks could hold equity investments in borrowers and other third parties who form strategic alliances to serve System customers. These types of investments further the System's mission to finance agriculture and rural communities, but usually they are not suitable for managing liquidity and market risks at System institutions. We plan to initiate a rulemaking in the future that will address the authority of FCS banks and associations to hold equity investments that are related to their agricultural credit mission.

¹⁶ See 63 FR 33281, 33289 (June 18, 1998).

Accordingly, we will address CoBank's request at that time.

IV. Stress Testing for Mortgage Securities

We adopt the requirements for stress testing mortgage securities in § 615.5141 as a final regulation without substantive amendment. However, we did receive several questions and comments regarding stress testing that require a response.

Prior to this rulemaking, FCS banks requested technical modifications to our existing regulatory stress tests. System banks subsequently requested that we repeal the regulatory stress tests after the FFIEC rescinded a policy statement that required depository institutions to stress test mortgage-derivative products.¹⁷ System banks commented that the FCA should make its regulatory approach consistent with the FFIEC's new policy. In response, we proposed significant changes to existing requirements for evaluating the price sensitivity of mortgage securities and determining their suitability. We, however, did not propose to rescind the stress-testing requirement for mortgage securities.

We concluded that stress testing is an essential risk management practice for several reasons. Although credit risk on highly rated mortgage securities is minimal, mortgage securities may expose investors to significant interest rate risk. Since borrowers may prepay their mortgages, investors may not receive the expected cashflows and returns on these securities. Additionally, numerous factors influence the cashflow pattern and price sensitivity of mortgage securities. Prepayments on these securities are affected by the spread between market rates and the actual interest rates of mortgages in the pool, the path of interest rates, and the unpaid balances and remaining terms to maturity on the mortgage collateral. The price behavior of a mortgage security also depends on whether the security was purchased at a premium or at a discount. As a result of these factors, we concluded that each System institution needs to employ appropriate analytical techniques and methodologies to measure and evaluate interest rate risk inherent in mortgage securities. More specifically, prudent risk management practices require every System institution to examine the performance of each mortgage security under a wide array of possible interest rate scenarios.

Our proposal allowed each System institution to accomplish this

performance analysis by choosing between two options for stress testing mortgage securities. Under the first option, an FCS institution could continue to use a modified version of the existing three-pronged stress test in § 615.5141(a). The three tests include an average life test, an average life sensitivity test, and a price sensitivity test.

The Bond Market Association suggested that we eliminate the standardized stress tests in § 615.5141(a) because a risk management program that requires a financial institution to identify, measure, monitor, and control risk on an institutional or portfolio level is more effective than a pass/fail test for individual instruments.

However, we elect to retain the three-pronged stress test in § 615.5141(a) as a viable option for System institutions. Our reasoning for this decision stems from our concerns about additional resources, costs, and expertise associated with more comprehensive analytical techniques needed to effectively manage risk at the portfolio or institutional level. From a historical perspective, the tests in § 615.5141(a) successfully protected Farm Credit banks from significant losses in certain mortgage products. By requiring the pre-purchase and quarterly price sensitivity analysis, System banks were better able to understand the risks associated with their investments.

Under the second stress-testing option, proposed § 615.5141(b) allowed the use of alternative stress test criteria and methodologies to evaluate the price sensitivity of mortgage securities. We proposed this alternative because new risk management techniques better enable investors to measure interest rate risks in complex mortgage securities. We also emphasized that alternate stress tests must be able to measure the price sensitivity of mortgage instruments over different interest rate and yield curve scenarios. Furthermore, the methodology must be commensurate with the complexity of the instrument's structure and cashflows. For example, a pre-purchase analysis should show the effect of an immediate and parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. An instrument's complexity determines whether the risk analysis should encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into consideration other relevant factors. Most importantly, the methodology that each System bank or association uses to evaluate an instrument's suitability must be able to

determine that a particular mortgage security:

- Meets the objectives and risk limits in its investment policies; and
- Does not expose the capital and earnings of the institution to excessive risk.

We received one comment from the PFC on proposed § 615.5141(b). The PFC requested clarification on whether the board or the management of each FCS bank and association is responsible for establishing the risk parameters of alternate stress tests. If the board elects to use alternative stress tests as permitted under § 615.5141(b) to gauge market risk in mortgage securities, it must also assume responsibility for establishing the risk parameters for the stress test.

In further response to the PFC, we reaffirm that § 615.5141(b) is consistent with the guidance in the FFIEC's policy statement regarding stress testing mortgage securities. Our new approach, which we now adopt as a final regulation, enables System banks and associations to rely on more comprehensive analytical techniques that enhance their risk management. Our regulations no longer prevent System banks and associations from holding mortgage securities solely on the basis that they exhibit significant price sensitivity. The final regulation affords FCS banks and associations the latitude to consider a number of factors when evaluating a mortgage security's suitability. For example, System banks and associations may consider interest rate volatility, changes in credit spreads, an instrument's total return or whether the instrument reduces the overall risk in the investment portfolio or throughout the institution.

The PFC inquired whether derivative hedge transactions could be considered when determining whether a mortgage security is an eligible investment. We confirm that FCS institutions may consider the effect of derivative hedge transactions on the price sensitivity of instruments as part of their evaluation of whether a particular mortgage security is a suitable investment under either § 615.5141(a) or (b).

V. Farmer Mac Mortgage Securities

1. Our Proposal

We proposed technical amendments to § 615.5174, which authorizes FCS banks and associations to invest in mortgage securities that are issued or guaranteed by Farmer Mac. Basically, we intended to revise § 615.5174 so it conforms to amendments in subpart E of part 615. More specifically, these technical amendments would:

¹⁷ See 63 FR 20191 (Apr. 23, 1998).

- Delete cross-references to the former definitions of “mortgage-backed securities,” “collateralized mortgage obligations,” “Real Estate Mortgage Investment Conduits,” and “adjustable rate mortgages” in § 615.5131; and

- Repeal existing § 615.5174(c), which prohibits FCS banks and associations from investing in Farmer Mac stripped mortgage-backed securities.

2. Summary of Comments

Two commenters requested substantive revisions to § 615.5174. Farmer Mac asked us to amend our regulations to equalize the regulatory treatment of mortgage securities of Farmer Mac, Fannie Mae, and Freddie Mac. Farmer Mac asserts that our original justification for according Farmer Mac mortgage securities a different regulatory treatment than Fannie Mae and Freddie Mac mortgage securities is no longer valid. Farmer Mac points out that 2 years after we adopted existing § 615.5174, Congress enacted the Farm Credit System Reform Act of 1996¹⁸ (1996 Act), which repealed several statutory provisions that distinguished its mortgage securities from those of Fannie Mae and Freddie Mac. As a result of these statutory changes, Farmer Mac asserts that the spreads of Farmer Mac mortgage securities are now close to those on comparable Fannie Mae and Freddie Mac products. For these reasons, Farmer Mac believes that the mortgage securities of all three GSEs expose investors to approximately the same risk of loss and should be treated in a similar fashion.

The jointly managed Central Coast Production Credit Association/Federal Land Credit Association (Central Coast) responded to our notice on regulatory burden by encouraging us to repeal the 20-percent portfolio limit on Farmer Mac mortgage securities in existing § 615.5174(a). As the commenter notes, we enacted this portfolio limit in 1993, when the Act required System banks and associations to guarantee 10 percent of Farmer Mac mortgage securities through either a cash reserve or a subordinated participation interest in the underlying loans. The associations assert that the original safety and soundness rationale for the 20-percent portfolio limit no longer exists because Farmer Mac now has the authority both to issue mortgage securities and to fully guarantee principal and interest payments to investors.

3. Response to Comments

We acknowledge that the 1996 Act granted Farmer Mac many of the same powers that Fannie Mae and Freddie Mac have to issue and guarantee mortgage securities. These statutory amendments profoundly changed Farmer Mac’s business operations and the market for its securities. We agree that the 1996 Act has rendered many provisions of existing § 615.5174 obsolete, and for this reason, this regulation requires more than technical and conforming amendments.

4. Final Regulation

We have fashioned a final regulation that balances the interests of both Farmer Mac and other System institutions. We recognized Farmer Mac’s new statutory powers and market realities by repealing all obsolete provisions in § 615.5174. The final regulation responds to Farmer Mac’s request for comparable treatment with Fannie Mae and Freddie Mac by applying the investment management provisions of final § 615.5133(b) and (c) and the stress test requirements of final § 615.5141 to Farmer Mac mortgage securities. In the same context, final § 615.5174 focuses on issues that are unique to investments by FCS banks and associations in Farmer Mac mortgage securities. In addition, the final regulation allows System banks and associations more latitude to manage their credit risks through investments in Farmer Mac securities.

Final § 615.5174(a) continues to authorize System banks and associations to invest in mortgage securities that are issued or guaranteed as to principal and interest by Farmer Mac. This provision specifically allows System banks and associations to purchase and hold Farmer Mac securities for the purposes of: (1) Managing credit and interest rate risk; and (2) furthering their mission to finance agriculture. Certain Farmer Mac mortgage securities may help System banks and associations to manage interest rate risk exposures in their portfolios. Additionally, System banks and associations can use these mortgage securities for cashflow management because Farmer Mac guarantees that investors will receive timely payment of principal and interest.

We added explicit references to associations to final § 615.5174 to clarify the scope of this regulation. Because redesignated § 615.5142 contained a redundant authorization for FCS associations to purchase and hold Farmer Mac mortgage securities, we

deleted the reference to § 615.5174 in redesignated § 615.5142.

System banks and associations can still acquire subordinated participation interests in Farmer Mac pools, although title VII of the Act no longer requires them to do so. Investments by System banks and associations in subordinate Farmer Mac securities are also subject to regulations in part 614 of this chapter.

In response to Central Coast’s request, we modified the portfolio cap in this regulation. Farmer Mac mortgage securities can be used to diversify the credit risk exposure in FCS bank and association agricultural loans and further their important mission objectives. Therefore, final § 615.5174 allows System banks and associations to hold Farmer Mac mortgage securities in an amount that is equal to their total outstanding loans.

We note that System banks must not count Farmer Mac mortgage securities as part of their total outstanding loans when they calculate their 30-percent portfolio limit for liquid investments under § 615.5132. Our reason for this treatment is that Farmer Mac mortgage securities are not considered loans of System banks and associations.

Final § 615.5174(b) covers the responsibilities of boards and senior management for overseeing investments in Farmer Mac securities. This provision requires each Farm Credit bank and association board of directors to adopt written policies that will govern their investments in Farmer Mac securities. Final § 615.5174(b) closely parallels similar provisions in § 615.5133 that guide investment management practices for non-agricultural investments.

Final § 615.5174(c) also closely follows similar provisions in § 615.5133. This provision requires banks and associations to establish policies that identify the types and quantity of Farmer Mac securities they will hold to achieve their objectives and set credit, market, and liquidity risk limits. Under final § 615.5174(c)(2), the board’s policy must establish specific criteria for managing credit risk by establishing product and geographic diversification requirements for investments in Farmer Mac mortgage securities. Final § 615.5174(c)(3) requires the board’s policies to address how the market risk of Farmer Mac mortgage securities affects the institution’s capital and earnings.

Under final § 615.5174(c)(4), board policies must indicate liquidity risk tolerance levels. Risk preferences may be based on the liquidity characteristics of the types of Farmer Mac securities you wish to select for your portfolio and your institutional objectives. We

¹⁸ Pub. L. 104–105, 110 Stat. 162 (Feb. 10, 1996).

recognize that if your objective is to hold Farmer Mac securities until maturity, liquidity risk is less important. Additionally, the final regulations prohibit Farm Credit banks from holding Farmer Mac mortgage securities in the liquidity reserve they maintain under § 615.5134. Our concern over concentration risk led us to develop this provision. For example, if the System had real or perceived credit problems due to a crisis in the agricultural economy and could not access the market at reasonable rates, those same economic factors may also adversely affect the price and liquidity of Farmer Mac securities.

Lastly, final § 615.5174(d) requires System banks and associations to perform stress tests in accordance with final § 615.5141 to measure market risks in these securities.

VI. Liquidity Reserve

We received no comment on our proposal to repeal a provision in existing § 615.5134(b) which requires System banks to segregate investments in the liquidity reserve from investments that are held for other purposes under § 615.5132. This amendment provides FCS banks with greater flexibility to decide how to best use their investments to manage risk exposure.

In response to our initiative on regulatory burden, CoBank, ACB, stated that the “burdensome liquidity reserve requirement calculations should be simplified.” The commenter did not offer any suggestions for simplifying the liquidity reserve requirement in § 615.5134.

The liquidity reserve requirement for System banks is calculated using a basic formula. The liquidity reserve requirement ensures that FCS banks have a pool of liquid investments to fund their operations for approximately 15 days if their access to the capital markets becomes impeded. We believe the significance of maintaining an ample supply of liquid funds outweighs any burdens created by the liquidity reserve calculation process. Thus, we made no changes to the liquidity reserve calculation at this time.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

Subpart E—Investment Management

2. Section 615.5131 is revised to read as follows:

§ 615.5131 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Asset-backed securities (ABS)* mean investment securities that provide for ownership of a fractional undivided interest or collateral interests in specific assets of a trust that are sold and traded in the capital markets. For the purposes of this subpart, ABS exclude mortgage securities that are defined in § 615.5131(i).

(b) *Bank* means a Farm Credit Bank, agricultural credit bank, or bank for cooperatives.

(c) *Eurodollar time deposit* means a non-negotiable deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(d) *Final maturity* means the last date on which the remaining principal amount of a security is due and payable (matures) to the registered owner. It does not mean the call date, the expected average life, the duration, or the weighted average maturity.

(e) *General obligations* of a State or political subdivision means:

(1) The full faith and credit obligations of a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a political subdivision thereof that possesses general powers of taxation, including property taxation; or

(2) An obligation that is unconditionally guaranteed by an obligor possessing general powers of taxation, including property taxation.

(f) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between its bid and ask

price is narrow and a reasonable amount can be sold at those prices.

(g) *Loans* are defined by § 621.2(f) of this chapter and they are calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans during the quarter.

(h) *Market risk* means the risk to the financial condition of your institution because the value of your holdings may decline if interest rates or market prices change. Exposure to market risk is measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire institution.

(i) *Mortgage securities* means securities that are either:

(1) Pass-through securities or participation certificates that represent ownership of a fractional undivided interest in a specified pool of residential (excluding home equity loans), multifamily or commercial mortgages, or

(2) A multiclass security (including collateralized mortgage obligations and real estate mortgage investment conduits) that is backed by a pool of residential, multifamily or commercial real estate mortgages, pass-through mortgage securities, or other multiclass mortgage securities.

(j) *Nationally Recognized Statistical Rating Organization (NRSRO)* means a rating organization that the Securities and Exchange Commission recognizes as an NRSRO.

(k) *Revenue bond* means an obligation of a municipal government that finances a specific project or enterprise but it is not a full faith and credit obligation. The obligor pays a portion of the revenue generated by the project or enterprise to the bondholders.

(l) *Weighted average life (WAL)* means the average time until the investor receives the principal on a security, weighted by the size of each principal payment and calculated under specified prepayment assumptions.

(m) *You* means a Farm Credit bank, association, or service corporation.

3. Section 615.5133 is revised to read as follows:

§ 615.5133 Investment management.

(a) *Responsibilities of Board of Directors.* Your board must adopt written policies for managing your investment activities. Your board of directors must also ensure that management complies with these policies and that appropriate internal controls are in place to prevent loss. Annually, the board of directors must

review these investment policies and make any changes that are needed.

(b) *Investment policies.* Your board's written investment policies must address the purposes and objectives of investments, risk tolerance, delegations of authority, and reporting requirements. Investment policies must be appropriate for the size, types, and risk characteristics of your investments.

(c) *Risk tolerance.* Your investment policies must establish risk limits and diversification requirements for the various classes of eligible investments and for the entire investment portfolio. These policies must ensure that you maintain appropriate diversification of your investment portfolio. Risk limits must be based on your institutional objectives, capital position, and risk tolerance. Your policies must identify the types and quantity of investments that you will hold to achieve your objectives and control credit, market, liquidity, and operational risks. The policy of any association or service corporation that holds significant investments and each bank must establish risk limits for the following four types of risk.

(1) *Credit risk.* Investment policies must establish:

(i) Credit quality standards, limits on counterparty risk, and risk diversification standards that limit concentrations based on a single or related counterparty(ies), a geographical area, industries or obligations with similar characteristics.

(ii) Criteria for selecting brokers, dealers, and investment bankers (collectively, securities firms). You must buy and sell eligible investments with more than one securities firm. As part of your annual review of your investment policies, your board of directors must review the criteria for selecting securities firms and determine whether to continue your existing relationships with them.

(iii) Collateral margin requirements on repurchase agreements.

(2) *Market risk.* Investment policies must set market risk limits for specific types of investments, the investment portfolio, or your institution. Your board of directors must establish market risk limits in accordance with these regulations and our other policies.

(3) *Liquidity risk.* Investment policies must describe the liquidity characteristics of eligible investments that you will hold to meet your liquidity needs and institutional objectives.

(4) *Operational risk.* Investment policies must address operational risks, including delegations of authority and internal controls in accordance with paragraphs (d) and (e) of this section.

(d) *Delegation of authority.* All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for investments.

(e) *Internal controls.* You must:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments.

(2) Establish and maintain a separation of duties and supervision between personnel who execute investment transactions and personnel who approve, reevaluate, and oversee investments.

(3) Maintain management information systems that are appropriate for the level and complexity of your investment activities.

(f) *Securities valuation.*

(1) Before you purchase a security, you must evaluate its credit quality and its price sensitivity to changes in market interest rates. You must also verify the value of a security that you plan to purchase, other than a new issue, with a source that is independent of the broker, dealer, counterparty or other intermediary to the transaction.

(2) You must determine the fair market value of each security in your portfolio and the fair market value of your whole investment portfolio at least monthly. You must also evaluate the

credit quality and price sensitivity to change in market interest rates of all investments that you hold on an ongoing basis.

(3) Before you sell a security, you must verify its value with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction.

(g) *Reports to the board.* Each quarter, management must report to the board of directors or a board committee on the performance and risk of each class of investments and the entire investment portfolio. These reports must identify all gains and losses that you incur during the quarter on individual securities that you sold before maturity. Reports must also identify potential risk exposure to changes in market interest rates and other factors that may affect the value of your bank's investment holdings. Management's report must discuss how investments affect your bank's overall financial condition and must evaluate whether the performance of the investment portfolio effectively achieves the board's objectives. Any deviations from the board's policies must be specifically identified in the report.

4. Section 615.5134 is amended by revising paragraph (b) to read as follows:

§ 615.5134 Liquidity reserve requirement.

* * * * *

(b) All investments that the bank holds for the purpose of meeting the liquidity reserve requirement of this section must be free of lien.

* * * * *

5. Section 615.5140 is revised to read as follows:

§ 615.5140 Eligible investments.

(a) You may hold only the following types of investments listed in the Investment Eligibility Criteria Table. These investments must be denominated in United States dollars.

Billing Code 6705-01-P

Investment Eligibility Criteria Table

ASSET CLASS	FINAL MATURITY LIMIT	NRSRO CREDIT RATING	OTHER REQUIREMENTS	INVESTMENT PORTFOLIO LIMIT
(1) Obligations of the United States	None	NA	None	None
- Treasuries - Agency securities (except mortgage securities) - Other obligations fully insured or guaranteed by the United States, its agencies, instrumentalities and corporations				
(2) Municipal Securities				
General obligations	10 years	One of the highest two	None	None
Revenue bonds	5 years	Highest	At the time of purchase, you must document that the issue is actively traded in an established secondary market	15%
(3) International and Multilateral Development Bank Obligations	None	None	The United States must be a voting shareholder	None
(4) Money Market Instruments				
Federal funds	1 day or continuously callable up to 100 days	One of the two highest short-term	None	None
Negotiable certificates of deposit	1 year		None	None
Bankers acceptances	None		Issued by a depository institution	None
Commercial paper	270 days			None
Non-callable Term Federal funds and Eurodollar time deposits	100 days	Highest short-term	None	20%
Master notes	270 days			20%
Repurchase agreements collateralized by eligible investments or marketable securities rated in the highest credit rating category by an NRSRO	100 days	NA	If counterparty defaults, you must divest non-eligible securities under § 615.5143	None

ASSET CLASS	FINAL MATURITY LIMIT	NRSRO CREDIT RATING	OTHER REQUIREMENTS	INVESTMENT PORTFOLIO LIMIT
(5) Mortgage Securities				
• Issued or guaranteed by the United States	None	NA	Stress testing under § 615.5141	None
• Fannie Mae or Freddie Mac mortgage securities	None	NA	Stress testing under § 615.5141	50%
• Non-Agency securities that comply 15 U.S.C. 77d(5) or 15 U.S.C. 78c(a)(41)	None	Highest	Stress testing under § 615.5141	15%
• Commercial mortgage-backed securities	None	Highest	• Security must be backed by a minimum of 100 loans. • Loans from a single mortgagor cannot exceed 5% of the pool • Pool must be geographically diversified pursuant to the board's policy • Stress testing under § 615.5141	
(6) Asset-Backed Securities secured by:				
• Credit card receivables	None	Highest	5-year WAL for fixed rate or floating rate ABS at their contractual interest rate caps	20%
• Automobile loans				
• Home equity loans				
• Wholesale automobile dealer loans				
• Student loans				
• Equipment loans				
• Manufactured housing loans				
(7) Corporate Debt Securities	5 years	One of the two highest	Cannot be convertible to equity securities	20%
(8) Diversified Investment Funds				
Shares of an investment company registered under section 8 of the Investment Company Act of 1940	NA	NA	The portfolio of the investment company must consist solely of eligible investments authorized by §§ 615.5140 and 615.5174. The investment company's risk and return objectives and use of derivatives must be consistent with FCA guidance and your investment policies.	None, if your shares in each investment company comprise 10% or less of your portfolio. Otherwise counts toward limit for each type of investment.

(b) *Rating of foreign countries.* Whenever the obligor or issuer of an eligible investment is located outside the United States, the host country must maintain the highest sovereign rating for political and economic stability by an NRSRO.

(c) *Marketable securities.* All eligible investments, except money market instruments, must be marketable. An eligible investment is marketable if you can sell it quickly at a price that closely reflects its fair value in an active and universally recognized secondary market.

(d) *Obligor limits.*

(1) You may not invest more than 20 percent of your total capital in eligible investments issued by any single institution, issuer, or obligor. This obligor limit does not apply to obligations, including mortgage securities, that are issued or guaranteed as to interest and principal by the United States, its agencies, instrumentalities, or corporations.

(2) Obligor limits for your holdings in an investment company. You must count securities that you hold through an investment company towards the obligor limit of this section unless the investment company's holdings of the security of any one issuer do not exceed five (5) percent of the investment company's total portfolio.

(e) *Other investments approved by the FCA.* You may purchase and hold other investments that we approve. Your request for our approval must explain the risk characteristics of the investment and your purpose and objectives for making the investment.

§§ 615.5141 through 615.5143 [Redesignated]

6. Sections 615.5141, 615.5142, and 615.5143 are redesignated as §§ 615.5142, 615.5143, and 615.5144, respectively, and a new § 615.5141 is added to read as follows:

§ 615.5141 Stress tests for mortgage securities.

Mortgage securities are not eligible investments unless they pass a stress test. You must perform stress tests to determine how interest rate changes will affect the cashflow and price of each mortgage security that you purchase and hold, except for adjustable rate securities that reprice at intervals of 12 months or less and are tied to an index. You must also use stress tests to gauge how interest rate fluctuations on mortgage securities affect your institution's capital and earnings. You may conduct the stress tests as described in either paragraph (a) or (b) of this section.

(a) Mortgage securities must comply with the following three tests at the time of purchase and each following quarter:

(1) *Average Life Test.* The expected WAL of the instrument does not exceed 5 years.

(2) *Average Life Sensitivity Test.* The expected WAL does not extend for more than 2 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test.* The estimated change in price is not more than thirteen (13) percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(4) *Exemption.* A floating rate mortgage security is subject only to the price sensitivity test in paragraph (a)(3) of this section if at the time of purchase and each quarter thereafter it bears a rate of interest that is below its contractual cap.

(b) You may use an alternative stress test to evaluate the price sensitivity of your mortgage securities. An alternative stress test must be able to measure the price sensitivity of mortgage instruments over different interest rate/ yield curve scenarios. The methodology that you use to analyze mortgage securities must be appropriate for the complexity of the instrument's structure and cashflows. Prior to purchase and each quarter thereafter, you must use the stress test to determine that the risk in the mortgage security is within the risk limits of your board's investment policies. The stress test must enable you to determine at the time of purchase and each subsequent quarter that the mortgage security does not expose your capital or earnings to excessive risks.

(c) You must rely on verifiable information to support all your assumptions, including prepayment and interest rate volatility assumptions, when you apply the stress tests in either paragraph (a) or (b) of this section. You must document the basis for all assumptions that you use to evaluate the security and its underlying mortgages. You must also document all subsequent changes in your assumptions. If at any time after purchase, a mortgage security no longer complies with requirements in this section, you must divest it in accordance with § 615.5143.

7. Newly designated § 615.5142 is revised to read as follows:

§ 615.5142 Association investments.

An association may hold eligible investments listed in § 615.5140, with

the approval of its funding bank, for the purposes of reducing interest rate risk and managing surplus short-term funds. Each bank must review annually the investment portfolio of every association that it funds.

8. Newly designated § 615.5143 is revised to read as follows:

§ 615.5143 Disposal of ineligible investments.

You must dispose of an ineligible investment within 6 months unless we approve, in writing, a plan that authorizes you to divest the instrument over a longer period of time. An acceptable divestiture plan must require you to dispose of the ineligible investment as quickly as possible without substantial financial loss. Until you actually dispose of the ineligible investment, the managers of your investment portfolio must report at least quarterly to your board of directors about the status and performance of the ineligible instrument, the reasons why it remains ineligible, and the managers' progress in disposing of the investment.

Subpart F—Property and Other Investments

9. Section 615.5174 is revised to read as follows:

§ 615.5174 Farmer Mac securities.

(a) *General authority.* You may purchase and hold mortgage securities that are issued or guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation (Farmer Mac securities). You may purchase and hold Farmer Mac securities for the purposes of managing credit and interest rate risks, and furthering your mission to finance agriculture. The total value of your Farmer Mac securities cannot exceed your total outstanding loans, as defined by § 615.5131(g).

(b) *Board and management responsibilities.* Your board of directors must adopt written policies that will govern your investments in Farmer Mac securities. All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for managing your investments in Farmer Mac securities. The board of directors must also ensure that appropriate internal controls are in place to prevent loss, in accordance with § 615.5133(e). Management must submit quarterly reports to the board of directors on the performance of all investments in Farmer Mac securities. Annually, your board of directors must review these policies and the performance of your

Farmer Mac securities and make any changes that are needed.

(c) *Policies.* Your board of directors must establish investment policies for Farmer Mac securities that include your:

(1) *Objectives* for holding Farmer Mac securities.

(2) *Credit risk* parameters including:

(i) The quantities and types of Farmer Mac mortgage securities that are collateralized by qualified agricultural mortgages, rural home loans, and loans guaranteed by the Farm Service Agency.

(ii) Product and geographic diversification for the loans that underlie the security; and

(iii) Minimum pool size, minimum number of loans in each pool, and maximum allowable premiums or discounts on these securities.

(3) *Liquidity risk* tolerance and the liquidity characteristics of Farmer Mac securities that are suitable to meet your institutional objectives. A bank may not include Farmer Mac mortgage securities in the liquidity reserve maintained to comply with § 615.5134.

(4) *Market risk* limits based on the effects that the Farmer Mac securities have on your capital and earnings.

(d) *Stress Test.* You must perform stress tests on mortgage securities that are issued or guaranteed by Farmer Mac in accordance with the requirements of § 615.5141(b) and (c). If a Farmer Mac security fails a stress test, you must divest it as required by § 615.5143.

Dated: May 13, 1999.

Vivian Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99-13622 Filed 5-27-99; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE121; Special Conditions No. 33-002-SC]

Special Conditions: General Electric Aircraft Engines Models CT7-6D, CT7-6E and CT7-8 Turboshaft Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the General Electric Aircraft Engines (GEAE) Models CT7-6D, CT7-6E and CT7-8 turboshaft engines. These engines will have 30-second one-engine-inoperative (OEI) and 2-minute OEI ratings. The applicable airworthiness

standards do not contain appropriate safety standards for engine overspeed test requirements for these engine ratings. This document contains the additional safety standards for the overspeed test for these ratings under § 33.27 that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. This document also specifies the mandatory post-flight engine inspection and maintenance requirements for these ratings in accordance with § 33.4.

DATES: The effective date of these special conditions is May 21, 1999. Comments must be received on or before July 27, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Docket NE121; 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or delivered in duplicate to the Office of the Regional Counsel at the above address.

Comments must be marked: Docket No. NE121. Comments may be inspected in the Docket weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Chung Hsieh, FAA, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7115; facsimile (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions numbers and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments

submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NE121." The postcard will be date-stamped and returned to the commenter.

Background

On May 24, 1996, GEAE applied for an amendment to type certificate E8NE to include a new model CT7-6E turboshaft engine. On July 15, 1996, GEAE applied for an amendment to type certificate E8NE to include a new model CT7-6D turboshaft engine. On August 12, 1996, GEAE applied for an amendment to type certificate E8NE to include a new model CT7-8 turboshaft engine. These models are all derivatives of the CT7 series turboshaft engine. With all of these applications GEAE applied for 30-second OEI and 2-minute OEI ratings for the new engine designs. The CT7-6D and the CT7-6E turboshaft engines will be rated at 30-second OEI, 2-minute OEI, continuous OEI, takeoff, and maximum continuous ratings. The CT7-8 turboshaft engine will be rated at 30-second OEI, 2-minute OEI, 30-minute OEI, takeoff, and maximum continuous ratings.

On June 19, 1996, the FAA published a final rule setting airworthiness standards for 30-second and 2-minute OEI engine ratings (61 FR 31324). Prior to that rule the airworthiness standards for engines, 14 CFR part 33, did not contain appropriate safety standards for engine overspeed test requirements for 30-second and 2-minute OEI engine ratings. Engine manufacturers who had applied for type certificates for engine designs that contained 30-second and 2-minute OEI ratings were issued special conditions to address, among other things, engine overspeed test requirements for those ratings, which were considered at the time to be novel and unusual engine ratings. The final rule, however, did not contain the proposed revisions to the airworthiness standards on engine overspeed test for these OEI ratings under § 33.27 that appeared in both the Notice of Proposed Rulemaking (NPRM) No. 89-27, published on September 22, 1989 (54 FR 39080), and the Supplemental Notice of Proposed Rulemaking (SNPRM) No. 89-27A (60 FR 7380), published on February 7, 1995. The FAA elected to drop the proposed changes to § 33.27 from the final rule in response to commenters who noted that the proposed revisions were not consistent with the status of the discussions on OEI test requirements ongoing at the time by a working group of the Aviation Rulemaking Advisory Committee

(ARAC). The FAA agreed that the proposed changes to § 33.27 were not completely harmonized with the proposed equivalent rules in the Joint Airworthiness Requirements—Engine (JAR-E) published by the European Joint Aviation Authority (JAA). The preamble to the final rule states that until the ARAC completes its work to harmonize § 33.27 with the equivalent rule in the JAR-E, the FAA should address engine overspeed test requirements for 30-second and 2-minute OEI engine ratings on a case by case basis. These special conditions reflect that policy and allow this applicant to proceed with the certification of these engine designs on the same basis as previous applicants seeking approval for 30-second and 2-minute OEI engine ratings.

Type Certification Basis

Under the provisions of 14 CFR 21.101, GEAE must show that GEAE models CT7-6D, CT7-6E and CT7-8 turboshaft engines meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. E8NE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The original type certification basis for the CT7-6D engine is 14 CFR part 33, effective February 1, 1965, as amended by Amendments 33-1 through 33-5. The original type certification basis for the CT7-6E engine is 14 CFR part 33, effective February 1, 1965, as amended by Amendments 33-1 through 33-16. The original type certification basis for the CT7-8 engine is 14 CFR part 33, effective February 1, 1965, as amended by Amendments 33-1 through 33-17.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 33) do not contain appropriate safety standards for the GEAE CT7-6D, CT7-6E and CT7-8 engines because of the 30-second OEI and 2-minute OEI engine ratings, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by 14 CFR 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same engine ratings, or should any other

model already included on the same type certificate be modified to incorporate the same engine ratings, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Applicability

As discussed above, these special conditions are applicable to the GEAE CT7-6D, CT7-6E and CT7-8 turboshaft engines. Should GEAE apply at a later date for a change to the type certificate to include another model incorporating the same engine ratings, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain engine ratings for the GEAE CT7-6D, CT7-6E and CT7-8 turboshaft engines. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these ratings.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the GEAE Models CT7-6D, CT7-6E and CT7-8 turboshaft engines.

Section 33.4, Instructions for Continued Airworthiness.

In addition to the requirements of § 33.4, the mandatory inspection and maintenance actions required following the use of the 30-second or 2-minute OEI rating must be included in the airworthiness limitations section of the appropriate engine manuals.

Section 33.27, Turbine, Compressor, Fan, and Turbo-supercharger Rotors.

For engines having 30-second and 2-minute OEI ratings, in addition to the requirements of § 33.27(b), turbine and compressor rotors must have sufficient strength to withstand the conditions specified in one of the following tests for the most critically stressed rotor component of each turbine and compressor including integral drum rotors and centrifugal compressor, as determined by analysis or other acceptable means. The selection of the test from the following paragraph (a) or (b) of this section is determined by the speed defined in paragraph (a)(2) or (b)(2), whichever is higher.

(a) Test for a period of two and one-half minutes-

(1) At its maximum operating temperature except as provided in § 33.27(c)(2)(iv); and
(2) At the highest speed determined, in accordance with § 33.27(c)(2)(i) through (iv).
(3) This test may be performed using a separate test vehicle as desired.

(b) Test for a period of 5 minutes-

(1) At its maximum operating temperature except as provided in § 33.27(c)(2)(iv); and

(2) At 100 percent of the highest speed that would result from failure of the most critical component of each turbine and compressor or system in a representative installation of the engine when operating at 30-second and 2-minute OEI rating conditions; and

(3) The test speed must take into account minimum material properties, maximum operating temperature, and the most adverse dimensional tolerances.

(4) This test may be performed using a separate test vehicle as desired. Following the test, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted for 30-second and 2-minute OEI ratings only, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

Issued in Burlington, Massachusetts, on May 21, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99-13637 Filed 5-27-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-89-AD; Amendment 39-11183; AD 99-11-12]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400 Series Airplanes Powered by Pratt & Whitney PW4000 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, that requires repetitive inspections to ensure proper installation of the engine thrust link components, and follow-on corrective action, if necessary; and replacement of the forward engine mount end cap assembly with an improved end cap assembly. Such replacement, when accomplished, will terminate the repetitive inspections. This amendment is prompted by a report of fatigue cracking of end cap bolts, caused by improper installation. Subsequent

investigation revealed that properly installed end caps also are subject to early fatigue cracking. The actions specified by this AD are intended to prevent failure of the end cap assembly, which could lead to separation of the engine from the airplane in the event of a primary thrust linkage failure.

DATES: Effective July 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2771; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 series airplanes was published in the **Federal Register** on May 20, 1998 (63 FR 27685). That action proposed to require repetitive inspections to detect improper installation and fatigue damage of the end cap of the forward engine mount, and replacement of the forward engine mount end cap assembly with an improved end cap assembly.

Clarification of the Rule

Since the issuance of the notice of proposed rulemaking (NPRM), the FAA has clarified certain wording in the final rule to more accurately describe the inspection requirements, which include the actions required and the components to be inspected. The Summary of the proposed AD states that repetitive inspections are required "to detect improper installation and fatigue damage of the end cap of the forward engine mount. * * *" However, the final rule states that repetitive inspections are required "to ensure proper installation of the engine thrust link components, and follow-on corrective action, if necessary. * * *"

The FAA considers that such clarification of the inspection requirements is necessary for several reasons. First, the FAA has determined that requiring operators "to ensure proper installation," rather than "to detect improper installation," more accurately describes the action required for the inspection. Second, the FAA points out that "fatigue damage of the end cap," which involves the secondary load path, could not be detected until the forward engine mount was disassembled. In addition, the inspections specified by Boeing Alert Service Bulletin 747-71A2283, dated October 10, 1996, are inspections of the "engine thrust link components," not the "end cap" itself. This inspection requirement also was clear in the proposed rule, which correlated the corrective action to the presence or absence of damage to the engine thrust link components. Therefore, the FAA has deleted "fatigue damage" from the inspection requirements and has changed "end cap" to "engine thrust link components." The FAA adds that the engine thrust link components, which involve the primary load path, can be inspected with no disassembly of the forward engine mount required. The Summary and paragraph (a)(1) of the final rule have been clarified accordingly.

In addition, although it is implied in the proposed AD that the FAA requires any discrepancy or damage to be repaired by taking corrective action, the FAA has clarified this requirement in the final rule. The first sentence of the Summary of this AD now includes "and follow-on corrective action, if necessary."

Comments

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

One commenter states that it is not affected by the proposal because it does not operate the affected airplanes. Another commenter generally supports the proposal.

Request to Withdraw the Proposed AD

One commenter states that "regulatory action mandating incorporation of Boeing Alert Service Bulletin 747-71A2283 [dated October 10, 1996] is unwarranted for PW4000 powered 747 aircraft." That commenter also states that this alert service bulletin was issued on the basis of one report of a broken end cap bolt by one operator of a Model 747-400 series airplane. In addition, the commenter states that the

discrepancy was revealed during engine overhaul and that the cause of the bolt failure was attributed to a personnel error when the end cap was installed backwards. The commenter adds that the redesigned end cap specified in the alert service bulletin does not prevent improper installation and does not address the original issue of misinstallation. Further, the commenter states that, during routine magnetic particle inspections of the end caps and bolts, no cracked end caps or bolts have been found. The commenter also states that such an incident should not lead to the conclusion that an unsafe condition exists or is likely to exist.

The FAA does not concur that the alert service bulletin is unwarranted or that the proposed AD should be withdrawn. The FAA points out that the current configuration of the end cap has been shown to fail if it is installed backwards because the end cap would contact the adjacent bearing, which is loaded during each flight. In addition, the end cap has insufficient fatigue life for such loading, and may not prevent separation of an engine in the event of failure of the primary thrust load path. However, the FAA has determined that the redesigned end cap specified in the alert service bulletin will prevent the end cap from contacting the adjacent bearing even if the redesigned end cap is installed backwards.

The FAA acknowledges that, if the redesigned end cap was installed backwards, several problems could occur. First, only a portion of the threads of the fasteners would engage and the few engaged threads could strip, resulting in inadequate torque of the fasteners. Second, if the installation procedure was continued, a mechanical interference could occur between the fan case and the fastener heads. However, the FAA points out that, because inadequate torque of the fasteners could be easily detected, installation of the engine would not be continued until corrective action was taken. The new design also would prevent inadvertent loading of the secondary thrust load path, which is reserved for use in the event of a failure in the primary thrust load path.

In light of this information, the FAA has determined that the redesigned end cap would significantly reduce the probability of inadvertent error in engine installation. In addition, the FAA was informed by the manufacturer that the original end cap assembly, if installed correctly, has insufficient fatigue life to prevent separation of an engine in case of a primary thrust link failure.

Request To Correct the Name of the Component To Be Inspected

One commenter, the manufacturer, requests that the inspection described in the "Explanation of Relevant Service Information" and in paragraph (a)(1) of the proposed AD be changed from "end cap of the forward engine mount" to "engine thrust link components" in the final rule.

The FAA concurs with this request. As described earlier in the "Clarification of the Rule" paragraph, the FAA agrees that the "engine thrust link components" are the correct components to be inspected. The FAA points out that, although the alert service bulletin specifies an inspection of the "forward engine mount," the FAA agrees with the manufacturer that the "engine thrust link components" are the appropriate components to be inspected. The FAA has made this change throughout the final rule, including the Summary and paragraph (a)(1). No change was made in the "Explanation of Relevant Service Information" because this paragraph does not appear in the final rule.

Request To Change a Reference to the Airplane Maintenance Manual

One commenter suggests changing a reference in the "Differences Between Proposed Rule and Service Bulletin" of the proposed AD from "Chapter 71-00-00 of the Boeing 747 Airplane Maintenance Manual (AMM)" to "paragraph (a)(2) of this AD."

The FAA concurs. The FAA acknowledges that the reference to Chapter 71-00-00 of the AMM in the "Differences Between Proposed Rule and Service Bulletin" of the proposed AD is incorrect because that chapter of the AMM does not include procedures for replacing the end cap and bolts. The FAA agrees that paragraph (a)(2) correctly references the appropriate work package of the alert service bulletin for such replacement procedures. However, the FAA has determined that further clarification is necessary, and has placed such clarification in the paragraph titled "Additional Differences Between This AD and the Service Information," below. In that paragraph, the FAA has deleted the reference to the AMM and added that the end cap and bolts be replaced "in accordance with the alert service bulletin referenced in paragraph (a)(2) of this AD."

Request To Add a Statement Regarding Repair

One commenter requests adding "repair all discrepancies or damage

found in accordance with an approved FAA procedure* * *" to the requirements of paragraph (a)(1)(ii) of the proposed AD.

The FAA acknowledges that adding a statement regarding the repair requirement is necessary for clarification of the final rule. As discussed earlier in the "Clarification of the Rule" paragraph, the FAA considers that the repair requirement was inherent in the proposed rule. The FAA agrees with the commenter that the repair requirement should be more explicit and has added this requirement to the final rule.

However, the FAA has determined that it is unnecessary to add that the repair must be "in accordance with an approved FAA procedure." The FAA points out that because the repairs required by this AD are considered common industry practice, it is unnecessary to require that such repairs must be accomplished in accordance with an approved FAA procedure. Since the suggested change would increase the burden to the operator and require issuance of further rulemaking to allow opportunity for public comment, the FAA has determined that such a change would be inappropriate in light of the identified unsafe condition.

In light of this information, the FAA has added the repair requirement to paragraph (a)(1)(ii)(A) of the final rule, but has not added the requirement that the repair be accomplished "in accordance with an approved FAA procedure."

Request To Allow an Operator's Equivalent Procedure for Certain Tasks

One commenter states that it objects to paragraph (c) of the proposed AD because it eliminates the option to perform certain tasks in accordance with an operator's equivalent procedure. The commenter also states that operators often incorporate changes to maintenance manual procedures and work cards by resequencing or improving the work steps to improve efficiency. The commenter maintains that its operator's procedures are equivalent to those specified in the AMM and will ensure accomplishment of the work specified in the AMM. For these reasons, the commenter requests that paragraph (c) of the proposed AD be deleted.

The FAA concurs with the commenter's request to delete paragraph (c) of the proposed AD and to allow the use of an operator's equivalent procedure for accomplishment of certain actions required by the final rule. The FAA points out that it did not intend to require the accomplishment of

access procedures prior to inspection and closure procedures after inspection in accordance with only the AMM. The FAA also intended to allow the accomplishment of access and closure procedures in accordance with an operator's equivalent procedure. The FAA has determined that accomplishment of the access and closure procedures, in accordance with an operator's equivalent procedure, and accomplishment of the inspection requirements, in accordance with Boeing Alert Service Bulletin 747-71A2283, dated October 10, 1996, will adequately address the identified unsafe condition and provide an acceptable level of safety.

In light of this, the FAA has deleted paragraph (c) that was included in the proposed AD, which did not allow the actions required by the proposed AD to be accomplished in accordance with an operator's equivalent procedure. In addition, the reference to paragraph (c) has been deleted from paragraphs (a) and (b) of the final rule.

Additional Differences Between This AD and the Service Information

Boeing Alert Service Bulletin 747-71A2283 divides the affected airplanes into two groups depending upon the particular engine configuration of the affected airplane, and provides different procedures depending upon group classification and engine on-wing flight cycles. Operators should note that, whereas the alert service bulletin specifies that operators of Group 1 airplanes should contact the manufacturer for disposition of the terminating action, this AD requires that the end cap and bolts be replaced in accordance with the alert service bulletin referenced in paragraph (a)(2) of this AD as terminating action.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 133 Model 747-400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD: 35 Group 1 airplanes, and 1 Group 2 airplane.

It will take approximately 36 work hours per Group 1 airplanes (9 work hours per engine) to accomplish the required inspection at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be \$75,600, or \$2,160 per airplane, per inspection cycle.

It will take approximately 272 work hours per airplane (68 work hours per engine) for both Group 1 and Group 2 airplanes to accomplish the required replacement of the forward engine mount end cap and/or end cap bolts at an average labor rate of \$60 per work hour. Required parts will cost approximately \$1,000 per airplane. Based on these figures, the cost impact of this replacement on U.S. operators is estimated to be \$623,520, or \$17,320 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-11-12 Boeing: Amendment 39-11183. Docket 97-NM-89-AD.

Applicability: Model 747-400 series airplanes powered by Pratt & Whitney PW4000 engines, as listed in Boeing Alert Service Bulletin 747-71A2283, dated October 10, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible separation of the engine from the airplane in the event of a primary thrust linkage failure, accomplish the following:

Initial Inspection and Corrective Actions

(a) For Group 1 airplanes, as identified in Boeing Alert Service Bulletin 747-71A2283, dated October 10, 1996: Accomplish paragraphs (a)(1) and (a)(2), of this AD, as applicable.

(1) Within 500 hours time-in-service after the effective date of this AD, perform a detailed visual inspection (Work Package 1) to ensure proper installation of the engine thrust link components, in accordance with the alert service bulletin.

(i) If no attachment hardware is found loose or missing, and if no part shows signs of damage, repeat the inspection thereafter at intervals not to exceed 5,000 hours time-in-service or 15 months, whichever occurs first, until the requirements of paragraph (a)(2) of this AD have been accomplished.

(ii) If any attachment hardware is found loose or missing, or if any part shows signs of damage, prior to further flight, accomplish the actions required by paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B).

(A) Repair any discrepancy or damage.

(B) Replace the existing end cap and end cap bolts of the forward engine mount end

cap assembly with an improved end cap and end cap bolts (Work Package 2) in accordance with the alert service bulletin.

Terminating Action

(2) Replace the existing end cap and end cap bolts of the forward engine mount end cap assembly with an improved end cap and end cap bolts (Work Package 2), in accordance with Boeing Alert Service Bulletin 747-71A2283, dated October 10, 1996, at the earlier of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Accomplishment of the replacement constitutes terminating action for the requirements of this AD for Group 1 airplanes.

(i) Prior to the accumulation of 16,000 total flight cycles on any engine, or within 500 hours time-in-service after the effective date of this AD, whichever occurs later; or

(ii) Within 3 years after the effective date of this AD.

(b) For Group 2 airplanes, as identified in Boeing Alert Service Bulletin 747-71A2283, dated October 10, 1996: Within 3 years after the effective date of this AD, replace the existing end cap bolts of the forward engine mount with improved end cap bolts (Work Package 3), in accordance with the alert service bulletin.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane a forward engine mount end cap having part number 310T3026-1.

Alternative Method of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) The inspections and replacement shall be done in accordance with Boeing Alert Service Bulletin 747-71A2283, dated October 10, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 2, 1999.

Issued in Renton, Washington, on May 20, 1999.

D.L. Riggin, Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-13483 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-19-AD; Amendment 39-11179; AD 99-11-08]

RIN 2120-AA64

Airworthiness Directives; General Electric Aircraft Engines CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Aircraft Engines (GE) CF34 series turbofan engines, that requires installation of a main fuel control (MFC) that incorporates a flange vent groove and installation of an MFC with improved overspeed protection. This amendment is prompted by reports of rapid uncommanded engine acceleration events. The actions specified by this AD are intended to prevent uncommanded engine accelerations, which could result in an engine overspeed, uncontained engine failure, and damage to the airplane.

DATES: *Effective date:* July 27, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 27, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from GEAE Technical Publications, Attention: N. Hanna MZ340M2, 1000 Western Avenue, Lynn, MA 01910; telephone (781) 594-2906, fax (781) 594-0600. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman Brown, Controls Specialist, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA

01803-5299; telephone (781) 238-7181, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Aircraft Engines (GE) CF34 series turbofan engines was published in the **Federal Register** on September 18, 1998 (63 FR 49877). That action proposed to require, within 800 hours time in service (TIS), or 120 days after the effective date of this AD, whichever occurs first, installation of an MFC incorporating a flange vent groove. In addition, the action proposed to require installation of an MFC with improved overspeed protection: for CF34-3A1 and -3B1 series engines, installed on Canadair Regional Jet airplanes, within 4,000 hours TIS after the effective date of this AD, or 24 months after the effective date of this AD, whichever occurs first; and for CF34-1A, -3A, -3A1, -3A2, and -3B series engines, installed on Canadair Challenger airplanes, at the next hot section inspection, or within 60 months after the effective date of this AD, whichever occurs first. The actions are required to be accomplished in accordance with GE CF34 Alert Service Bulletin (ASB) No. A73-18, Revision 1, dated September 24, 1997; CF34 ASB No. A73-32, Revision 2, dated May 29, 1998; CF34 ASB No. A73-33, Revision 1, dated May 29, 1998; and CF34 ASB No. A73-19, Revision 1, dated February 20, 1998.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public.

Since the publication of the notice of proposed rule making (NPRM), GE has issued Revision 2, dated May 29, 1998, to ASB A73-32 that added effectivity information to the Planning Information section of ASB A73-32. GE has also issued Revision 1, dated May 29, 1998 to ASB 73-33 that added effectivity information to the Planning Information section of ASB A73-33. The ASB revisions have not affected the technical or economic content of this proposed AD. We have added the updated ASB revisions to paragraphs (a), (b)(1), and (b)(2) of the compliance section of this AD. GE has implemented the vent groove and improved overspeed protection design changes in new MFC's. In addition, we have made editorial changes to the compliance section of this AD to improve readability and to remove ambiguity. We changed the requirement "with a flange vent groove reworked in

accordance with" in paragraph (a) to "with a flange vent groove modified in accordance with." We made the change so that you are not restricted to installing only reworked MFC's, and to allow you to install a new MFC with the design improvements. We added the base part number 6078T55 of the MFC to each of the POX numbers to remove any ambiguity over the MFC's that must be replaced. We changed the requirement "Install a reworked MFC with improved overspeed protection" in paragraph (b) to "Install a serviceable MFC with improved overspeed protection." We made the change to allow you to install a new MFC that incorporates the improved overspeed protection design change, and so you are not restricted to installing only reworked MFC's. We added the word "within" to the requirements of paragraphs (b)(1), (b)(2), and (b)(3) to allow you to perform the actions before reaching the specified calendar times after the effective date of the AD. We removed the new MFC P/N's from paragraphs (b)(1), (b)(2), and (b)(3) and changed "install MFC" to "install a serviceable MFC." We removed the P/N's so that you will not have to request an alternate method of compliance in accordance with paragraph (d) of this AD if a new MFC P/N is certificated for use on the applicable engines. We also added a new paragraph (c) that defines a serviceable MFC.

After careful review of the available data, including the changes noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99-11-08 General Electric Aircraft

Engines: Amendment 39-11179. Docket 98-ANE-19-AD.

Applicability: General Electric Aircraft Engines (GE) CF34-1A, CF34-3A, -3A1, -3A2, and CF34-3B and -3B1 series turbofan engines, installed on but not limited to Bombardier, Inc. Canadair airplane models CL-600-2A12, -2B16, and -2B19.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded engine accelerations, which could result in an engine overspeed, uncontained engine failure, and damage to the airplane, accomplish the following:

(a) For all CF34-3A1 -3B, and -3B1 engines, with main fuel control (MFC) part numbers (P/N's) 6078T55P02, 6078T55P03, 6078T55P04, 6078T55P05, 6078T55P06, 6078T55P07, 6078T55P08, 6078T55P09, or 6078T55P10 installed, within 800 hours time in service (TIS), or 120 days after the effective date of this AD, whichever occurs first, install an MFC with a flange vent groove modified in accordance with the Accomplishment Instructions of GE CF34 Alert Service Bulletin (ASB) No. A73-18, Revision 1, dated September 24, 1997, or CF34 ASB No. A73-32, Revision 1, dated September 24, 1997, or Revision 2, dated May 29, 1998, as applicable.

(b) Install a serviceable MFC with improved overspeed protection as follows:

(1) For all CF34-1A, -3A, and -3A2 series engines, install a serviceable MFC at the next hot section inspection, or within 60 months after the effective date of this AD, whichever occurs first, in accordance with step 2A through step 2G of the Accomplishment Instructions of CF34 ASB No. A73-33, dated November 21, 1997, or Revision 1, dated May 29, 1998.

(2) For CF34-3A1, and -3B series engines installed on Canadair aircraft models CL601

or CL604 (Challenger airplanes), install a serviceable MFC at the next hot section inspection, or within 60 months after the effective date of this AD, whichever occurs first, in accordance with step 2A through step 2G of the Accomplishment Instructions of CF34 ASB No. A73-33, dated November 21, 1997, or Revision 1, dated May 29, 1998.

(3) For CF34-3A1 and -3B1 series engines installed on Canadair aircraft model CL601RJ (Regional Jet airplanes), install a serviceable MFC within 4,000 hours TIS after the effective date of this AD, or within 24 months after the effective date of this AD, whichever occurs first, in accordance with step 2A through step 2G of the Accomplishment Instructions of CF34 ASB No. A73-19, Revision 1, dated February 20, 1998.

(c) For the purposes of this AD, a serviceable MFC is defined as a new MFC that incorporates the improved overspeed protection modifications, or an MFC that has been reworked to provide the improved overspeed protection as provided by the applicable GE ASB.

(d) 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. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

(f) The MFC replacement must be done in accordance with the following General Electric Aircraft Engines alert service bulletins:

Document No.	Pages	Revision	Date
A73-18	All	1	September 24, 1997.
A73-19	All	1	February 20, 1998.
A73-32	All	1	September 24, 1997.
A73-32	All	2	May 29, 1998.
A73-33	All	Original	November 21, 1997.
A73-33	All	1	May 29, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GEAE Technical Publications, Attention: N. Hanna MZ340M2, 1000 Western Avenue, Lynn, MA 01910; telephone (781) 594-2906, fax (781) 594-0600. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on July 27, 1999.

Issued in Burlington, Massachusetts, on May 17, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99-13484 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 738 and 740

[Docket No. 990318078-9078-01]

RIN 0694-AB89

Addition of Macau to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) in preparation of the return of the Portuguese Colony of Macau (Macau) to the sovereignty of the People's Republic of China (PRC) on December 20, 1999. This final rule adds Macau as a separate destination on the Commerce Country Chart for export licensing purposes.

DATES: This rule is effective May 28, 1999.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482-4196.

SUPPLEMENTARY INFORMATION: This final rule adds Macau as a distinct destination on the Commerce Country Chart for export licensing purposes. Specifically, this rule amends the EAR in the following ways:

1. In Supplement No. 1 to part 738 of the EAR, Macau is added to the Commerce Country Chart. As noted on the Chart, licensing requirements for exports and reexports to Macau are imposed on items subject to the EAR

controlled for the following reasons: chemical and biological weapons, nuclear nonproliferation, national security, missile technology, regional stability, and crime control.

2. In § 740.7 of the EAR, Macau is listed under Computer Tier 3 for License Exception CTP purposes. Exporters are reminded to consult § 742.12 regarding license requirements on high performance computers for Computer Tier 3 destinations.

3. In Supplement No. 1 to part 740, Macau is added to Country Groups D:1, D:3, and D:4.

Note that a Statement of Ultimate Consignee and Purchaser (Form BXA 711) may be required for exports of items under a license. See part 748 of the EAR for end-use certificate requirements.

This action is taken consistent with the provisions of the Export Administration Act (EAA) and after consultation the Secretary of State. BXA submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on May 20, 1999.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Savings Clause

Shipments of items no longer eligible for NLR authorization, or items which now require NDAA notification, as a result of this regulatory action that were on deck for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export before June 11, 1999, may be exported up to and including June 25, 1999. Any such items not exported before midnight June 25, 1999, will require an export license or NDAA notification in accordance with this regulation.

Rule Making Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of

information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. In addition, information is also collected under OMB control number 0694-0107, "National Defense Authorization Act," Advance Notifications and Post-Shipment Verification reports.

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

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 738 and 740 of the Export Administration Regulations (15 CFR Parts 730-774) are amended as follows:

1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*, app. 5; 10 U.S.C. 7420; 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 185(u); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996

Comp., p. 228; Notice of August 13, 1998, 3 CFR, 1998 Comp., p. 294.

2. The authority citation for 15 CFR Part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998, 3 CFR, 1998

Comp., p. 294; Pub. L. 105–85, 111 Stat. 1629.

PART 738—[AMENDED]

3. Supplement No. 1 to Section 738 is amended by adding “Macau” in alphabetical order to read as follows:

SUPPLEMENT NO. 1 TO PART 738.—COMMERCE COUNTRY CHART

[Reason for Control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Fire-arms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Macau ..	X	X	X	X		X	X	X	X	X		X		X		
	*			*		*		*		*		*		*		

* * * * *

PART 740—[AMENDED]

§ 740.7 [Amended]

4. Section 740.7 is amended by revising the phrase “Lithuania,

Macedonia (The Former Yugoslav Republic of),” in paragraph (d)(1) to read “Lithuania, Macau, Macedonia (The Former Yugoslav Republic of),”.

5. Supplement No. 1 to part 740 is amended by adding, in alphabetical

order, “Macau” to Country Group D to read as follows:

SUPPLEMENT NO. 1 TO PART 740.—COUNTRY GROUP D

Country	[D: 1] National Security	[D: 2] Nuclear	[D: 3] Chemical & Biological	[D: 4] Missile Technology
Macau	X		X	X
	*	*	*	*

* * * * *

Dated: May 20, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–13352 Filed 5–27–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742, 745 and 774

[Docket No. 990416098–9098–01]

RIN 0694–AB67

Corrections to Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On May 18, 1999, the Bureau of Export Administration published an

interim rule (64 FR 27138) implementing the export control provisions of the Chemical Weapons Convention. This rule corrects inadvertent errors that appeared in the May 18 rule.

DATES: This rule is effective May 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 55121, August 17, 1998).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C.

553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is issued in final form.

List of Subjects

15 CFR Parts 742 and 774

Exports, Foreign trade.

15 CFR Part 745

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742, 745 and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended to read as follows:

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. P. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 comp., p.294.

2. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 comp., p. 294.

3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*, app 5; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*, 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s), 185(u)); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1999 comp., p. 294.

PART 742 [AMENDED]

4. Section 742.2 is amended by revising the phrase “See also § 742.16 of this part” to read “See also § 742.18 of this part”.

PART 745 [AMENDED]

5. Section 745.1 is amended:

a. By revising the phrase “address, for courier deliveries” in paragraph (b)(3) to read “address, for mail and courier deliveries”; and

b. By revising the title to Supplement No. 3 to part 745 to read as follows:

Supplement No. 3 to Part 745—
Foreign Government Agencies
Responsible for Issuing End-Use
Certificates Pursuant to § 745.2.

* * * * *

PART 774 [AMENDED]

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1, the heading to ECCN 1E001 is revised to read as follows:

1E001 “Technology” According to the General Technology Note for the “Development” or “Production” of Items Controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A102, 1B or 1C (Except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, and 1C995).

* * * * *

Dated: May 19, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–13350 Filed 5–27–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 970428099–9105–09]

RIN 0694–AB60

Entity List: Addition of Entities located in the People's Republic of China; and Correction to Spelling of One Indian Entity Name.

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration (BXA) may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contains a list of such entities. This rule adds six entities located in the People's Republic of China to the Entity List. A license will be required for the export or reexport of all items subject to the EAR having a classification other than EAR99 to five of these entities. A license will be required for the export or reexport of all items subject to the EAR to the Northwest Institute of Nuclear Technology, in the Science Research, Xi'an, Shaanxi. License applications to export or reexport these items will be reviewed on a case-by-case basis to determine whether the export or reexport would make a material

contribution to the proliferation of missiles. This rule also makes a correction to one Indian entity name which was inadvertently misspelled.

EFFECTIVE DATE: This rule is effective May 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Eileen M. Albanese, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

General Prohibition Five (§ 736.2(b)(5) of the EAR) prohibits exports and reexports to certain end-users or end-uses (described in part 744 of the EAR) without a license. In the form of Supplement No. 4 to part 744, BXA maintains an “Entity List” to provide notice informing the public of certain entities subject to such licensing requirements. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, continued by Presidential notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

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

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are

inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be

submitted to Sharron Cook, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended, as follows:

1. The authority citation for 15 CFR part 744 continues to read as follows:

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3

CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

PART 744—[AMENDED]

2. Supplement No. 4 to part 744 is amended by:

(a) Revising the Indian entity name “Misrha Dhatu Nigam, Ltd. (MIDHANI), Hyderabad” to read “Mishra Dhatu Nigam, Ltd. (MIDHANI), Hyderabad; and

(b) Adding, in alphabetical order, the following entities:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
CHINA, PEOPLE'S REPUBLIC OF.	Beijing Aerospace Automatic Control Institute, 51 Yong Ding Road Beijing.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	Beijing Institute of Structure and Environmental Engineering, a.k.a., Beijing Institute of Strength and Environmental Engineering, No. 36 Wanyuan Road Beijing.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	China Aerodynamics Research and Development Center (CARDIC) Sichuan Province.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	* * *	* * *	* * *	* * *
	Northwest Institute of Nuclear Technology, in the Science Research, Xi'an, Shaanxi.	For all items subject to the EAR.	See § 744.2 of this part.	64 FR May 28, 1999.
*	Shanghai Academy of Spaceflight Technology, Shanghai, Spaceflight Tower 222 Cao Xi Road Shanghai, 20023.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	Shanghai Institute of Space Power-Sources, Shanghai, 388 Cang Wu Rd Shanghai.	For all items subject to the EAR having a classification other than EAR99.	See § 744.3 of this part.	64 FR May 28, 1999.
	* * *	* * *	* * *	* * *

Dated: May 20, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–13351 Filed 5–27–99; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Representations and Disclosures Required by Certain IBs, CPOs and CTAs

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is adopting amendments to Commission Rules 30.5 and 30.6. The amendments will revise the procedure by which

foreign persons may obtain an exemption from registration under Rule 30.5 and will require foreign and domestic commodity pool operators and commodity trading advisors to provide U.S. retail customers with certain disclosures, regardless of whether they are trading on U.S. or foreign markets.

EFFECTIVE DATE: June 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Proposed Rules

On January 11, 1999, the Commission published amendments to Part 30 of its regulations. Part 30 governs the solicitation and sale of foreign futures¹ and foreign option² contracts to foreign futures or foreign options customers.³ The activities which are subject to regulation and require registration under Part 30 include the solicitation or acceptance of funds, or the sale of stock or other forms of securities, for the purpose of trading any foreign futures or foreign option contract, as well as soliciting or entering into an agreement to direct a U.S. customer account or to guide a U.S. customer account by means of a systematic program that recommends specific transactions in foreign futures or options.⁴

Commission Rule 30.5 provides an exemption from the registration requirement for any person located outside of the United States, its territories or possessions who is required to be registered with the Commission under Part 30 of the regulations, other than a person required to be registered as a futures commission merchant ("FCM")—*i.e.*, an introducing broker ("IB"), commodity pool operator ("CPO") or commodity trading advisor ("CTA"). All persons who are registered or required to be registered under Rule 30.4, including persons who are exempt pursuant to Rule 30.5, must comply with the disclosure requirements of Rule 30.6.⁵

A. Rule 30.5

An exemption from registration pursuant to Rule 30.5 currently is effective when a foreign IB, CPO or CTA enters into a written agency agreement

with any of the persons or entities provided for by the rule and files the agreement with the National Futures Association ("NFA"). CPOs and CTAs who have obtained a Rule 30.5 exemption were requested by Commission staff to make certain representations, including the representation that they would solicit only qualified eligible participants ("QEPs") and qualified eligible clients ("QECs"), as those terms are defined in Rule 4.7. Pursuant to the Commission's September 11, 1997 delegation order to the NFA,⁶ NFA has continued to request these representations from Rule 30.5 exempt persons. Thus, most Rule 30.5 exempt persons have solicited only QEPs and QECs, not U.S. "retail customers," defined for the purpose of this **Federal Register** Release as U.S. customers who do not meet the definition of a QEP or QEC.

As described below, amended Rule 30.5 will change the procedure by which foreign IBs, CPOs and CTAs can obtain a Rule 30.5 exemption to ensure that exempt persons meet basic fitness requirements and consent to the jurisdiction of the Commission and United States federal and state courts with respect to activities governed by Part 30 of the regulations.

B. Rule 30.6

Rule 30.6 sets forth the disclosure requirements that apply to domestic and foreign IBs, CPOs and CTAs who are registered or required to be registered under Part 30 or who have a Rule 30.5 exemption. As currently written, Rule 30.6 does not distinguish between QEPs and QECs, who are sophisticated customers, and U.S. retail customers. To ensure that adequate risk disclosures are provided in U.S. retail customers and pool participants trading in foreign futures and option contracts, the Commission proposed to amend Rule 30.6(b)(2) to provide that CPOs and CTAs registered or required to be registered under Rule 30.4 or exempt from registration under Rule 30.5 must provide each prospective participant or prospective client with the Disclosure Document required by Rule 4.21 for CPOs and Rule 4.31 for CTAs, including the disclosure statement required by Rules 4.24 and 4.34, respectively, prior to engaging in the activities described in Rule 30.4. The proposed rule therefore provides that U.S. retail customers shall receive similar disclosures whether they trade on domestic or foreign markets.

As discussed below, the Commission also proposed that the required disclosures by CPOs and CTAs to QEPs

and QECs be decreased to recognize the sophistication of these persons. The Commission proposed to retain the disclosure language contained in Rule 4.24(b) and Rule 4.34(b)(2), however, to ensure that QEPs and QECs were apprised that there are different risks of trading foreign futures or foreign options as compared with U.S. futures and options.

II. Final Rules

The Commission received three comment letters on the proposed rulemaking: one from a U.S. commodity exchange; one from NFA; and one from a bar association. The commenters all supported the Commission's proposing the rule amendments. They commended the Commission for expanding Rule 30.5 to allow foreign exempt persons to solicit U.S. retail customers, not just QEPs and QECs. In addition, commenters were supportive of the requirement that all CPOs and CTAs, both foreign and domestic, provide certain disclosures to U.S. retail customers, regardless of whether those customers are trading on domestic or foreign markets. As one commenter stated, "[t]his requirement will level the playing field for foreign and domestic markets with respect to the amount of disclosure that must be provided to U.S. retail customers."

A. Rule 30.5 Petitions

Proposed Rule 30.5 is being adopted by the Commission with only minor revisions. It permits a foreign IB, CPO or CTA to solicit any U.S. customer—not just QEPs and QECs—after filing a petition that establishes that it is qualified for the exemption. A petitioner is required to show affirmatively that it qualifies for an exemption by representing that (i) the petitioner is located outside of the United States, its territories or possessions; (ii) the petitioner does not act as a CTA, CPO or IB, respectively, in connection with trading on or subject to the rules of a designated contract market in the United States by, for, on behalf of, or for the benefit of any U.S. customer, client or pool;⁷ and (iii) petitioner irrevocably consents to jurisdiction in the United States with respect to transactions subject to Part 30 of the regulations promulgated under the Commodity

¹ "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission Rule 30.1(a) Commission rules referred to herein are found at 17 CFR Ch. I (1998).

² "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade, an 'option', 'privilege', 'indemnity', 'bid', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Commission Rules 30.1(b).

³ Pursuant to Commission Rule 30.1(c), "Foreign futures or foreign options customers" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part."

⁴ See Commission Rule 30.4.

⁵ Persons claiming exemption pursuant to Rule 30.5 must also comply with Commission Rules 1.37 and 1.57. Rule 30.5(c).

⁶ 62 FR 47792 (September 11, 1997).

⁷ This language differs slightly from the language of the proposed rule. The proposed rule required petitioners to represent that they would not "trade" on U.S. markets on behalf of U.S. foreign futures and option customers. The revised language makes clear that Rule 30.5 exempt persons may not engage in any of the activities of an IB, CPO or CTA on U.S. contract markets with U.S. customers, clients or pools.

Exchange Act ("CEA").⁸ To ensure the fitness of persons who conduct business with U.S. customers, the petitioner also must represent that it would not be statutorily disqualified from registration under Section 8a(2) or 8a(3) of the Act and has not been and would not be disqualified from registration or licensing by the home country regulator. If the petitioner or its activities are regulated by any government entity or self-regulatory organization, it must provide the name and address of such government entity or self-regulatory organization. In addition, the petitioner must specify whether it is applying for an exemption based on activities as an IB, CPO or CTA and provide the name, address and telephone number of its main business location.⁹

The amended rule also states that persons exempt under Rule 30.5 must use either a U.S. registered FCM or a foreign broker that has received confirmation of Rule 30.10 relief to carry accounts for, on behalf of or for the benefit of foreign futures or foreign options customers, a position previously set forth by Commission staff in 1989.¹⁰ For example, a Rule 30.5 exempt commodity pool operator may not operate a pool with U.S. foreign futures and options customers as participants unless the foreign futures and option trades entered into on behalf of the pool are intermediated on a fully disclosed basis by a U.S. registered FCM or a Rule 30.10 exempt foreign broker.

Two commenters questioned why a Rule 30.5 petition would not continue to be self-effectuating, but rather must be approved by NFA. One of these commenters also requested clarification regarding what type of review NFA would make, the time frame in which the review would be conducted, and whether NFA would notify the petitioner of the disposition of its application.

⁸ These representations are consistent with the representations required of foreign firms claiming exemption from registration pursuant to Commission Rule 30.10. (See Commission Rule 30.10, Appendix A—Part 30, Interpretative Statement with Respect to the Commission's Exemptive Authority under § 30.10 of Its Rules).

⁹ The new rule also clarifies that a Rule 30.5 exempt person must designate either a U.S. futures commission merchant through which business is done, a registered futures association or any other person located in the United States in the business of providing services as an agent for service of process to act as the agent for service of process in accordance with Rule 30.5(a).

¹⁰ This rule codifies the position stated in CFTC Interpretative Letter No. 89-3 [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,416 (April 4, 1989). The text of the introductory language in final Rule 30.5 was modified from the language in the proposed rule to more closely parallel the language of the interpretative letter.

NFA currently reviews all petitions for confirmation of Rule 30.10 relief for completeness and conformity with the requisite representations and then notifies the foreign firm whether its petition is approved, denied, or is deficient in any way. The NFA review performs a vital function by ensuring that the petitioner firm has consented to U.S. jurisdiction and made other required representations prior to the firm's soliciting U.S. customers for trading on foreign markets. Since September 1997 when the Commission delegated this responsibility to NFA, NFA has carried out its functions in this regard thoroughly and expeditiously. In those cases where a Rule 30.10 firm has made all of the appropriate representations, NFA usually confirms relief to the firm within 30 days.

Proposed Rule 30.5 sets forth a parallel procedure for Rule 30.5 exemptions. NFA will review the Rule 30.5 petition to ensure that all of the representations required by the rule have been made and to verify that a proper agreement with a U.S. agent for service of process is on file with NFA. NFA's role will be solely to verify that the petitioner has complied with all aspects of the rule. If the petition is deficient, NFA will notify the petition of the deficiency. If the petition is complete, NFA will confirm to the petitioner that it has a Rule 30.5 exemption. As is the case with Rule 30.10 exemptions, the Commission believes that it is important for NFA to verify that a Rule 30.5 petitioner has made all of the necessary representations and consents prior to engaging in any of the activities described in Rule 30.4. Accordingly, the Commission does not believe that the Rule 30.5 petition should be self-effectuating and has retained in the final rule the requirement that NFA review Rule 30.5 petitions.

The Commission requested comment regarding who should sign a Rule 30.5 petition on behalf of foreign entities that may not fit within traditional U.S. legal structures. One commenter proposed that the rule allow "a natural person involved in the management of the petitioner who is legally authorized under local law to make binding agreements and representations for the applicant" to sign the petition. The Commission has incorporated similar language into Rule 30.5(e)(7).

B. Rule 30.6 Disclosures

As an initial matter, the Commission wishes to reiterate that the disclosure requirements in Rule 30.6(b), both

currently and as amended,¹¹ apply to both domestic and foreign CPOs and CTAs, whether registered with the Commission or exempt pursuant to Rule 30.5, that operate pools or advise clients that trade in foreign futures and options. Thus, CPOs and CTAs located in the United States with foreign futures and options customers must comply with the requirements of Part 4 and the requirements of Part 30.

Amended Rule 30.6(b)(2) requires domestic and foreign CPOs and CTAs to provide U.S. foreign futures and options customers that are not QEPs or QECs with a disclosure document in accordance with Rule 4.21 for CPOs and 4.24 for CTAs.¹² These Disclosure Documents should be filed with NFA in accordance with Rules 4.26 and 4.36 and in compliance with the order issued by the Commission in conjunction with this **Federal Register** release, which delegates to NFA the authority to review disclosures documents filed pursuant to Rule 30.6.

With regard to QEPs and QECs, CPOs and CTAs registered or required to be registered or exempt pursuant to Rule 30.5 must provide to QEPs and QECs that trade on domestic markets the statements set forth in Rule 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A), respectively, which disclose generally that the materials being provided to the participant or client are not required to be and have not been reviewed by the Commission ("the general statement"). In addition, Rule 30.6 currently requires domestic and foreign CPOs and CTAs to provide a lengthy disclosure statement to all U.S. foreign futures and options customers, including QEPs and QECs, in accordance with Rule 4.24(b) and 4.34(b). To better harmonize the requirements of Part 4 and Part 30, Rule 30.6(b)(1) will require both registered and Rule 30.5 exempt CPOs and CTAs to provide the general statement to QEPs and QECs trading foreign futures and options. It also will pare down the current disclosure statement requirement by specifying that CPOs and CTAs must provide QEPs and QECs with the specific disclosure regarding the risks of trading in foreign futures and options in Rules 4.24(b)(2) and 4.34(b)(2), rather than the entire

¹¹ The text of Rule 30.6(b)(1) and (b)(2) was modified in the final rule to refer back to Rule 30.4 in describing to whom the disclosure requirements apply, rather than reiterating the registration requirements again in the text of Rule 30.6. The change is technical and non-substantive.

¹² The disclosure requirements for IBs that solicit or accept orders from U.S. foreign futures and option customers are set forth in Rule 30.6(a), which is not being amended in this rulemaking.

disclosure statement contained in Rules 4.24(b) and 4.34(b).

Even though Rule 30.6(b)(1) as proposed would lessen the current disclosure requirement with regard to QEPs and QECs, two commenters expressed the view that, since QEPs and QECs are sophisticated investors, the Commission should not require any disclosure other than the general statement required by Rules 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A). While QEPs and QECs may be sophisticated investors for purposes of Rule 4.7, they are not necessarily sophisticated and/or knowledgeable regarding the different types of risks present when trading on foreign boards of trade. As the Commission recently learned in the wake of the collapse of Griffin Trading Company, many Griffin customers, including CTAs and other sophisticated investors, claimed not to be fully aware of the risks that they undertook when trading on foreign markets. In particular, certain "sophisticated" clients did not appear to understand that the Commission had no legal ability to compel actions on foreign exchanges or to compel actions by foreign persons who held U.S. foreign futures and options customers' funds.

Recent Commission experience confirms that it is necessary to require disclosure regarding the risks of trading on foreign boards of trade to QEPs and QECs, as well as to U.S. retail customers. Moreover, the Commission notes that, since the required disclosure is only three sentences long and is less disclosure than that which is currently required, it does not impose a significant burden on CPOs and CTAs. Therefore, after consideration of the comments, the Commission has decided to retain the requirement in Rule 30.6(b)(1) that CPOs and CTAs provide a risk disclosure statement to QEPs and QECs regarding the risk of trading in foreign futures and options.

C. Effect of the Amendments

The amendments to Rules 30.5 and 30.6 will apply to all regulated activities with all new foreign futures and foreign options customers as of the effective date of the new rules. An IB, CPO or CTA currently exempt under Rule 30.5 will not be required to file a new Rule 30.5 petition for exemption. However, all CPOs and CTAs will be required to provide all new prospective poll participants or new prospective customers with the disclosures required by Rule 30.6.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in adopting rules, consider the impact of those rules on small businesses.

The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.¹³ The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.¹⁴ And although IBs might be small entities for purposes of the rule, the disclosure required to IBs is not changed with this rulemaking, and thus the new rules will not have any impact on domestic IBs.

With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.¹⁵ In this regard, the Commission notes that the regulations with respect to CTAs' activities relating to foreign futures and foreign option contracts are essentially the same as those contained in Part 4 governing CTAs in connection with their activities relating to futures contracts and options traded or executed on or subject to the rules of a contract market designated by the Commission. The Commission has previously determined that the disclosure requirements in Part 4 governing CTAs will have a significant economic impact on a substantial number of small entities.¹⁶ In fact, Rule 4.31, which governs the disclosure requirements for CTAs and to which Rule 30.6(b) refers, was revised in 1995 for the purpose of reducing the number of disclosures required and focusing on succinct disclosure of material information. The Commission determined that the revised rule reduced rather than increased the requirements of former Rule 4.31. Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

¹³ 47 FR 18618–18621 (April 30, 1982).

¹⁴ 47 FR 18619–18620.

¹⁵ 47 FR 18618–18620.

¹⁶ See 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (August 3, 1983).

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995¹⁷ ("Act") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Act. In compliance with the Act, these final rules and/or their associated information collection requirement inform the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) that fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

The Commission previously submitted these rules in proposed form and their associated information collection requirement to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules and assigned OMB control number 3038–0023 to these rules. The burden associated with this entire collection of which these proposed rules are a part, is as follows:

Average burden hours per response: 16.13.

Number of respondents: 73,435.

Frequency of response: On occasion.

The burden associated with these specific proposed rules is as follows:

Rule 30.5—

Average burden hours per response: 100.

Number of Respondents: 65.

Frequency of response: On occasion.

Rule 30.6(b)(1)—

Average burden hours per response: .5.

Number of Respondents: 40.

Frequency of response: On occasion.

Rule 30.6(b)(2)—

Average burden hours per response: 3.0.

Number of Respondents: 5.

Frequency of response: On occasion.

Persons wishing to comment on the information which is required by these final rules should contact the Desk

¹⁷ Pub. L. 104–13 (May 13, 1995).

Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Foreign options, Reporting and recordkeeping requirements, Registration requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount, Customer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1998), and pursuant to the authority contained in 5 U.S.C. 552 (1998), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.5 is amended by adding introductory text, revising paragraph (a) and adding paragraph (e) to read as follows:

§ 30.5 Alternative procedures for non-domestic persons.

Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing a petition for exemption with the National Futures Association and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must engage in all transactions subject to regulation under Part 30 through a registered futures commission merchant or a foreign broker who has received confirmation of an exemption pursuant to § 30.10 in accordance with the provisions of § 30.3(b).

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through

which business is done, with any registered futures association or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

* * * * *

(e) *Petition for exemption.* Any person seeking an exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor under this section must file a petition for exemption, which will be granted or denied based on compliance with § 30.5(a) and the provision of this paragraph. The petition must:

- (1) Be in writing;
- (2) Provide the name, main business address and main business telephone number of the petitioner;
- (3) Represent that:
 - (i) The petitioner is located outside of the United States, its territories or possessions;
 - (ii) The petitioner does not act as an introducing broker, commodity pool

operator or commodity trading advisor, respectively, in connection with trading on or subject to the rules of a designated contract market in the United States by, for, on behalf of, or for the benefit of any U.S. customer, client or pool; and

(iii) The petitioner irrevocably agrees to the jurisdiction of the Commission and state and federal courts in the United States with respect to activities and transactions subject to this part;

(4) Represent that the petitioner would not be statutorily disqualified from registration under Section 8a(2) or 8a(3) of the Commodity Exchange Act and that the petitioner is not disqualified from registration pursuant to the laws or regulations of its home country;

(5) If the petitioner or its activities are regulated by any government entity or self-regulatory organization, state the name and address of such government entity or self-regulatory organization;

(6) State whether the petitioner is applying for a § 30.5 exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor;

(7) Be signed as follows: If the petitioner is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; if a corporation, by the chief executive officer or other person(s) legally authorized to bind the corporation; if any other business structure, by such person or persons involved in the management of the petitioner and legally authorized to bind the petitioner; and

(8) Be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606.

3. Section 30.6 is amended by revising paragraph to read as follows:

§ 30.6 Disclosure.

* * * * *

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible participant with the Risk Disclosure Statement set forth in § 4.24.(b)(2) of this chapter and the statement in § 4.7(a)(2)(i)(A) of this chapter. With respect to qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter,

a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the commodity trading advisor, at or before the time it engages in such activities, first provides each qualified eligible client with the Risk Disclosure Statement set forth in § 4.34(b)(2) of this chapter and the statement in § 4.7(b)(2)(i)(A) of this chapter.

(2) With respect to participants who do not satisfy the requirements of qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(c) unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.21 of this chapter and files the Disclosure Document in accordance with § 4.26 of this chapter. With respect to clients who do not satisfy the requirements of qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5, may not, directly or indirectly, engage in any of the activities described in § 30.4(d) unless the commodity trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished customers or potential customers pursuant to § 4.31 of this chapter and files the Disclosure Document in accordance with § 4.36 of this chapter.

* * * * *

Dated: May 21, 1999.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-13573 Filed 5-27-99; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF STATE

22 CFR Parts 41 and 42

[Public Notice 3048]

Visas: Documentation of Nonimmigrants—Passport and Visa Waivers; Deletion of Obsolete Visa Procedures and Other Minor Corrections

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final Rule.

SUMMARY: This rule revises the Department's regulations regarding the waiver of the passport and nonimmigrant visa requirement for aliens applying for entry to the United States in an unforeseen emergency. This revision is necessary to make clear that the passport and/or visa are required but, in cases of unforeseen emergency, the alien may apply for a waiver.

This rule also removes the Department's regulation regarding the transfer of nonimmigrant visas in light of the Department's decision to treat a request for the transfer of a visa to a new travel document as an application for a new visa.

Finally, this rule corrects an existing regulation relating to aliens traveling with extended-validity immigrant visas to make clear that a consular officer need reinterview only aliens who intend to enter the United States more than six months after the date of visa issuance.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, (202) 663-1204.

SUPPLEMENTARY INFORMATION:

Waiver of Passport and Visa

The Department's regulation at 22 CFR 41.2(j), as currently worded, incorrectly implies that a passport and visa are not required where an alien is applying for admission in cases of unforeseen emergency. In fact, INA 212(a)(7)(B)(i) does require a passport and visa, however, INA 212(d)(4) provides for a waiver of this requirement in certain specified circumstances. Under the provisions of INA 212(d)(4), the Attorney General and the Secretary of State, acting jointly, may waive the passport and/or visa requirements of INA 212(a)(7)(B)(i) on the basis of an unforeseen emergency. On January 11, 1994 [59 FR 1473], the Department of State published a rule that authorized the district director of the Immigration and Naturalization Service to exercise the Department of

State's function with respect to the passport and visa waiver under the provisions of INA 212(d)(4)(A). The Department makes clear in this rule that only if the alien applies for and is granted such a waiver by the INS district director may an alien be admitted to the United States without a passport and/or visa.

Transfer of Nonimmigrant Visas

The Department's regulation at 22 CFR 41.114 addresses the transfer of a valid nonimmigrant visa from one travel document to another. In accordance with this regulation, the consular officer could transfer a visa without fee to a different travel document if the visa remained valid and the consular officer determined that the applicant remained eligible. In fact, such cases are technically reapplications since consular officers readjudicate the case to determine the alien's eligibility to receive a visa and, if the alien is eligible, issue an entirely new visa. It is appropriate for the Department to charge a processing fee for such readjudication, as well as any applicable reciprocity fee. The Department, therefore, is removing the regulation concerning transfer of visas. Applicants who do not wish to apply for new visas, may travel with their old, but still valid visas, and a valid passport.

Extended Visa Validity

On May 21, 1997 [62 FR 27693], the Department amended 42.72(e)(4) to reflect the new immigrant visa validity of 6 months. In updating this regulation, the addition of the word "no" unintentionally changed the meaning of this regulation which, as amended, implied that an alien must appear for a second interview before traveling to the United States even if the alien is traveling within the six-month visa validity. This was not the Department's intent. This rule corrects this error.

Regulatory Analysis and Notices

Final Rule

The Department is publishing this rule as a final rule under the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3) and 553(d)(3). The clarification of the waiver requirement is necessary to conform to the INS regulation and practice. The abolition of transferred visas reflects the costs of processing a machine-readable visa for the new document, and the law now requires a fee for such service. The clarification of the period before a second visa interview is required benefits the applicant.

The Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

E.O. 12988 and E.O. 12866

The Department has reviewed this rule as required under E.O. 12998 and determined it to be in compliance therewith. This rule is exempt from review under E.O. 12866, but the Department has reviewed the rule internally to ensure consistency therewith. The rule does not directly or indirectly affect states or local governments or Federal relationships and does not create unfunded mandates.

5 U.S.C. Chapter 8

As required by 5 U.S.C., chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

Paperwork Reduction Act

This rule imposes no paperwork requirements.

List of Subjects in 22 CFR Parts 41 and 42

Aliens, Immigrants, Nonimmigrants, Passports and visas, Waivers.

In view of the foregoing, the Department amends 22 CFR parts 41 and 42 as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Amend § 41.2 to revise paragraph (j) to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(j) Except as provided in paragraphs (a) through (i) and (k) through (m) of this section, all aliens are required to present a valid, unexpired visa and passport upon arrival in the United States. An alien may apply for a waiver of the visa and passport requirement if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible district director of the Immigration and Naturalization Service (INS) in charge of the port of entry concludes that the alien is unable to present the required documents because of an unforeseen emergency. The INS

district director may grant a waiver of the visa or passport requirement pursuant to INA 212(d)(4)(A), without the prior concurrence of the Department of State, if the district director concludes that the alien's claim of emergency circumstances is legitimate and that approval of the waiver would be appropriate under all of the attendant facts and circumstances.

* * * * *

§ 41.114 [Removed]

3. Remove § 41.114.

PART 42—[AMENDED]

4. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

§ 42.72 [Amended]

5. Amend § 42.72, paragraph (e)(4) by deleting the word "no" in the first sentence.

Dated: April 30, 1999.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 99-13537 Filed 5-27-99; 8:45 am]

BILLING CODE 4710-06-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1650

Revision of Debt Collection Regulation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) is revising its regulation on debt collection to provide general debt collection standards and to implement the administrative wage garnishment provisions of the Debt Collection Improvement Act (DCIA) of 1996. This final rule adopts the federal claims collection standards issued jointly by the General Accounting Office (GAO) and the Department of Justice (DOJ) in 4 CFR Parts 101-105 and the regulation on administrative wage garnishment issued by the Department of the Treasury at 31 CFR 285.11.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Schlageter, Assistant Legal Counsel, or Susan Murphy, Senior Attorney, Office of Legal Counsel, at (202) 663-4669 (voice), (202) 663-7026 (TDD). This final rule is also available in the following formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained

from the EEOC's Publication Center by calling 1-800-669-3362 (voice) or 1-800-669-6820 (TDD).

SUPPLEMENTARY INFORMATION: EEOC is revising its regulation on debt collection found in 29 CFR Part 1650 to indicate that it follows the federal claims collection standards of the Department of Justice and the General Accounting Office at 4 CFR Parts 101-105. A statement of adoption by cross-reference is being added to each of the subparts of 29 CFR Part 1650.

EEOC is also adding a new subpart D to implement administrative wage garnishment provisions under section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104-134, 110 Stat. 1321-358 (April 26, 1996). Here, EEOC is adopting by cross-reference the administrative wage garnishment regulation issued by the Department of the Treasury at 31 CFR 285.11. Under the DCIA, a federal agency that is collecting delinquent nontax debt may administratively garnish the debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. EEOC's debt collection program does not necessitate procedures different from those established by the Department of the Treasury, and therefore the Commission is adopting the Treasury regulation. This new subpart will also contain the statement of adoption by cross-reference of the federal claims collection standards issued by the Department of Justice and the General Accounting Office.

We are issuing a final rule rather than a notice of proposed rulemaking because we have determined, for good cause, that publication of a proposed rule and solicitation of comments are not necessary. Good cause also exists for waiving the 30-day delay in effectiveness as to these revisions. These amendments concern matters of agency practice and procedure. Their purpose is to incorporate without change existing regulations of the Departments of Justice and the Treasury and the General Accounting Office, which were the subject of public comment when promulgated by those agencies. Incorporation of the federal claims collection standards reflects existing requirements and longstanding Commission practice.

Regulatory Procedures

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354, as amended by Pub. L. 104-121), the Commission has reviewed this regulation, and by approving it, certifies

under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. The EEOC's debt collection activities do not affect a substantial number of small entities. Moreover, as found by the Department of the Treasury, wage garnishment requirements do not have a significant economic impact on small entities. Employers of delinquent debtors must certify certain information about the debtor, such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certification would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this rule. For these reasons, a regulatory flexibility analysis is not required.

Executive Order 12866

This rule is not a significant regulatory action as defined in Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

List of Subjects in 29 CFR Part 1650

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

For the reasons stated in the preamble, 29 CFR Part 1650 is amended as set forth below.

PART 1650—DEBT COLLECTION

1. The authority citation for 29 CFR Part 1650 is revised to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720D; EO 13019, 61 FR 51763, 3 CFR 1996 Comp., p. 216; 5 CFR 550.1101.

2–3. Section 1650.101 is amended by adding two new sentences at the end of the section to read as follows:

§ 1650.101 Purpose.

* * * The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Parts 101–105) apply to the administrative collection activities of the EEOC. The Director of the Financial Management Division shall act on all claims arising out of the activities of the EEOC.

4. Section 1650.201 is amended by adding two new sentences at the end of the section to read as follows:

§ 1650.201 Purpose.

* * * The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Parts 101–105) apply to the administrative collection activities of the EEOC. The Director of the Financial Management Division shall act on all claims arising out of the activities of the EEOC.

5. Section 1650.301 is amended by adding two new sentences at the end of the section to read as follows:

§ 1650.301 Purpose.

* * * The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Part 101–105) apply to the administrative collection activities of the EEOC. The Director of the Financial Management Division shall act on all claims arising out of the activities of the EEOC.

6. A new Subpart D is added to 29 CFR Part 1650 to read as follows:

Subpart D—Procedures for the Collection of Debts by Administrative Wage Garnishment

§ 1650.401 Purpose and regulatory procedures for the collection of debts by administrative wage garnishment.

The Commission hereby adopts by cross-reference the administrative wage garnishment regulation issued by the Department of the Treasury at 31 CFR

285.11. The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Parts 101–105) apply to the administrative collection activities of the EEOC. The Director of the Financial Management Division shall act on all claims arising out of the activities of the EEOC.

Dated: May 20, 1999.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 99–13342 Filed 5–27–99; 8:45 am]

BILLING CODE 6570–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300866; FRL–6082–7]

RIN 2070–AB78

Fenhexamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for fenhexamid (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide) in or on grapes at 4.0 parts per million (ppm), strawberries at 3.0 ppm, and raisins at 6.0 ppm. The TM–402 Fungicide Task Force comprised of Tomen Agro, Inc. and Bayer Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 28, 1999. Objections and requests for hearings must be received by EPA on or before July 27, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300866], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled “Tolerance Petition Fees” and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified

by the docket control number, [OPP-300866], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300866]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Product Manager 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 1998 (63 FR 64498) (FRL-6042-1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) announcing the filing of a pesticide petition (PP 7F4890) for tolerances by the TM-402 Fungicide Task Force comprised of Tomen Agro, Inc. and Bayer Corporation. The notice included a summary of the petition prepared by the TM-402 Fungicide Task Force. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for the fungicide, fenhexamid in or on grapes at 4.0 ppm, strawberries at 3.0 ppm, and raisins at 6.0 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fenhexamid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances in or grapes at 4.0 ppm, strawberries at 3.0 ppm, and raisins at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenhexamid are discussed in this unit.

1. *Acute toxicity*—i. The acute oral LD₅₀ and acute dermal LD₅₀ for rats was

> 5,000 milligrams/kilograms (mg/kg) for both sexes. The acute LC₅₀ for rats was > 5.06 mg/liters (L) for both sexes. Fenhexamid was not an eye or skin irritant and was not a dermal sensitizer.

ii. In an acute neurotoxicity study, rats were gavaged with a single oral dose of fenhexamid at dose levels of 0, 200, 630, or 2,000 mg/kg. The rats were observed for 14 days. Functional Observational Battery and motor activity testing were performed 7 days prior to dosing, approximately 20 minutes to 3 hours post-dosing, and on days 7 and 14. The no observed adverse effect level (NOAEL) in males was 630 mg/kg. The NOAEL in females was 2,000 mg/kg. The lowest observed adverse effect level (LOAEL) in males was 2,000 mg/kg based on a marginally decreased mean body temperature (the only treatment-related effect noted in the study). The LOAEL in females was not established.

2. *Subchronic toxicity*—i. In an inhalation toxicity range-finding study, 10 rats/sex/dose were exposed (head/nose only) to fenhexamid at concentrations of 0, 11.8, 97.7 or 1,092.6 mg/m³ in air for 6 hours per day for 5 days. One-half of the rats were sacrificed 7 days after the first exposure and the other one-half were sacrificed 21 days after the first exposure. The NOAEL was 0.098 mg/L and the LOAEL was 1.092 mg/L based on the observations of macroscopic grey coloration of the lungs and marginally increased lung weights.

ii. In a 21-day dermal toxicity study, fenhexamid was applied to the shaved skin of 5 male and female rabbits at a dose level of 1,000 mg/kg/day for 17 days over a 3-week period. There were no compound related effects. The NOAEL was 1,000 mg/kg/day and the LOAEL was > 1,000 mg/kg/day for both systemic and local effects on the skin.

iii. In a 28-day oral toxicity range finding study, 10 rats/sex/dose were gavaged at dose levels of 0, 100, 300, or 1,000 mg/kg/day for 28 days. There were no compound-related effects in mortality, clinical signs, body weight, food consumption, hematology, clinical chemistry, organ weights, or gross and histologic pathology. The NOAEL was 1,000 mg/kg/day.

iv. In a 90-day oral toxicity study, 10 rats/sex/dose were fed fenhexamid at dose levels of 0, 2,500, 5,000, 10,000 or 20,000 ppm (0, 202, 415, 904, and 1,904 mg/kg/day for males and 0, 270, 549, 1,132, and 2,824 mg/kg/day for females). No treatment-related changes were seen in clinical signs, mortality, ophthalmoscopic examinations, hematology, urinalyses, or gross pathology. The NOAEL was 5,000 ppm in males and 10,000 ppm in females.

The LOAEL in males was 10,000 ppm based on decreased terminal body weights and body weight gains, increased food consumption, decreased food efficiency and increased Alanin amino-transferase (ALAT) levels. The LOAEL in females was 20,000 ppm based on increased food consumption, decreased food efficiency, decreased liver weights, and liver histopathology (Kupffer cell proliferation and altered hepatocyte morphology).

v. In a 90-day oral toxicity study, 4 dogs/sex were fed fenhexamid at dose levels of 0, 1,000, 7,000 or 50,000 ppm (0, 33.9, 239.1, or 1,747.7 mg/kg/day for males and 0, 37, 261, or 1,866.2 mg/kg/day for females). The NOAEL in males and females was 1,000 ppm. The LOAEL in males and females was 7,000 ppm based on significant increases in Heinz bodies in males and females and increased absolute and relative liver weights in females.

vi. In a 90-day oral toxicity study, 10 mice/sex/dose were fed fenhexamid at dose levels of 0, 100, 1,000 or 10,000 ppm (0, 26.5, 266.5 or 3,283.5 mg/kg/day in males and 0, 51.6, 453.9, or 5,151.1 mg/kg/day in females) for 14 weeks. The NOAEL in males and females was 1,000 ppm. The LOAEL in males and females was 10,000 ppm based on the observation in both sexes of: increased serum cholesterol, bilirubin and creatinine, decreased kidney weights, increased water consumption, increased food consumption (males), decreased food efficiency (males), renal cortical tubular basophilia (both sexes), renal protein casts and cellular detritus (males), and marginal alterations of liver function (increased serum cholesterol, bilirubin, decreased Aspartate amino-transferase (ASAT), ALAT), marginal increase in liver weights and reduced glycogen content of hepatocytes (males).

vii. In a 56-day oral toxicity study, 10 rats/sex/dose were fed fenhexamid at dose levels of 0, 1,000, 5,000, 10,000, 15,000, or 20,000 ppm (0, 57.5, 284.7, 575.7, 943.8, or 1,217.1 mg/kg/day for males and 0, 78, 407.1, 896.5, 1,492.5, or 1,896.7 mg/kg/day for females). At 20,000 ppm, rats had fenhexamid plasma levels below the level of detection. Urine samples showed measurable excretion of conjugated fenhexamid indicating intestinal absorption in the dose range examined. Males had a maximum excretion rate at 15,000 ppm indicating a saturation of intestinal absorption between 15,000 and 20,000 ppm. Urine excretion in females was somewhat lower than in males, at concentrations of 10,000 ppm and above. The highest value was determined at 20,000 ppm suggesting

that saturation in intestinal absorption was not achieved with this dose level in females.

3. *Developmental toxicity*—i. In a developmental toxicity study, 30 rats/dose were gavaged at dose levels of 0 and 1,000 (1,044 determined analytically) mg/kg/day from days 6 through 15 of gestation. At 1,000 mg/kg/day, there were no treatment-related effects on maternal mortality, clinical signs, cesarean parameters, or gross pathology. No treatment-related effects were noted in any embryo/fetal parameters. Under the conditions of the study, fenhexamid was not embryotoxic, fetotoxic, or teratogenic at a dose of 1,044 mg/kg/day. The NOAEL for maternal toxicity was < 1,044 mg/kg/day. The developmental NOAEL was 1,044 mg/kg/day. The LOAEL for maternal toxicity was 1,044 mg/kg/day based on the decreased body weight gain (–12% of controls) during gestation days 6–16 and a decrease in food consumption (10% of controls) during gestation days 6–11.

ii. In a developmental toxicity study, 16 rabbits were gavaged with fenhexamid at dose levels of 0, 100, 300, or 1,000 mg/kg/day from days 6 through 18 of gestation. No treatment-related effects were seen on mortality, general appearance or behavior. The NOAEL for maternal toxicity was 100 mg/kg/day. The LOAEL for maternal toxicity was 300 mg/kg/day based on observations at this dose and above of alterations of excretory products (discolored urine, small scybala), decreased body weight gain and feed consumption (mainly during the first week of the treatment period) and decreased placental weights. One abortion at 300 mg/kg/day and one abortion and two total litter resorptions at 1,000 mg/kg/day were not considered to be treatment-related because the incidences fell within the ranges of historical control data submitted with the study. Reduced and/or light feces were also noted at 1,000 mg/kg/day. Pale livers were noted in the 2 dams that aborted. The NOAEL for developmental toxicity was 300 mg/kg/day. The LOAEL for developmental toxicity was 1,000 mg/kg/day based on marginally decreased male fetal body weights and evidence of delayed ossification. Fenhexamid did not induce any treatment-related fetal malformations or deviations at any of the doses tested under the conditions of this study. All effects on intrauterine development were correlated with maternal toxicity and, therefore, no primary developmental effect was evident. Fenhexamid was not teratogenic up to and including 1,000 mg/kg/day.

4. *Reproductive toxicity*. In 2-generation reproduction study, 30 rats/sex/dose were fed fenhexamid at dose levels of 0, 100, 500, 5,000 or 20,000 ppm (0, 7.6, 38.2, 406, or 1,814 for males and 0, 9.0, 44.8, 477, or 2,043 mg/kg/day for females determined for the 10-week pre-mating period). There were no compound-related effects on mortality, clinical signs, behavior or reproductive parameters for adult animals. The NOAEL for reproductive toxicity was 20,000 ppm.

The neonatal NOAEL was 500 ppm and the neonatal LOAEL was 5,000 ppm based on significantly decreased pup body weights on lactation days 14 and 21 for the F₁ (6–11% < controls) and on lactation days 7, 14, and 21 for F₂ pups (9–11% < controls). At 20,000 ppm, significantly decreased pup body weights were observed on lactation days 7, 14, and 21 for F₁ pups (15–30% < controls) and for F₂ pups (11–19% < controls). Treatment-related decreased pup body weights were not observed at birth or on lactation day 4. An additional effect observed at 20,000 ppm was an increase in the number of pups among the post-weaning F₁ pups selected to be F₁ parents which died viz. 0/66, 2/68, 0/68, 0/68 and 10/78 for the control, 100, 500, 5,000, and 20,000 ppm dose groups, respectively. This effect was attributed to the small size of the pups at weaning (30% < controls).

The parental NOAEL was 500 ppm and the parental LOAEL in males was 5,000 ppm based on increased creatinine levels in P-generation (but not F₁ generation) males at pre-mating (20%, p<0.05) and at termination (20%, not significant); slightly increased alkaline phosphatase levels in P-generation and F₁-generation males at pre-mating and at termination (20–34%, not significant); decreased absolute liver weight in P-generation and F₁-generation males (11–12%, p<0.05) and decreased liver/body weight ratios in P-generation and F₁-generation males (8–9%, p<0.05 for P-generation and not significant for F₁-generation); decreased absolute kidney weights in F₁-generation (but not P-generation) males (12%, p<0.05); and decreased kidney/body weight ratios in F₁-generation (but not P-generation) males (8%, p>0.05). The parental LOAEL in females was based on increased alkaline phosphatase levels in F₁-generation (but not P-generation) females at pre-mating (43%, p<0.05) and at termination (63%, p<0.05); and on very small increases in gamma glutamyl transferase (GGT) (not considered to be biologically relevant). Overall, treatment-related effects observed at 5,000 ppm in males and females were also observed at 20,000

ppm, but were slightly increased in severity. Toxicologically relevant additional toxicological effects observed at 20,000 ppm were decreased body weights and increased food consumption in males and increased urea nitrogen and creatinine levels, decreased kidney weights, decreased body weights, and increased food consumption in females.

5. *Mutagenicity*. No mutagenicity was noted in the following assays: Reverse gene mutation, *S. typhimurium*, *E. coli*; Forward gene mutation - Hypoxanthine guanine phosphoribosyl transferase (HGPRT) locus; Chromosome aberration, Chinese hamster ovary (CHO) cells; Unscheduled DNA synthesis, rat hepatocytes; and Micronucleus assay in mice.

6. *Chronic toxicity*—i. In a 1-year chronic oral toxicity study, dogs were fed dose levels of 0, 500, 3,500, or 25,000 ppm (0, 17.4, 124.3, or 917.8 mg/kg/day for males and 0, 19.2, 132.7, or 947.1 mg/kg/day for females). The NOAEL in males and females was 500 ppm. The LOAEL was 3,500 ppm in males and females based on decreases in red blood cells (RBC), hemoglobin (Hb), and hematocrit (Hct) and on significant increases in Heinz bodies in both sexes, increased adrenal weight parameters in females, and the presence of intracytoplasmic vacuoles in the adrenal cortex of 3/4 females.

ii. In a combined chronic toxicity/carcinogenicity study, 50 rats/sex/dose were fed fenhexamid at dose levels of 0, 500, 5,000 or 20,000 ppm (0, 28, 292, or 1,280 mg/kg/day for males and 0, 40, 415, 2,067 mg/kg/day for females) for 24 months. The NOAEL in males and females was 500 ppm. The LOAEL for chronic toxicity in males and females was 5,000 ppm based on observations of decreased body weight gain (–6.8%) and food efficiency (–11.8%) in females, increased incidence of cecal mucosal hyperplasia in males, increased cellularity (hyperplasia) of the bone marrow in females and the presence of splenic extramedullary hematopoiesis in males. At 20,000 ppm, observations were increased food consumption, increased numbers of circulating reticulocytes, enlarged spleens observed macroscopically, increased splenic weights, and thyroid colloid alterations (both sexes). Fenhexamid was non-oncogenic at doses up to and including 20,000 ppm in the diet. At doses tested, there were no treatment related increases in tumor incidence, tumor spectrum, or latency when compared to controls.

7. *Carcinogenicity*. In a carcinogenicity study, 50 mice/sex/dose were fed fenhexamid at dose levels of 0,

800, 2,400, or 7,000 ppm (0, 247.4, 807.4, or 2,354.8 mg/kg/day for males and 0, 364.8, 1,054.5, or 3,178.2 mg/kg/day for females) for 2 years. The NOAEL for males was 800 ppm and the NOAEL for females was 2,400 ppm. The LOAEL for males was 2,400 ppm based on the observation of decreased kidney weights and decreases in sex-specific vacuolation of the proximal tubules in the kidneys in males. A marginal decrease in body weights (up to 8%) and body weight gain (17%) was observed in males at 7,000 ppm. The LOAEL for females was 7,000 ppm based on significantly increased water consumption, decreased kidney weights, and renal histopathology (increased incidence of basophilic cortical tubules). Fenhexamid was not oncogenic in mice at doses up to and including 7,000 ppm. There were no treatment-related increases in tumor incidence, tumor spectrum, or latency when compared to controls.

8. *Dermal absorption*. In a dermal absorption study, radiolabeled fenhexamid (50% formulation) was applied to the shaved skin of male rats at dose levels of 0.00138, 0.0147, or 0.148 mg/cm². A volume of 100 µL was applied to a skin area of approximately 12.5 cm² on each rat. Four rats/dose level were sacrificed at 0.5, 1, 2, 4, 10, 24, and 120 hours postdose. Mean total recovery of radioactivity ranged from 90.3% to 97.6% of the applied dose. The majority of radioactivity was recovered from the skin wash (69.9% to 96.1%). Radioactivity in the skin test site ranged from 0.44% to 10.2%; in the urine from “not detectable” to 3.34%; and in the feces from “not detectable” to 11.6% of the applied dose. Radioactivity in blood did not exceed 0.03% and in the carcass did not exceed 9.37%. Estimates of dermal absorption were based on the sum of radioactivity (as test material) in the skin test site, urine, feces, blood and carcass. The percentage dermal absorption decreased with increasing dose levels. The percentage dermal absorption at 10 hours post-dose was 19.58%, 7.62%, and 2.63% and at 120 hours post-dose was 21.0%, 6.91%, and 2.13% for the low, mid and high dose levels respectively.

9. *Metabolism*. In a metabolism study, rats were administered radiolabeled fenhexamid (a single oral low dose of 1 mg/kg, a single oral high dose of 100 mg/kg, or 15 repeated low doses of 1 mg/kg/day). Radiolabeled fenhexamid was rapidly absorbed from the gastrointestinal (GI) tract in all dose groups. After single and repeated administration of the low dose, the plasma concentration peaked within 5

to 10 minutes. After administration of the high dose, the maximum was detected 40 to 90 minutes post-dosing. The absorption of the test compound was shown to be almost complete in a bile-cannulation experiment, as more than 97% of the administered dose was absorbed from the GI tract 48 hours after intra-duodenal administration. These results are indicative of a pronounced first pass effect and enterohepatic circulation. Tissue residues declined rapidly and after 48 hours the total radioactivity residue in the body excluding the GI tract, was < 0.3% of the administered dose in all dose groups. Liver and kidney were the organs with the highest concentrations of radioactivity in all dose groups. Excretion was rapid and almost complete with feces as the major route of excretion. Approximately 62–81% of the recovered radioactivity was found in feces, and 15–36% in urine within 48 hours post-dosing. More than 90% of the recovered radioactivity was eliminated with bile in the bile cannulation experiment. Only 0.02% of the administered radioactivity was recovered in exhaled air. Radioactive residues in rat bodies (excluding GI tract) were significantly lower in females after a single high dose. There was significantly higher renal excretion for females in comparison with males after 15 repeated low doses. In both sexes renal excretion was significantly higher after a single low dose when compared with a single high dose. Metabolite characterization studies showed that the main component detected in excreta was the unchanged parent compound which accounted for 62 to 75% of the dose independent of the dosing regime and sex. Metabolite 1, the glucuronic acid conjugate of the parent compound, ranged from 4 to 23% of the dose. Metabolite fractions 2 and 3 accounted for up to 3 and 7% of the dose, respectively. The proposed major pathway for biotransformation is via conjugation of the aromatic hydroxyl group with glucuronic acid. Prior to fecal excretion, hydrolysis in the intestine converts the conjugate back to the parent compound giving rise to enterohepatic circulation. Identification of radioactive residues ranged from 88% to 99% and was independent of dose and sex.

B. Toxicological Endpoints

1. *Acute toxicity*. An acute toxicological endpoint was not identified resulting from a single oral exposure, and therefore, an acute Reference Dose (RfD) was not selected.

2. *Short- and intermediate-term toxicity*. A short- and intermediate-term

dermal endpoint of 1,000 mg/kg/day from the 21-day dermal toxicity study in rabbits was selected for occupational exposure. No short- and intermediate-term endpoint was selected for non-occupational exposure as there are no residential uses of fenhexamid.

3. *Chronic toxicity.* EPA has established the RfD for fenhexamid at 0.17 mg/kg/day. This RfD is based on 1-year feeding study in dogs with a NOAEL = 17 mg/kg/day. An additional 3x FQPA safety factor was added and applies to all population subgroups resulting in a chronic population-adjusted dose (chronic PAD) of 0.057 mg/kg/day.

4. *Carcinogenicity.* Fenhexamid was classified as a "not likely" human carcinogen based on the lack of evidence of carcinogenicity in mice and rats and the lack of genotoxicity in a battery of mutagenicity studies.

C. Exposures and Risks

1. From food and feed uses.

Fenhexamid is a new chemical and no tolerances are currently established. In today's action, tolerances are being established at 40 CFR 180.553 for grapes at 4.0 ppm, strawberries at 3.0 ppm, and raisins at 6.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from fenhexamid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No toxicological endpoint attributable to a single (acute) dietary exposure was identified.

ii. *Chronic exposure and risk.* The chronic risk analysis used the chronic PAD of 0.057 mg/kg/day which applies to all populations subgroups. The Dietary Exposure Evaluation Model (DEEM) which is a exposure analysis system that estimates exposure to a pesticide chemical in food comprising the diets of the U.S. population, including population subgroups was used to conduct the chronic (food) risk analysis. DEEM contains food consumption data as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989-1992. The chronic food exposure was calculated assuming theoretical maximum residue contribution (TMRC) values and 100% crop treated estimates. The percent of the chronic PAD utilized is as follows: 6.6% for nursing infants (< 1 year); 4.8% for children (1-6 years); 3.6% for females (13+/nursing) and for all infants (< 1 year); 2.7% for the Pacific regions;

2.4% for non-nursing infants (< 1 year), Western region, and non-Hispanic other than black or white; and 1.8% for the U.S. population (48 states-all seasons).

2. *From drinking water.* In soil, fenhexamid is relatively immobile ($K_{oc} = 446$) and non-persistent ($t_{1/2} = \geq 1$ day). Fenhexamid is not expected to be a ground water contaminant, but has some potential to reach surface water on eroded soil particles. In surface water, fenhexamid would be expected to photodegrade rapidly ($t_{1/2} = \geq 0.2$ days).

No monitoring data are available to perform a quantitative drinking water assessment. The Agency estimated surface water exposure using the Generic Expected Environmental Concentration (GENEEC) model, a screening level model for determining concentrations of pesticides in surface water. GENEEC uses the soil/water partition coefficient, hydrolysis half life, and the maximum label rate to estimate surface water concentration. GENEEC contains a number of conservative underlying assumptions. Therefore, the drinking water concentrations derived from GENEEC for surface water are likely to be overestimated. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for fenhexamid: 0.75 lb. active ingredient/acre x 4 applications/acre/year. The estimated environmental concentrations (EECs) derived from GENEEC are 17 µg/L (peak value) and 4.8 µg/L (56-day average).

The Agency used the Screening Concentration in Ground Water (SCI-GROW) model to estimate pesticide levels in ground water. The SCI-GROW model is based on actual monitoring data collected for a number of pesticides that serve as benchmarks to predict EECs in ground water. Using SCI-GROW, the EEC calculated for fenhexamid is 0.0007 µg/L (acute and chronic).

i. *Acute exposure and risk.* Drinking water levels of comparison (DWLOCs) for acute exposure were not calculated as there was no appropriate toxicological endpoint attributable to a single (acute) dietary exposure.

ii. *Chronic exposure and risk.* Chronic (non-cancer) DWLOCs were calculated for the U.S. population and the population subgroups with the highest (chronic) food exposure. The DWLOCs are as follows: 530 µg/L for infants/children; 1,700 µg/L for females 13+; 1,900 µg/L for the U.S. population - pacific region; and 2,000 µg/L for U.S. population (48 states, all seasons). The EECs (0.0007 µg/L from SCI-GROW, and 4.8 µg/L from GENEEC) for fenhexamid are well below the DWLOCs and

therefore, are below the Agency's level of concern. Therefore, the Agency concludes with reasonable certainty that residues of fenhexamid in drinking water do not contribute significantly to the aggregate chronic human health risk.

3. From non-dietary exposure.

Fenhexamid is not registered for use on residential non-food sites. Therefore, no non-occupational, non-dietary exposure and risk are expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fenhexamid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute aggregate risk is the sum of exposures resulting from acute dietary food + acute drinking water. The Agency did not identify an appropriate toxicological endpoint attributable to a single (acute) dietary exposure.

2. *Chronic risk.* Using the TMRC, exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fenhexamid from food will utilize 1.8% of the chronic PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is nursing infants (< 1 year) discussed below. EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the

potential for exposure to fenhexamid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the chronic PAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenhexamid residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Although short- and intermediate-term endpoints were identified, there are no residential uses for fenhexamid.

4. *Aggregate cancer risk for U.S. population.* Fenhexamid was classified as "not likely" to be a human carcinogen.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to Fenhexamid residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenhexamid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants

or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and postnatal sensitivity.* Qualitatively, there is evidence of increased susceptibility in rat pups compared to adults, based on the relative severity of effects in the 2-generation reproduction study in rats. The effects on pups were of concern because: significant pup body weight decreases were observed in both the F₁ and the F₂ generations; the pup body weight decreases in the F₂ generation were observed during early lactation (lactation days 7 through day 21) when the pups are exposed to the test material primarily through the mother's milk; the pup body weight decreases in the F₁ generation were observed during late lactation (lactation days 14 through 21) when the pups are exposed to the test material through the mother's milk and through the feed; and, in the metabolism study on fenhexamid, glucuronidation of fenhexamid was clearly demonstrated to be the single major route of metabolism, detoxification and excretion of fenhexamid in adult male and female rats. The demonstrated poor glucuronidation capacity of rat pups between days 7 and 21 indicates a possibly increased sensitivity of pups and serves to support a concern for neonatal toxicity.

iii. *Conclusion.* There is a complete toxicity data base for fenhexamid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Although there is qualitative evidence of increased susceptibility, the Agency decided that an additional safety factor of 3x would be appropriate based on the following reasons: the increased susceptibility demonstrated in the 2-generation reproduction study was only qualitative (not quantitative) evidence and was observed only in the presence of parental toxicity; the qualitative offspring effect was limited to decreased body weight and no other adverse effects (e.g., decreased pup survival, behavioral alterations, etc.) were observed; and there is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the prenatal developmental toxicity studies with fenhexamid.

2. *Acute risk.* An acute endpoint was not identified and this risk assessment was not required.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that highest aggregate exposure to fenhexamid from food will utilize 6.6% of the chronic PAD for all infants (< 1 year). EPA generally has no

concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenhexamid in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the chronic PAD.

4. *Short- or intermediate-term risk.* There are no residential uses and thus these risks are not presented.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenhexamid residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The parent compound, fenhexamid, is the only compound of concern. Radiolabeled fenhexamid plant metabolism studies were conducted on grapes, tomatoes, and apples. The qualitative nature of fenhexamid residues in plants is adequately understood. The data indicate very little translocation of residues, i.e., residues of fenhexamid are non-systemic and are thus primarily surface residues. There are no animal feedstuffs associated with the uses of fenhexamid on grapes, strawberries, and ornamentals. Therefore, no animal metabolism data were submitted or required.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (a high performance liquid chromatography method with electrochemical detection) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 101FF, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5229.

C. Magnitude of Residues

An adequate number of geographically representative field trials were submitted to support the proposed uses on grapes and strawberries. These studies were conducted via use patterns approximating those proposed by the petition requesting these tolerances. The data indicate that residues of fenhexamid will not exceed the proposed tolerances. Residues concentrated an average of 1.9x in raisins. Multiplying 1.9x by the highest

average field trial residue value in grapes (2.3 ppm), yields 5.3 ppm as the maximum residue expected in raisins which is below the proposed tolerance of 6.0 ppm. The concentration factor was $\leq 0.25x$ in juice and $\leq 0.5x$ in wine grapes based on data from red and white wine grapes.

D. International Residue Limits

There are no codex, Canadian or Mexican maximum residue limits established for this chemical. This petition was jointly reviewed with Canada's Pest Management and Regulatory Agency and the tolerances proposed have been harmonized with Canada.

E. Rotational Crop Restrictions

The Agency concluded that a 30-day plantback interval is required for all crops without a fenhexamid tolerance.

IV. Conclusion

Therefore, tolerances are established for residues of fenhexamid in or on grapes at 4.0 ppm, strawberries at 3.0 ppm, and raisins at 6.0 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 27, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For

additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300866] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs,

Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances,

raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal

governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 19, 1999.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.553, is added to subpart C to read as follows:

§ 180.553 Fenhexamid; tolerances for residues.

(a) *General.* Tolerances are established for the residues of the fungicide fenhexamid (N-2,3-dichloro-4-

hydroxyphenyl)-1-methyl cyclohexanecarboxamide) in or on the following commodities:

Commodity	Parts per million
Grapes	4.0
Raisins	6.0
Strawberries	3.0

(b) Section 18 emergency exemptions. [Reserved]

(c) Tolerances with regional registrations. [Reserved]

(d) Indirect or inadvertent residues. [Reserved]

[FR Doc. 99-13656 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300862; FRL-6080-5]

RIN 2070-AB78

Terbacil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide terbacil and its metabolites in or on watermelon at 0.4 part per million (ppm) for an additional 2-year period, to May 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on watermelons. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective May 28, 1999. Objections and requests for hearings must be received by EPA, on or before July 27, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300862], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing

requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300862], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP-300862]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 286, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9358; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of June 20, 1997 (62 FR 33557) (FRL-6080-5), which announced that on its own initiative under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of terbacil and its metabolites in or on watermelon at 0.4 ppm, with an expiration date of May 30, 1998, which was later extended to an expiration date of May 30, 1999, with a notice published in the **Federal Register** on February 4, 1998 (63 FR 5735) (FRL-5768-1). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption

from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of terbacil on watermelon for this year's growing season due to ongoing lack of effective registered alternative herbicides which can control morning glory and other annual broadleaf weeds in watermelon fields in the mid-Atlantic. EPA has authorized this use to occur in Delaware, Maryland, and Virginia, during the 1999 growing season.

EPA assessed the potential risks presented by residues of terbacil in or on watermelon. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 20, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2-year period. Although this tolerance will expire and is revoked on May 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watermelons after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those

procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 27, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP-300862] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCa. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCa, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a

“major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 19, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§180.209 [Amended]

2. In §180.209, by amending the table in paragraph (b) by revising the date “5/30/99” to read “5/30/01”.

[FR Doc. 99–13655 Filed 5–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[FRL–6334–7]

Underground Storage Tank Program: Approved State Petroleum Program for Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA’s decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA’s inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Tennessee’s petroleum underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective July 27, 1999, unless EPA publishes a prior

Federal Register document withdrawing this immediate final rule. All comments on the codification of Tennessee’s petroleum underground storage tank program must be received by the close of business June 28, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of July 27, 1999, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, 15th Floor Tower, Atlanta, GA 30303. Comments received by EPA may be inspected in the Underground Storage Tank Section, located at EPA Region 4 from 9 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth St. S.W., Atlanta, GA 30303–3104. Phone: (404) 562–9441.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** document announcing its decision to grant approval to Tennessee on November 17, 1998, **Federal Register** Vol. 63, No. 221. Approval was effective on January 19, 1999.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA’s inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today’s rulemaking codifies EPA’s approval of Tennessee’s petroleum underground storage tank program. This codification reflects the state program in effect at the time EPA granted Tennessee approval under section 9004(a), 42 U.S.C. 6991c(a) for its petroleum underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency’s decision to approve the Tennessee program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Tennessee program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Tennessee, the status of federally approved requirements of the Tennessee program will be readily discernible. Only those provisions of the Tennessee petroleum underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA’s approval of Tennessee’s petroleum underground storage tank program, EPA has added section 282.92 to title 40 of the CFR. Section 282.92 incorporates by reference for enforcement purposes the State’s statutes and regulations. Section 282.92 also references the Attorney General’s Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions. Therefore, the approved Tennessee enforcement authorities will not be incorporated by reference. Section 282.92 lists those approved Tennessee authorities that would fall into this category.

The public also needs to be aware that some provisions of the State’s petroleum underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are “broader in scope” than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are “broader in scope” than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.92 of the codification simply lists for reference and clarity the Tennessee statutory and regulatory provisions which are “broader in scope” than the federal program and which are not, therefore, part of the approved program being codified today. “Broader in scope” provisions cannot be enforced by EPA;

the State, however, will continue to enforce such provisions.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the state requirements authorized by EPA under 40 CFR part 281. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Tennessee's requirements which have been authorized by EPA under 40 CFR part 281 into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic

and regulatory alternatives for proposed and final rules with federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. The requirements being codified today are the result of Tennessee's voluntary participation in accordance with RCRA Subtitle I.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to this action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, this codification incorporates into the Code of Federal Regulations Tennessee's requirements which have already been authorized by EPA under 40 CFR part 281 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

Compliance With Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not

required by statute and that creates a mandate upon a State, local or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its underground storage tank program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from today's action. This rule merely codifies existing requirements which regulated entities must already comply with under State and federal law. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the final rule is not subject to

the requirements of Executive Order 13045.

Compliance With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Tennessee is not approved to implement the underground storage tank program in Indian Country. This rule has no effect on the underground storage tank program that EPA implements in the Indian Country within the State. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency

decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects In 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: April 23, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons set forth in the preamble, 40 CFR Part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding § 282.92 to read as follows:

§ 282.92 Tennessee State-Administered Program.

(a) The State of Tennessee is approved to administer and enforce a petroleum underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Tennessee program on November 17, 1998 and it was effective on January 19, 1999.

(b) Tennessee has primary responsibility for enforcing its petroleum underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections

9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions. EPA also retains all authority to operate the hazardous substance underground storage tank program.

(c) To retain program approval, Tennessee must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Tennessee obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this Subpart and notice of any change will be published in the **Federal Register**.

(d) Tennessee has final approval for the following elements submitted to EPA in the State's program application for final approval and approved by EPA on November 17, 1998. Copies may be obtained from the Underground Storage Tank Program, Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, 4th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1541.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Tennessee Statutory Requirements Applicable to the Underground Storage Tank Program, 1998.

(B) Tennessee Regulatory Requirements Applicable to the Underground Storage Tank Program, 1998.

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(1) General Statutes of Tennessee, Chapter 215—Tennessee Petroleum Underground Storage Tank Act:
 Section 68-215-107 Supervision, inspection, and enforcement responsibilities
 Section 68-215-114 Order for correction—Liability
 Section 68-215-116 Failure to take proper action
 Section 68-215-119 Review of orders and revocations
 Section 68-215-120 Criminal penalties—Suspension of certificates

Section 68–215–121 Civil penalty—Assessment

Section 68–215–122 Injunctions

(B) The regulatory provisions include:

(1) Tennessee Department of Environment and Conservation, Underground Storage Tank Program Rules, Chapter 1200–1–15: Not applicable.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, and are not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include:

(1) Tennessee Code Annotated, Title 68, Chapter 215:

Section 68–215–102(a)(3) [Insofar as it refers to the intent to develop long range plans to meet future petroleum underground storage tank demands.]

Section 68–215–102(a)(5) [Insofar as it provides for a cleanup fund.]

Section 68–215–104 [Insofar as it applies to persons other than underground storage tank owners or operators.]

Section 68–215–106(a)(6) [Insofar as it requires any person who deposits petroleum in underground storage tanks to notify the owner or operator of state notification requirements.]

Section 68–215–106(c)(2) [Insofar as it applies to persons other than owners and operators placing petroleum substances in an underground storage tank.]

Section 68–215–107(f)(9) [Insofar as it provides for rule development for the assessment and collections of fees.]

Section 68–215–109 [Insofar as it allows for levying and collection of annual fees to operate the underground storage tank fund and develop rules.]

Section 68–215–110 [Insofar as it establishes a petroleum underground storage tank fund.]

Section 68–215–111 [Insofar as it refers to uses of the state underground storage tank fund.]

Section 68–215–112 [Insofar as it established a petroleum underground storage tank board.]

Section 68–215–113 [Insofar as it established board meeting, public hearing, and board compensation.]

Section 68–215–115 [Insofar as it establishes cost recovery and apportionment of liability for cleanups.]

Section 68–215–117 [Insofar as it applies to persons other than underground storage tank owners and operators.]

Section 68–215–125 [Insofar as it applies to the state underground storage tank fund.]

Section 68–215–128 [Insofar as it requires a report to the General Assembly.]

(B) The regulatory provisions include:

(1) Tennessee Department of Environment and Conservation, Underground Storage Tank Program Rules, Chapter 1200–1–15:

Section .09 [Insofar as it refers to guidelines and procedures for administering the Tennessee petroleum underground storage tank fund.]

Section .10 [Insofar as it refers to annual fees, the use, collection and failure to pay fees.]

Section .11 [Insofar as it requires underground storage tank fees, use, collection and failure to pay penalties, and fee notices.]

(2) *Statement of legal authority.* “Attorney General’s Statement of ‘No Less Stringent’ Requirements and ‘Adequate Enforcement’ Authorities Implementing Underground Storage Tank Program”, signed by the State Attorney General on June 3, 1996, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on September 1, 1996, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program Description.* The program description and any other material submitted as part of the original application on September 1, 1996, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, signed by the EPA Regional Administrator on July 1, 1998, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to Part 282 is amended by adding in alphabetical order “Tennessee” and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Tennessee

- (a) The statutory provisions include:
1. Section 68–215–101 Short title
 2. Section 68–215–102 Legislative intent [Except § 68–215–102(a)(3) and except § 68–215–102(a)(5).]
 3. Section 68–215–103 Definitions
 4. Section 68–215–105 Minimum requirements for tanks
 5. Section 68–215–106 Notification as to tanks in use and tanks taken out of operations [Except § 68–215–106(a)(6) and except § 68–215–106(c)(2).]
 6. Section 68–215–107 Supervision, inspection, and enforcement responsibilities [Except § 68–215–107(e) and except § 68–215–107(f)(9).]
 7. Section 68–215–108 Proprietary information
 8. Section 68–215–118 Compliance by governmental entities
 9. Section 68–215–123 Complaints—Hearings—Appeals
 10. Section 68–215–124 Exemptions
 11. Section 68–215–126 Preemption of local regulation—Exception
 12. Section 68–215–127 Exclusivity of provisions
- (b) The regulatory provisions include:
1. Section .01 Program Scope and Minimum Requirements for Tanks
 - Section .01(1) Applicability
 - Section .01(2) Minimum requirements for tanks
 - Section .01(3) Definitions
 2. Section .02 UST Systems: Design, Construction, Installation and Notification
 - Section .02(1) Performance standards for new UST systems
 - Section .02(2) Upgrading of existing UST systems
 - Section .02(3) Notification requirements
 3. Section .03 General Operating Requirements
 - Section .03(1) Spill and overfill control
 - Section .03(2) Operation and maintenance of corrosion protection
 - Section .03(3) Compatibility
 - Section .03(4) Repairs allowed
 - Section .03(5) Reporting and recordkeeping
 4. Section .04 Release Detection
 - Section .04(1) General requirements for release detection
 - Section .04(2) Requirements for petroleum UST systems
 - Section .04(3) Methods of release detection for tanks
 - Section .04(4) Methods of release detection for piping
 - Section .04(5) Release detection recordkeeping
 5. Section .05 Release Reporting, Investigation and Confirmation
 - Section .05(1) Reporting of suspected releases
 - Section .05(2) Investigation due to off-site impacts
 - Section .05(3) Release investigation and confirmation steps

- Section .05(4) Reporting and cleanup of spills and overfills
- 6. Section .06 Release Response and Corrective Action for UST Systems Containing Petroleum
 - Section .06(1) General
 - Section .06(2) Initial response
 - Section .06(3) Initial abatement measures and site check
 - Section .06(4) Initial site characterization
 - Section .06(5) Free products removal
 - Section .06(6) Investigations for soil and ground water cleanup
 - Section .06(7) Corrective action plan
 - Section .06(8) Public participation
- 7. Section .07 Out-of-Service UST System and Closure
 - Section .07(1) Temporary closure
 - Section .07(2) Permanent closure and changes-in-service
 - Section .07(3) Assessing the site at closure or change-in-service
 - Section .07(4) Applicability to previously closed UST systems
 - Section .07(5) Closure records
- 8. Section .08 Financial Responsibility
 - Section .08(1) Applicability
 - Section .08(2) Compliance dates
 - Section .08(3) Definition of terms
 - Section .08(4) Amount and scope of required financial responsibility
 - Section .08(5) Allowable mechanisms and combinations of mechanisms
 - Section .08(6) Financial test of self-insurance
 - Section .08(7) Guarantee
 - Section .08(8) Insurance and risk retention group coverage
 - Section .08(9) Surety bond
 - Section .08(10) Letter of credit
 - Section .08(11) Petroleum underground storage tank fund
 - Section .08(12) Trust fund
 - Section .08(13) Standby trust fund
 - Section .08(14) Substitution of financial assurance mechanisms by owner or operator
 - Section .08(15) Cancellation or nonrenewal by a provider of financial assurance
 - Section .08(16) Reporting by owner or operator
 - Section .08(17) Recordkeeping
 - Section .08(18) Drawing on financial assurance mechanisms
 - Section .08(19) Release from requirements
 - Section .08(20) Bankruptcy or other incapacity of owner or operator or provider of financial assurance
 - Section .08(21) Replenishment of guarantees, letters of credit, or surety bonds

[FR Doc. 99-13194 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3461, or (e-mail) matt.miller@fema.gov.

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

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

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

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

The modified base flood elevations are the basis for the floodplain

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7276).	Unincorporated Areas.	January 13, 1999, January 20, 1999, <i>Arizona Daily Star</i> .	The Honorable Mike Boyd, Chairperson, Pima County, Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	December 28, 1998 ..	040073
Arkansas:					
Washington (FEMA Docket No. 7276).	City of Fayetteville.	January 8, 1999, January 15, 1999, <i>Morning News</i> .	The Honorable Fred Hanna, Mayor, City of Fayetteville, 113 West Mountain, Fayetteville, Arkansas 72701.	December 17, 1998 ..	050216
Crittenden (FEMA Docket No. 7276).	City of West Memphis.	January 12, 1999, January 19, 1999, <i>Evening Times</i> .	The Honorable Ward L. Wimbish, Public Works Director/Floodplain Manager, P.O. Box 1728, West Memphis, Arkansas 72303.	December 18, 1998 ..	050055
California:					
Riverside	City of Murrieta ...	February 23, 1999, March 2, 1999, <i>The Press-Enterprise</i> .	The Honorable Chuck Washington, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562.	February 8, 1999	060751
Los Angeles (FEMA Docket No. 7280).	City of Santa Clarita.	November 27, 1998, December 4, 1998, <i>The Signal</i> .	The Honorable Jan Heidt, Mayor, City of Santa Clarita, 23920 Valencia Boulevard, Suite 300, Santa Clarita, California 91355.	November 12, 1998 ..	060729
Ventura (FEMA Docket No. 7276).	Unincorporated Areas.	January 8, 1999, January 15, 1999, <i>Ventura County Star</i> .	The Honorable Judy Mikels, Chairperson, County of Ventura, 3855-F Alamo Street, Simi Valley, California 93063.	December 23, 1998 ...	060413
Iowa:					
Johnson (FEMA Docket No. 7276).	City of Coralville	January 13, 1999, January 20, 1999, <i>Iowa City Press Citizen</i> .	The Honorable Jim Fausett, Mayor, City of Coralville, 814 14 th Avenue, Coralville, Iowa 52241.	December 18, 1998 ..	190169
Johnson (FEMA Docket No. 7276).	City of Iowa City	January 13, 1999, January 20, 1999, <i>Iowa City Press Citizen</i> .	The Honorable Ernie Lehman, Mayor, City of Iowa City, 410 East Washington Street, Iowa City, Iowa 52240.	December 18, 1998 ..	190171
Kansas: Sedgwick (FEMA Docket No. 7276).	City of Wichita	January 19, 1999, January 26, 1999, <i>Wichita Eagle</i> .	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	January 7, 1999	200328
Missouri:					
St. Louis (FEMA Docket No. 7276).	City of Eureka	January 6, 1999, January 13, 1999, <i>Tri-County Journal</i> .	The Honorable Robert A. Berry, Mayor, City of Eureka, P.O. Box 125, Eureka, Missouri 63025.	April 13, 1999	290349
Jackson (FEMA Docket No. 7272).	City of Raytown ..	December 23, 1998, December 30, 1998, <i>Raytown Post</i> .	The Honorable Jack R. Nesbitt, Mayor, City of Raytown, 10000 East 59th Street, Raytown, Missouri 64133.	March 30, 1999	290176
Nevada: Clark (FEMA Docket No. 7272).	City of Las Vegas	December 22, 1998, December 29, 1998, <i>Las Vegas Review Journal</i> .	The Honorable Jan Laverty Jones, Mayor, City of Las Vegas, 400 East Stewart Avenue, Las Vegas, Nevada 89101-2986.	November 30, 1998 ...	325276
Texas:					
Dallas (FEMA Docket No. 7276).	City of Dallas	January 13, 1999, January 20, 1999, <i>Dallas Morning News</i> .	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	December 11, 1998 ...	480171
El Paso (FEMA Docket No. 7276).	City of El Paso	January 12, 1999, January 19, 1999, <i>El Paso Times</i> .	The Honorable Carlos M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901-1196.	December 21, 1998 ..	480214

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant (FEMA Docket No. 7276).	City of Fort Worth	January 12, 1999, January 19, 1999. <i>Fort Worth Star-Telegram</i> .	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 100 Throckmorton Street, Fort Worth, Texas 76102-6311.	December 14, 1998 ..	480596
Washington: Walla Walla (FEMA Docket No. 7276).	City of Waitsburg	January 7, 1999, January 14, 1999, <i>Waitsburg Times</i> .	The Honorable Bill Zuger, Mayor, City of Waitsburg, P.O. Box 35, Waitsburg, Washington 99361.	December 8, 1998	530196
Walla Walla (FEMA Docket No. 7276).	Unincorporated Areas.	January 7, 1999, January 14, 1999, <i>Walla Walla Union-Bulletin</i> .	The Honorable Charles Maiden, Chairman, Walla Walla County, Board of Commissioners, P.O. Box 1506, Walla Walla, Washington 99362.	December 8, 1998	530194

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

Dated: May 13, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-13631 Filed 5-27-99; 8:45 am]

BILLING CODE 6718-04-U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-7288]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

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

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

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

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-3461, or (e-mail) matt.miller@fema.gov.

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

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

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

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

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

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

pursuant to policies established by other Federal, State, or regional entities.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino ..	City of Flagstaff	April 20, 1999, April 29, 1999, <i>Arizona Daily Sun.</i>	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	March 17, 1999	040020
Arkansas: Crittenden.	City of West Memphis.	April 20, 1999, April 27, 1999, <i>Evening Times.</i>	The Honorable William H. Johnson, Mayor, City of West Memphis, P.O. Box 1728, West Memphis, Arkansas 72303.	March 30, 1999	050055
California: Los Angeles.	City of Los Angeles	April 22, 1999, April 29, 1999, <i>Los Angeles Times.</i>	The Honorable Richard J. Riordan, Mayor, City of Los Angeles, City Hall, Room 305, 200 North Main Street, Los Angeles, California 90012.	March 12, 1999	060137
Colorado: Douglas	Unincorporated Areas.	April 21, 1999, April 28, 1999, <i>Douglas County News Press.</i>	The Honorable James Sullivan, Chairman, Douglas County Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	March 29, 1999	080049
Douglas	Town of Parker	April 22, 1999, April 29, 1999, <i>Parker Trail.</i>	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Main Street, Parker, Colorado 80138.	March 29, 1999	080310
San Miguel	Town of Telluride ..	April 9, 1999, April 16, 1999, <i>Telluride Daily Planet.</i>	The Honorable Elaine Fischer, Mayor, Town of Telluride, P.O. Box 397, Telluride, Colorado 81435.	March 10, 1999	080186
Missouri: Madison ..	City of Fredericktown.	April 21, 1999, April 28, 1999, <i>Democrat News.</i>	The Honorable Phillip Wulfert, Mayor, City of Fredericktown, City Hall, 124 Main Street, Fredericktown, Missouri 63645.	March 24, 1999	290221
Texas: Bandera	City of Bandera	April 21, 1999, April 28, 1999, <i>Bandera Bulletin.</i>	The Honorable Bob Cowan, Mayor, City of Bandera, P.O. Box 896, Bandera, Texas 78003.	July 27, 1999	480021
Bandera	Unincorporated Areas.	April 21, 1999, April 28, 1999, <i>Bandera Bulletin.</i>	The Honorable Richard A. Evans, Bandera County Judge, County Courthouse, P.O. Box 877, Bandera, Texas 78003.	July 27, 1999	480020
Tarrant	City of Bedford	April 23, 1999, April 30, 1999, <i>Fort Worth Star-Telegram.</i>	The Honorable Rick Hurt, Mayor, City of Bedford, 2000 Forrest Ridge Drive, Bedford, Texas 76021.	March 26, 1999	480585
Brazos	City of College Station.	April 21, 1999, April 28, 1999, <i>Bryan-College Station Eagle.</i>	The Honorable Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, Texas 77842-0960.	March 26, 1999	480083
Tarrant	City of Crowley	April 14, 1999, April 21, 1999, <i>Fort Worth Star-Telegram.</i>	The Honorable Chuck Rutherford, Mayor, City of Crowley, P.O. Box 747, Crowley, Texas 76036.	July 20, 1999	480591
El Paso	City of El Paso	April 20, 1999, April 27, 1999, <i>El Paso Times.</i>	The Honorable Carlos M. Ramirez, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901-1196.	March 26, 1999	480214
Tarrant	City of Euless	April 13, 1999, April 20, 1999, <i>Fort Worth Star-Telegram.</i>	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, Texas 76039.	March 16, 1999	480593
Tarrant	City of Fort Worth	April 30, 1999, May 7, 1999, <i>Fort Worth Star-Telegram.</i>	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102-6311.	April 1, 1999	480596
Tarrant	City of Haltom City	April 8, 1999, April 15, 1999, <i>Fort Worth Star-Telegram.</i>	The Honorable Gary Larson, Mayor, City of Haltom City, P.O. Box 14246, Haltom City, Texas 76117-0246.	March 16, 1999	480599

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin	City of Plano	April 21, 1999, April 28, 1999, <i>Plano Star Courier</i> .	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358.	March 26, 1999	480140
Tarrant	City of Watauga	April 8, 1999, April 15, 1999, <i>Fort Worth Star-Telegram</i> .	The Honorable Hector Garcia, Mayor, City of Watauga, 7101 Whitley Road, Watauga, Texas 76148.	March 16, 1999	480613
Utah: Salt Lake	Unincorporated Areas.	April 13, 1999, April 20, 1999, <i>Salt Lake Tribune</i> .	The Honorable Mary Callaghan, Chairperson, Salt Lake County Commission, 2001 South State Street, Suite N2100, Salt Lake City, Utah 84190-1000.	July 19, 1999	490102
Salt Lake	City of South Jordan.	April 13, 1999, April 20, 1999, <i>Salt Lake Tribune</i> .	The Honorable Dix McMullin, Mayor, City of South Jordan, 11175 South Redwood Road, South Jordan, Utah 84095.	July 19, 1999	490107
Salt Lake	City of West Jordan.	April 13, 1999, April 20, 1999, <i>Salt Lake Tribune</i> .	The Honorable Donna Evans, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, Utah 84088.	July 19, 1999	490108

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

Dated: May 13, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-13629 Filed 5-27-99; 8:45 am]

BILLING CODE 6718-04-U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT:

Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3461, or (e-mail) matt.miller@fema.gov.

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

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

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM

available at the address cited below for each community.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Alturas (City), Modoc County (FEMA Docket No. 7274) <i>North Fork Pit River:</i> Approximately 1,750 feet downstream from Main Street Approximately 6,800 feet upstream from Estalos Street	*4,359 *4,371
Maps are available for inspection at 202 West Fourth Street, Alturas, California.	
Modoc County (Unincorporated Areas) (FEMA Docket No. 7274) <i>North Fork Pit River:</i> Approximately 50 feet downstream from Southern Pacific Railroad Approximately 7,550 feet upstream from Estalos Street	*4,358 *4,372
Maps are available for inspection at 202 West Fourth Street, Alturas, California.	

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

Dated: May 13, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99-13632 Filed 5-27-99; 8:45 am]

BILLING CODE 6718-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[WT Docket No. 98-160; FCC 99-45]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission revises its rules to eliminate the Wireless Telecommunications Bureau's reference facility in Gettysburg, Pennsylvania. The demand to review application and licensing records will be met by the Commission's public access capabilities, particularly as the use of electronic filing increases. This document also amends the Commission's rules to accurately reflect the location and availability of license application information within the Wireless Telecommunications Bureau.

EFFECTIVE DATE: Amendments to § 0.453(g) and (h) are effective July 20, 1999. Amendments to §§ 0.453(l) and (o) and 0.455(f) are effective 90 days after ULS is implemented for all services licensed by the Wireless Telecommunications Bureau. The Wireless Bureau will issue a public notice announcing the specific date upon which these amendments become effective.

FOR FURTHER INFORMATION CONTACT: Walter Boswell, 717-338-2601.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) released March 24, 1999 in WT Docket No. 98-160; FCC 99-45. The full text of this R&O is available for inspection and copying during normal business hours at the FCC Dockets Branch, 445 12th Street SW, Washington, DC. The text of the R&O may also be purchased by calling International Transcription Service at 202-857-3800.

Given the readily available electronic access to information concerning applications and licenses for wireless telecommunications services, this R&O closes the Commission's Gettysburg reference facility at a future date. Due to its location outside the Washington, DC area, the Gettysburg reference facility is not as well used as those at Commission headquarters. The demand to review materials will be easily met by the Commission's public access capabilities, particularly as the use of electronic filing expands to the point where the Commission receives little or no paper from applicants. The Wireless

Telecommunications Bureau staff in Gettysburg will accept requests at their front counter to review paper documents, and the Commission's duplication services contractor will provide copies of applications upon request for their usual research and copying fees.

List of Subjects in 47 CFR Part 0

Public information and inspection of records.

Federal Communications Commission.

Magalie Roman Salas, Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Section 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.453 is amended by revising the introductory text, paragraph (g) introductory text, paragraph (h) introductory text and adding new paragraph (o) to read as follows:

§ 0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC:

* * * * *

(g) The Common Carrier Bureau, Network Services Division Public Reference Room. Section 214 applications and related files, to the extent that they concern domestic communications facilities and services are available for inspection at this location.

* * * * *

(h) The Wireless Telecommunications Bureau, Commercial Mobile Services Reference Room. The following documents, files and records are available for inspection at two different locations. The Legal Branch is the responsible custodian for both locations.

* * * * *

(o) Electronically stored application and licensing data for commercial radio operator applications and all authorizations in the Wireless Radio services are available for public inspection via the Commission's wide area network. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Fixed Point-to-Point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS),

Aviation Ground and Marine Coast applications.

3. Section 0.455 is amended by revising paragraph (f) as follows:

§ 0.455 Other locations at which records may be inspected.

* * * * *

(f) *Wireless Telecommunications Bureau*. See § 0.453(o) of this chapter.

* * * * *

[FR Doc. 99-13623 Filed 5-27-99; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990318076-9109-02; I.D. 052199E]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Commercial Cod Harvest

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

ACTION: Reduction of cod landing limit.

SUMMARY: NMFS issues this notification to announce that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that 402

metric tons (mt) of the target total allowable catch (TAC) for the Gulf of Maine (GOM) cod stock will be harvested as of 0001 hours, May 28, 1999, and that, with certain exceptions as specified in the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP), vessels fishing under a multispecies day-at-sea (DAS) may not possess more than 30 lb (13.6 kg) of cod per DAS for any DAS utilized on or after May 28, 1999.

DATES: Effective 0001 hours, May 28, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978-281-9273.

SUPPLEMENTARY INFORMATION:

Regulations implementing the GOM cod trip limit in Framework Adjustment 27 to the FMP (64 FR 24066, May 5, 1999) became effective May 1, 1999. To ensure that GOM cod landings remain within the target TAC of 1,340 mt established for the 1999 fishing year, Framework 27 provides a mechanism to reduce the 200 lb (90.7 kg) per DAS landing limit to as low as 5 lb (2.3 kg) per DAS, based on the rate of catch and the risk of exceeding the target TAC. Section 648.86(b)(1)(i) specifies that this mechanism is triggered when the Regional Administrator has projected that 402 mt will be harvested. Further, this section stipulates that NMFS will

publish a notification in the **Federal Register** informing the public of the date of the reduction.

Based on the available information, the Regional Administrator has projected that 402 mt will be reached on May 28, 1999. Given the rate at which this trigger amount was reached, the Regional Administrator has determined that reducing the landing limit to 30 lb (13.6 kg) will be necessary in order to best balance the need to minimize discards, discourage vessels from targeting cod by using the running clock provision, and ensure that GOM cod landings remain within the target TAC for the 1999 fishing year. Therefore, the cod landing limit, pursuant to § 648.86(b)(1)(i), has been reduced to 30 lb (13.6 kg) per DAS, except as provided under § 648.86(b)(1)(ii) and (b)(2), for DAS used on or after 0001 hours May 28, 1999.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: May 21, 1999.

Gary C. Matlock,

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

[FR Doc. 99-13555 Filed 5-25-99; 3:10 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 64, No. 103

Friday, May 28, 1999

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

Farm Service Agency

7 CFR Part 735

RIN 0560-AF13

Amendments to the Regulations for Cotton Warehouses Regarding the Delivery of Stored Cotton

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations governing cotton warehouses under the United States Warehouse Act (USWA) to establish a cotton shipping standard that would define the statutory phrase "without unnecessary delay" which could be used to determine whether warehouse operators deliver cotton timely. The Department of Agriculture (USDA) is taking this action as the result of two Federal District Court orders requesting USDA to define the statutory phrase "without unnecessary delay" as set forth in the USWA. Concurrently, several segments of the cotton industry requested the implementation of a uniform national cotton shipping standard for the delivery of stored cotton that would increase the market value of producer cotton through timely and improved delivery. Before issuing this proposed rule, the Farm Service Agency (FSA) published an advanced notice of proposed rulemaking (ANPRM) in the May 26, 1998, **Federal Register** (63 FR 28488) seeking comments on two independent options and specific questions regarding National Cotton Flow Standard issues. Each option contained identical methods for defining "without unnecessary delay," and establishment of both a uniform cotton shipping standard and dispute resolution. Along with minimal USDA involvement Option I offered nothing more. However, Option II offered standardized terminology, definitions, dispute mediation, a national cotton flow shipping status report, user fees, and

greater USDA regulatory role. Public comments favored Option I and expressed a strong conviction that USDA should only establish a cotton shipping standard, but allowed enforcement by the cotton industry without USDA involvement, assessment of user fees, or increased governmental costs. This proposed rule expresses those public comments and provides another opportunity for the public to comment before FSA publishes a final rule.

DATES: Comments should be submitted on or before July 27, 1999 to be assured of consideration.

ADDRESSES: FSA invites interested persons to submit written comments on this proposed rule to: Steve Gill, Director, Warehouse and Inventory Division, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, D.C. 20250-0553; telephone (202) 720-2121; fax (202) 690-3123; or by E-mail comments to: Steve Mikkelsen@wdc.fsa.usda.gov. Additionally, interested persons may send comments via the Internet through the National Cotton Flow's (NCF) homepage at: <http://www.fsa.usda.gov/nfc>.

All written comments received in response to this proposed rule will be available for public inspection in Room 5968, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Deputy Director, Warehouse and Inventory Division, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, D.C. 20250-0553; telephone (202) 720-2121; or fax (202) 690-3123. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has reviewed the proposed rule and determined the rule to be significant for

the purposes of Executive Order 12866. A Cost-Benefit Assessment (CBA) was prepared. The costs associated with the implementation of the proposed rule will be minimal to all parties involved. The CBA summarized the cost and benefit impact of the proposed rule as follows:

The cost associated with the implementation of the proposed rule will be minimal to all parties involved.

The cotton industry will benefit from FSA establishing a shipping standard that the industry can apply through arbitration or legal proceedings to determine whether warehouse operators are delivering cotton "without unnecessary delay." Establishment of a national shipping standard would potentially help (1) maintain the competitiveness of U.S. cotton in domestic and world markets, (2) improve the prices that producers receive in those areas affected by delivery delays, and (3) eliminate any disruption in commerce due to uncertainty of delivery expectations.

Copies of the CBA are available upon request at the address listed above.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12612, Federalism

This proposed rule would not involve any policies that have federalism implications under Executive Order 12612.

Executive Order 12372

FSA programs are not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments set forth in this proposed rule do not affect information collection or recordkeeping requirements.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouseman's part.

Unfunded Mandate Reform Act of 1995 (UMRA)

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Since the early 1960's, the timely delivery and shipping of stored cotton (cotton flow) has been an ongoing issue throughout the cotton industry. While cotton shippers and cotton merchants require timely delivery and shipping to meet the demands of the marketplace, cotton warehousemen contend that the delivery and shipping demands placed on them by shippers and merchants are unreasonable and exceeded warehouse capabilities. When delivery and shipping delays began to occur during the 1995/96 crop year, rather than exercising the arbitration rights incorporated in the voluntary standard that was implemented by the Coalition for Cotton Flow Standards (CCFS), an organization created by the National Cotton Council, several cotton shippers filed complaints with FSA. These shippers requested FSA to investigate the cotton flow situation, and suspend the federal license of those warehouses that had not delivered and shipped cotton "without unnecessary delay" as required by the USWA. USWA personnel investigated and found the lack of uniform common terms and a standard process for requesting services may have contributed to confusion and the appearance of longer delivery and shipping delays.

In addition to filing complaints with FSA, several shippers also filed lawsuits in United States District Courts against two cotton warehousemen. In each of these cases, the lack of determination by USDA in the use and meaning of the USWA statutory phrase "without unnecessary delay" was a key issue for the courts. Ultimately, the shippers

elected to dismiss their suits after jointly agreeing to request that the cases be remanded for USDA to determine the definition of the statutory phrase "without unnecessary delay." The Courts agreed and remanded the matter of defining "without unnecessary delay" to USDA.

Concurrently, several segments of the cotton industry requested USDA to implement a uniform national cotton shipping standard, based on weekly deliveries of 4.5% of each warehouse's Commodity Credit Corporation's (CCC) Cotton Storage Agreement (CSA) approved capacity. The industry presented 4.5% as the level that would expedite the delivery and shipment of U.S. cotton into marketing trade channels and enhance prices paid producers while reducing the cost of handling cotton. Because the CSA's applicability was for CCC-interest cotton only and about 80% of all cotton being receipted under the USWA's electronic warehouse receipt authority. USDA perceived that a delivery and shipping standard should be based on the USWA rather than the CSA.

As a result of these events, on May 26, 1998, USDA published an ANPRM (63 FR 28488) that sought public comments on two independent options and specific questions regarding National Cotton Flow Standard issues. Each contained identical methods for defining "without unnecessary delay," and establishment of both a uniform cotton shipping standard and dispute resolution. Along with minimal USDA involvement Option I offered nothing more. However, Option II offered standardized definitions, terminologies, dispute mediation, a national cotton flow shipping status report, operated with user fees, and a greater USDA regulatory role. Public comments favored Option I and strongly expressed a conviction that USDA should only establish a cotton shipping standard, but allow enforcement by the cotton industry without USDA involvement, assessment of user fees, or increased governmental costs.

Summary of Public Comments

FSA received 47 public comments in response to the ANPRM that was published on May 26, 1998 (63 FR 28488). Comments and suggestions were received from 6 sectors of the trade-industry as follows: 6 Cotton Trade Associations; 23 Cotton Warehouse Operators; 15 Cotton Brokers/Merchants; 1 Attorney; 1 Retired USDA Employee; and 1 Cottonseed Oil Processor. Of the comments received, 1 respondent approved of the ANPRM's Option I as written; 35 respondents

approved of the ANPRM's stated cotton flow standard, but believed that any dispute resolution should be administered by cotton industry arbitration procedures; 4 respondents favored the ANPRM's stated cotton flow standard without arbitration procedures; 2 respondents believed that compliance should be enforced through the Commodity Credit Corporation's Cotton Storage Agreement with modified cotton industry arbitration provisions; 1 respondent favored the ANPRM's 4.5% shipping requirement, but opposed the 14-day shipping period included in Option II; 1 respondent favored the ANPRM's 4.5% shipping requirement, but wanted it to be based on the previous week's ending inventory rather than a licensed or approved capacity; 1 respondent opposed the entire ANPRM, but favored cotton industry self-regulation; and 2 respondents favored no established cotton shipping standard.

Public comments received in response to the ANPRM expressed the strong conviction that USDA should define "without unnecessary delay" through the establishment of a national cotton shipping standard based on weekly deliveries of 4.5% of a warehouse's approved capacity, but allowed enforcement by the cotton industry without governmental involvement, assessment of user fees, or increased governmental costs. Since public comments strongly expressed that USDA limit its role and involvement to defining "without unnecessary delay" through establishing a national cotton shipping standard, reserving enforcement by the cotton industry without governmental involvement, assessment of user fees, or governmental costs. FSA is limiting USDA's role and involvement in publishing this proposed rule that sets forth a national cotton shipping standard that defines "without unnecessary delay," and reserves any compliance or dispute resolution for the cotton industry without USDA enforcement or involvement.

The provisions in this proposed rule would be applicable to cotton warehousemen licensed under the USWA and warehousemen who utilize electronic warehouse receipts stored in a central filing system approved under the USWA.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Delivery, Reporting and recordkeeping requirements, Shipping, Surety bonds, Warehouses.

For the reasons stated in the preamble, the Farm Service Agency

proposes to amend 7 CFR part 735 as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for 7 CFR part 735 continues to read as follows:

Authority: 7 U.S.C. 241 et seq.

§§ 735.106 through 735.199 [Added and Reserved]

2. Sections 735.106 through 735.199 are added and reserved.

3. Section 735.2 is amended by adding paragraph (jj) to read as follows:

§ 735.2 Terms defined.

* * * * *

(jj) *Force majeure*. Severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military authority, non-availability of transportation facilities, or any other cause beyond the control of the warehouseman that renders performance impossible.

4. Add an undesignated center heading entitled, "Delivery and Shipping" after reserved § 735.199.

5. Sections 735.200 through 735.202 are added under the undesignated heading "Delivery and Shipping" to read as follows:

§ 735.200 Applicability.

The cotton shipping standard set forth in § 735.201 is applicable to all cotton warehousemen licensed under the Act and to all warehousemen that issue electronic warehouse receipts through an authorized electronic warehouse receipt provider in accordance with §§ 735.100 through 735.105 regardless of whether the warehouse is licensed under the Act.

§ 735.201 Cotton Shipping Standard.

Unless prevented from doing so by force majeure, a warehouseman identified in § 735.200 shall deliver stored cotton without unnecessary delay. A warehouseman shall be considered to have delivered cotton without unnecessary delay if for the week in question, the warehouseman has delivered or staged for scheduled delivery at least 4.5% of either their licensed capacity or Commodity Credit Corporation approved storage capacity or other storage capacity as determined by the Secretary to be in effect during the week of shipment.

§ 735.202 Compliance and Dispute Resolution.

(a) Any claims for noncompliance with the cotton shipping standard will be resolved by the parties involved through established industry,

professional, or mutually agreed upon arbitration procedures. The arbitration procedures shall be nondiscriminatory and provide all persons equal access and protection relating to the cotton shipping standard.

(b) No arbitration determination or award resulting from noncompliance with the shipping standard shall affect, obligate, or restrict the Farm Service Agency's authority to provide, administer, and regulate the issuance of licenses and receipts, contractual agreements, or authorized electronic warehouse receipt provider systems in accordance with the Act.

(c) The Farm Service Agency shall not settle unresolved disputes involving the cotton shipping standard or associated damages.

(d) In the event any party requests assistance from or initiates the involvement of the Farm Service Agency in matters relating to the cotton shipping standard, the initiating party shall be responsible for all costs incurred by the Farm Service Agency. Before any such assistance is provided, the initiating party shall make payment to the Farm Service Agency in an amount equal to the Agency's good faith estimate of costs and expenses that will be incurred in fulfilling the request. Costs incurred that exceed the Agency's good faith estimate will be the responsibility of the initiating party.

Signed at Washington, D.C., on May 24, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99-13635 Filed 5-27-99; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 98-065-1]

Animal Welfare; Confiscation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to allow us to place animals confiscated from situations detrimental to the animal's health and well-being with a person or facility that is not licensed by or registered with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, if the person or facility can offer a level of care equal

to or exceeding that required by the regulations. The change would facilitate the relocation of confiscated animals and minimize the amount of time neglected, sick, or injured animals stay in unhealthy situations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 27, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98-065-1, Regulatory Analysis and Development, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 98-065-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Bettie K. Walters, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301) 734-8100.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers and other regulated businesses. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3. Part 2 sets forth general requirements, and part 3 sets forth the standards for the humane handling, care, treatment, and transportation of covered animals by regulated entities.

In part 2, § 2.129 provides for the confiscation and destruction of animals. Paragraph (a) of § 2.129 provides that if an animal being held by a dealer, exhibitor, intermediate handler, or carrier is found by APHIS to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, or carrier to comply with the Animal Welfare regulations, APHIS will notify the dealer, exhibitor, intermediate handler, or carrier of the condition of the animal and request that the animal's suffering be alleviated, or that the animal be euthanized. If the dealer, exhibitor, intermediate handler, or carrier refuses to comply with APHIS' request, an APHIS official may confiscate the animal for care, treatment, or disposal.

Paragraph (c) of § 2.129 provides that APHIS may place confiscated animals with a person or facility that is licensed by or registered with APHIS and that complies with the regulations and can provide proper care. Alternatively, the confiscated animals may be euthanized by APHIS or the receiving facility. The dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated is responsible for all costs associated with the placement or euthanasia of the animals.

We are proposing to amend § 2.129(c) to allow APHIS to place confiscated animals with a person or facility that can offer a level of care equal to or exceeding that required by the regulations, even if the person or facility is not licensed by or registered with APHIS. Such facilities may include local animal shelters. Although confiscations of animals are relatively rare (approximately two confiscations per year), we are proposing this action because we have had problems finding licensees or registrants who have room to accommodate new animals.

We would expect a person or facility approved to accept confiscated animals to house, care for, and try to locate permanent homes for the confiscated animals. The person or facility would also be authorized to euthanize, if necessary, any animals that were in severe distress, mortally wounded, or could not be placed in a permanent home in a reasonable period of time. This action would increase the options for APHIS when placing confiscated animals and would, therefore, allow neglected, sick, or injured animals to be removed more quickly from situations detrimental to their health and well-being.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Animal Welfare Act regulations to allow APHIS to place animals confiscated from situations detrimental to the animals' health and well-being with a person or facility that is not licensed by or registered with APHIS. The change would increase the options for APHIS when placing confiscated animals and would, therefore, facilitate the relocation of confiscated animals and minimize the amount of time neglected, sick, or injured animals stay in unhealthy situations.

Confiscation is a complicated and expensive procedure. Currently, the regulations require that APHIS place confiscated animals with a person or facility licensed by or registered with APHIS. Finding a licensee or registrant with the capacity and ability to house and care for the animals' well-being is one of the major challenges in the confiscation process. In some cases, local humane protection groups have been willing to assist in the placement of confiscated animals at local animal shelters but have been unable to because the shelters are not licensed by or registered with APHIS.

This proposed rule would make the task of finding an adequate facility for confiscated animals faster and simpler, which would reduce APHIS' costs associated with locating a facility and the cost of the care APHIS must provide when adequate facilities cannot be located. At times, APHIS assumes the associated costs for care or euthanasia of confiscated animals when the dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated is unable to pay these costs and APHIS cannot find a facility at which to place the animals.

The Regulatory Flexibility Act requires that agencies consider the potential economic effects of rules on small businesses, organizations, and governmental jurisdictions. Businesses and organizations potentially affected by this proposed rule are those that are not licensed by or registered with APHIS but that can accommodate and provide adequate care for confiscated animals.

We expect that the types of facilities most likely to accept confiscated animals under this proposal are animal

shelters run by humane societies. The number of humane societies that are small entities under the Small Business Administration's (SBA) standards are unknown because information as to their size in terms of gross receipts and number of employees is not available. Humane societies are not-for-profit organizations where some of the employees work on a voluntary basis, and there is not a way to determine their revenue. In addition, the costs incurred by humane societies are covered by membership donations. In the United States, there are at least 121 known humane societies in 35 States. Most of these are in California (at least 14); Texas and Illinois (at least 7 each); Florida, Georgia, and Minnesota (at least 6 each); Oregon, Virginia, Maryland, and Wisconsin (at least 5 each); and Colorado, Alabama, Ohio, Michigan, and Pennsylvania (at least 4 each).

APHIS confiscates animals, on average, only about twice a year. Adoption of this proposed rule would expedite relocation of any confiscated animals. It is likely that the receiving facilities, as noted above, would be small entities. The regulations require that the dealer, exhibitor, intermediate handler, or carrier from whom the animals are confiscated bear all costs associated with performing the placement or euthanasia. If a facility accepts confiscated animals, that facility would be responsible for the future costs incurred for the care of those animals while at the facility. However, APHIS needs to place confiscated animals only about twice a year, and the acceptance of confiscated animals is voluntary.

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 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must

be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 2 as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 would continue to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 2.129, paragraph (c) would be revised and new paragraph (d) would be added to read as follows:

§ 2.129 Confiscation and destruction of animals.

* * * * *

(c) Confiscated animals may be:

(1) Placed, by sale or donation, with other licensees or registrants that comply with the standards and regulations and can provide proper care; or

(2) Placed with persons or facilities that can offer a level of care equal to or exceeding the standards and regulations, as determined by APHIS, even if the persons or facilities are not licensed by or registered with APHIS; or

(3) Euthanized.

(d) The dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated must bear all costs incurred in performing the placement or euthanasia activities authorized by this section.

Done in Washington, DC, this 24th day of May 1999.

Joan N. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–13621 Filed 5–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98–006–1]

Veterinary Services User Fees; Import or Entry Services at Ports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for import- or entry-related services provided for animals presented at air, ocean, and rail ports. Existing user fees for these services are set at a flat rate. We are proposing to replace the flat rate user fee with an hourly rate user fee. We are taking this action to ensure that the user fees collected are adequate for the services that are provided.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 27, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–006–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–006–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals, contact Dr. Morley Cook, Senior Staff Veterinarian, National Animal Programs Staff, Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–8364.

For information concerning rate development of the proposed user fees, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, ABS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing import- and entry-related services for animals, birds, and animal products are contained in 9

CFR part 130 (referred to below as the regulations).

Section 130.6 lists the user fees for import- or entry-related services provided at land border ports along the United States-Mexico border. The services provided at these ports include inspecting and processing imported animals and authorizing services for animals transiting the United States. Section 130.7 lists the user fees charged for import- or entry-related services for animals presented at any port of entry other than a land border port along the United States-Mexico border. These ports of entry include air, ocean, and rail ports and land border ports along the United States-Canada border. Section 130.9 lists the hourly rate user fees for miscellaneous import or entry services.

The flat rate user fees listed in §§ 130.6 and 130.7 of the regulations were based on our experience with activities at land border ports along the United States-Canada and United States-Mexico borders. These flat rate user fees were calculated as a nationwide average for the costs involved in performing import- or entry-related services for animals. We believe that these user fees are still appropriate for import- or entry-related services for animals at land border ports along the United States-Canada and United States-Mexico borders.

During a review of user fees and the import- and entry-related services, we focused on a variety of factors that can affect our services and their associated costs. These factors included the size of the shipment, the location of the port, the location of APHIS employees, the purpose of the shipment, and the method of shipment.

Often, shipments that enter ocean and rail ports contain 50 animals or more. For these large shipments, the flat rate user fees may be higher than the cost of providing the necessary services. In these cases, the flat rate user fees do not consider the economies of scale that can exist for large shipments. Therefore, the flat rate user fee may not be appropriate for large shipments that arrive at ocean and rail ports. When there are small shipments, for example two animals arriving at an airport, the flat rate user fee does not come close to covering the cost of our service because of the time required for our employees to travel to the port.

Our employees are generally located near land border ports. When shipments arrive at an air, ocean, or rail port, our employees must travel to the port to provide the required import- or entry-related services, which can require more time than it takes to provide the

services. Therefore, the basic cost for providing services at air, ocean, and rail ports is higher than the cost of providing the same services at land border ports.

We could factor the variety of shipment sizes and various locations into a new average flat rate user fee. However, we believe that, due to the wide variances in shipments at air, ocean, and rail ports versus shipments at land border ports, it would be more appropriate to establish an hourly rate user fee for import- or entry-related services for animals at air, ocean, or rail ports.

Therefore, we are proposing to charge our current hourly rate user fee of \$56 per hour (\$14 per quarter hour, with a minimum fee of \$16.50) as listed in § 130.9 of the regulations for import- or entry-related services provided at air, ocean, or rail ports. However, as set forth in § 130.50, a premium rate user fee would apply for services provided by an APHIS employee on Sundays, holidays, or any time outside the normal tour of duty of the employee. For services provided outside the employee's normal tour of duty on Monday through Saturday and holidays, the hourly rate user fee of \$65.00 (\$16.25 per quarter hour, with a minimum fee of \$16.50) would apply. For services provided on Sundays, the hourly rate user fee of \$74.00 (\$18.50 per quarter hour, with a minimum fee of \$16.50) would apply. We would continue charging the flat rate user fees listed in § 130.7 for import- or entry-related services for animals at land ports along the United States-Canada border.

In some cases, for example very small shipments, the user fee could increase or decrease depending upon the number of animals in the shipment, the amount of time required to provide the required services, and the time of arrival. Currently, after-hours arrivals at air, ocean, and rail ports are subject to reimbursable overtime in addition to the flat rate user fee. However, based on this proposed rule, after-hours arrivals would be subject to the premium hourly rate user fee.

In other cases, for example very large shipments, the user fee could decrease. The amount of the decrease would reflect the economies of scale, which would effectively lower the cost per animal.

While it is difficult to determine specific increases and decreases in advance, we do not expect a significant increase in the collection of user fees. In fact, based on the increases in large shipments, we believe that many importers may save money based on this proposed change.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend existing user fees for import- or entry-related services provided for animals presented at air, ocean, and rail ports. Existing user fees for these ports are set at a flat rate. We are proposing to replace the flat rate user fee with an hourly rate user fee.

If this proposed rule is adopted, the user fees for shipments that involve large numbers of animals could decline because the user fees would be based on the time necessary to provide the services rather than the size of the shipment. For shipments that involve small numbers of animals, the user fees could increase or decrease, depending upon the number of animals in the shipment, the amount of time required to provide the required services, and the time of arrival. Currently, after-hours arrivals at air, ocean, and rail ports are subject to reimbursable overtime in addition to the flat rate user fee. However, under this proposed rule, after-hours arrivals would be subject to the premium hourly rate user fee.

Any entity that uses APHIS' services that are subject to user fees may be affected by this proposed rule. The entities who would be most affected by this proposed rule are importers. The Small Business Administration's criteria for a small entity engaged in importing and exporting live animals, poultry, and birds is one whose total sales are less than \$5 million annually. However, the number of entities who specifically trade in live animals and who would qualify as a small entity under this definition cannot be determined. Data from the Bureau of Census show that in 1995 the majority of agricultural entities who dealt in grade animals can be considered small, except those entities who dealt exclusively in purebred or registered animals.

The degree to which an entity could be affected by changes in user fees depends on its market power or the ability to which costs could be absorbed or passed on to buyers. Without information on either profit margins or operational expenses of the affected entities,¹ or the supply responsiveness

of the affected industry,² the scale of economic impacts cannot be precisely predicted.

This proposed rule should have a minimal effect on large and small importers. As previously indicated, the total hourly user fees collected should not be significantly different from the total flat rate user fees that have been previously collected for the same services. For those entities who do experience a change in the fee amount, the economic effect should be minimal.

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 12988

This proposed rule has been reviewed under Executive Order 12988, 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; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would be revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.7, the section heading and the introductory text in paragraph (a) would be revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) User fees, with a minimum fee of \$16.50, for live animals presented for

¹ Profits for sales of small entities are proprietary in nature and are not a part of the public record.

² The measurement of supply responsiveness would provide information on the likely effect on an entity's production due to changes in operating costs.

importation into or entry into the United States through a land border port along the United States-Canada border, are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

3. Section 130.9 would be revised to read as follows:

§ 130.9 Hourly user fees for import or entry services.

(a) User fees for import and entry services listed in paragraphs (a)(1) through (a)(5) of this section will be calculated at \$56.00 per hour, or \$14.00 per quarter hour, with a minimum fee of \$16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

(1) Services provided to live animals for import or entry at air, ocean, and rail ports;

(2) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(3) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(4) Supervising the opening of in-bond shipments; and

(5) Other import or entry services not specified elsewhere in this part.

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579-0094)

Done in Washington, DC, this 24th day of May 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99-13620 Filed 5-27-99; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ASO-8]

Proposed Establishment of Class E Airspace; Avon Park, FL

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Avon Park, FL. A Global Positioning System (GPS) Runway (RWY) 9 Standard Instrument Approach Procedure (SIAP) has been developed for Avon Park Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Avon Park Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99-ASO-8, Manager, Airspace Branch, ASO-520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305-5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

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 above. 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. 99-ASO-8." the postcard will be date/time stamped and returned to the commenter. All communications received 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 light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO-520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 establish Class E airspace at Avon Park, FL. A GPS RWY 9 SIAP has been developed for Avon Park Municipal Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Avon Park Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves 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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389.

§ 71.1 [Amended]

2. the incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Avon Park, FL [New]

Avon Park Municipal Airport, FL
(Lat. 27°35'28" N, long 81°31'40" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.6-mile radius of Avon Park Municipal Airport, excluding that airspace within the Sebring, FL Class E airspace area.

* * * * *

Issued in College Park, Georgia, on May 10, 1999.

Nancy B. Shelton,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 99–13638 Filed 5–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29279; Notice No. 99–06]

RIN 2120–AG79

Airspace and Flight Operations Requirements for Kodak Albuquerque International Balloon Fiesta; Albuquerque, NM; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (NPRM), which was published on May 18, 1999 (64 FR 27160). The NPRM proposed a Special Federal Aviation Regulation, applicable for the periods of October 2 through October 10, 1999, and October 7 through October 15, 2000, to establish a temporary flight restriction area for the 1999 and 2000 Kodak Albuquerque International Balloon Fiestas.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, telephone (202) 267–8783.

Correction of Publication

In proposed rule FR Doc. 99–12517, published on May 18, 1999 (64 FR 27160), on page 27160, make the following corrections:

1. On page 27160, in column 1, in the **ADDRESSES** section, beginning on line 3, correct the address “U.S. Department of Transportation Dockets, Docket No. 29279, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590”, to read “Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–200), Docket No. 29279, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591”.

2. On page 27160, in column 2, starting on line 2, correct the words “duplicate to the DOT Rules Docket address specified above”, to read “triplicate to the Rules Docket address specified above”.

Issued in Washington, DC on May 24, 1999.

Donald P. Byrne,

*Assistant Chief Counsel, Regulations
Division.*

[FR Doc. 99–13639 Filed 5–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–1999–5536; Notice No. 99–05]

RIN 2120–AG51

Security of Checked Baggage on Flights Within the United States; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble of a proposed rule published in the **Federal Register** of April 19, 1999 (64 FR 19220). That document proposed that each certificate holder required under section 108.5 to adopt and implement an FAA-approved security program screen checked baggage or conduct passenger-to-bag matching for operations within the United States when using an airplane having a passenger seating configuration of more than 60 seats.

FOR FURTHER INFORMATION CONTACT: Lon Siro, (202) 267–3414.

Correction

In proposed rule FR Doc. 99–9635, published in the **Federal Register** of April 19, 1999 (64 FR 19220), make the following corrections to the “Economic Evaluation Summary” section under **SUPPLEMENTARY INFORMATION**.

1. On page 19232, in the second column of text, first full paragraph, thirteenth line, correct “(from Table 7)” to read “(from Table 1)”.

2. On page 19235, in the second column of text, in the seventh line from the top, correct “For years 2000–2009” to read “For each of the years 2000–2009”.

3. On page 19235, in the third column of text, in the seventeenth and eighteenth lines from the bottom, remove “; as shown in table 11B”.

4. On page 19238, third column, in paragraph “c. Estimates of Future Costs of Compliance of the Federal Mandate,” in the thirteenth line of the paragraph, correct “approximately \$234 million per year” to read “approximately \$283 million per year”.

Issued in Washington, DC, on May 24, 1999.

Donald P. Byrne,

*Assistant Chief Counsel, Office of Chief
Counsel.*

[FR Doc. 99–13640 Filed 5–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 3065]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates**AGENCY:** Bureau of Consular Affairs, State Department.**ACTION:** Proposed rule.

SUMMARY: This rule proposes to amend the Department's Schedule of Fees for Consular Services by exempting members of UN observer missions and their immediate family members from paying a visa processing fee and a visa issuance fee when obtaining a visa to enter the United States as a UN observer. Members of most of the 32 permanent UN observer missions are currently issued visas without charge when entering the United States to participate as observers. This proposed rule would exempt from fees members of those UN observer missions not currently designated by Executive Order as otherwise exempt.

DATES: Comments must be received in the Department no later than June 28, 1999.

ADDRESSES: Commenters must send comments in duplicate to: Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520-4818, telephone (202) 647-3682; telefax (202) 647-3677.

FOR FURTHER INFORMATION CONTACT: Alcy Frelick, Office of the Executive Director, Bureau of Consular Affairs, Department of State, telephone (202) 647-3682; telefax (202) 647-3677.

SUPPLEMENTARY INFORMATION:**Background**

Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services by embassies and consulates. All consular fees and exemptions therefrom must be reflected

in the Schedule of Fees for Consular Services. Certain persons are exempted by law from payment of specific fees. (These statutory exemptions are noted in the fee schedule.)

Under the Headquarters Agreement with the United Nations, the United States provides visas for persons on UN business. Article IV, Section 13, states, "When visas are required for persons referred to in (Section 11), they shall be granted without charge and as promptly as possible." Members of UN observer missions are covered under Section 11, part (5), and should therefore be granted visas without charge under Section 13.

There are currently 32 permanent observer missions at the UN in New York. They include non-member states, intergovernmental organizations and other entities invited to participate as observers. The current Schedule of Fees (63 FR 5098, as amended by AG5 FR 6585-867) exempts from visa processing fees only those members of UN observer missions who are entitled to A, G, C-2, C-3 or NATO visas or from visa issuance fees those who are entitled to diplomatic (courtesy) visas. While these categories cover the majority of observer mission members, there are approximately 25-40 members of UN observer missions who are not exempted from the visa fees under the current Schedule of Fees.

In order to carry out the UN Headquarters Agreement, the Department proposes to amend the Schedule of Fees to reflect the entitlement of these observer mission members to exemption from all visa fees.

Amendments to 22 CFR Part 22

The Department is, therefore, proposing to add a new entry designated as paragraph (f) under item 55 (visa processing fee) and a new entry designated as paragraph (e) under item 57 (visa issuance fee) of 22 CFR part 22, § 22.1. These entries would reflect an exemption from both the nonimmigrant visa processing fee and the nonimmigrant visa issuance fee for

"members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families."

Regulatory Findings

The Department does not consider this rule to be a major rule for purposes of E.O. 12291. The Department does not expect the rule to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Department has reviewed the rule as required by E.O. 12988 and determined it to be in compliance. This rule is exempt from E.O. 12866, but the Department has reviewed the rule to ensure consistency with the objectives of the Executive Order, and the Office of Management and Budget has determined this rule would not constitute a significant regulatory action under E.O. 12866.

Proposed Rule**List of Subjects in 22 CFR Part 22**

Consular services, Fees, Passports and visas, Schedule of consular fees.

Accordingly, this rule proposes to amend 22 CFR part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 22 U.S.C. 214, 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954-1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966-1970 Comp., p. 570.

2. Section 22.1 is proposed to be amended by adding a new paragraph (f) to item No. 55 and a new paragraph (e) to item No. 57 to read as follows:

§ 22.1 Schedule of fees.

	*	*	*	*	*	*	*
(55)	*	*	*				
	(f) Members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families.			No fee.			
	*	*	*	*	*	*	*
(57)	*	*	*				
	(e) Members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families.			No fee.			
	*	*	*	*	*	*	*

Dated: May 17, 1999.

Bonnie R. Cohen,

Under Secretary for Management.

[FR Doc. 99-13213 Filed 5-27-99; 8:45 am]

BILLING CODE 4710-06-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region VII Docket No. MO 060-1060; FRL-6351-5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the state of Missouri to amend the fugitive dust rule. The proposed revisions amend the state fugitive dust rule in order to provide an exemption for adverse or unusual weather conditions. The fugitive dust rule is necessary to help maintain compliance with the National Ambient Air Quality Standards (NAAQS) for particulate matter.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: All comments should be addressed to: Aaron Worstell, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, 913-551-7787.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Aaron Worstell, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, 913-551-7787.

SUPPLEMENTARY INFORMATION:

Background

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality

meets the NAAQS established by EPA. These ambient standards are established under section 109 of the CAA and they currently address six criteria pollutants. These pollutants are: CO, nitrogen dioxide, ozone, lead, PM₁₀, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

The CAA requires each state to have a Federally approved SIP which protects air quality, primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state may submit the adopted provisions to EPA and request that these provisions be included in the Federally enforceable SIP. EPA must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, they must be addressed prior to a final action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which were approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state function. However, once the regulation is Federally approved, EPA

and the public may take enforcement action against violators of these regulations.

What Is Being Acted on in This Document?

On January 21, 1998, EPA approved revisions to the Missouri SIP which included the addition of rule 10 CSR 10-6.170, Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin (see 63 FR 3037). Subsequently, on November 25, 1998, Missouri submitted an amended 10 CSR 10-6.170 (the fugitive dust rule) to EPA and requested that it be included as part of the SIP. It is the amended fugitive dust rule for which EPA is proposing approval today.

In general, the fugitive dust rule limits fugitive dust emissions onto adjacent property and into the atmosphere. The rule achieves this by prohibiting the deposition of particulate matter onto surrounding property and by restricting visible emissions. In addition, the rule requires that reasonable control measures be used to correct any noncompliance situation that may occur and lists several typical fugitive dust control measures. Finally, the rule provides specific exemptions where the fugitive dust rule would not be practical (e.g., agricultural operations such as tilling).

The amended fugitive dust rule proposed here today adds an exemption for activities that would otherwise be subject to control requirements except for the occurrence of adverse or unusual weather conditions. These weather conditions include, but are not limited to: high winds, extended dry weather periods, and extreme cold weather periods. However, the staff director has the discretion to determine what constitutes "adverse or unusual weather." The fugitive dust rule is applicable throughout the state of Missouri.

EPA believes that the exemption merely recognizes that fugitive emissions may occur despite the application of reasonable control measures and that, in some instances, conditions beyond the control of the source owner or operator may cause fugitive dust emissions beyond the property line of the source. In such cases, the rule provides authority for the state to exempt sources from the prohibition.

In addition to the new exemption, the amendments include minor renumbering and wording changes which are unsubstantial and do not effect the application or requirements of the rule.

The proposed SIP revisions are amendments to a regulation necessary to help maintain compliance with the particulate matter NAAQS in Missouri.

What Action Is Being Proposed by EPA?

EPA is proposing to approve revisions to the SIP submitted by the state of Missouri on November 25, 1998, amending rule 10 CSR 10-6.170, Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.

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

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, a summary of the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposal does not create a mandate on state, local, or tribal governments. The proposal does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposal.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposal.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility

analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies 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 small governmental jurisdictions. This proposal does not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of 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. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action would not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, would result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 18, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99-13660 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 268**

[FRL-6351-4]

RIN-2050-AE54

Potential Revisions to the Land Disposal Restrictions Mercury Treatment Standards

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Environmental Protection Agency (EPA or Agency) is considering publication of a proposed rule to revise the 40 CFR part 268 Land Disposal Restrictions (LDR) treatment standards applicable to mercury-bearing wastes. This ANPRM is intended to give advance notice of EPA's comprehensive reevaluation of the treatment standards for mercury-bearing hazardous wastes as well as various options, issues, and data needs related to potential mercury treatment standard revisions. The Agency requests additional data and comments on these issues and options.

DATES: Written and electronic comments in response to this ANPRM must be received on or before July 27, 1999.

ADDRESSES: Commenters should submit an original and two copies of their comments referencing Docket No. F-1999-MTSP-FFFFF to: the RCRA Information Center (RIC), U.S. Environmental Protection Agency Headquarters (5305W), 401 M Street, SW, Washington, D.C. 20460. Courier deliveries of comments should be submitted to the RIC at the address listed below. Comments may also be submitted electronically through the Internet to:

RCRA-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F-1999-MTSP-FFFFF. Submit electronic comments as an ASCII file and avoid the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional

copy of the comments on disk in WordPerfect 6.1 file format.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted under separate cover to: Regina Magbie, RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460.

The Agency will consider the public comments during development of any proposed rule related to this action. The Agency urges commenters submitting data in support of their views to include with the data evidence that appropriate quality assurance/quality control¹ (QA/QC) procedures were followed in generating the data. Data that the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing regulatory options for proposal and final rules.

Public comments and supporting materials are available for viewing in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 703-603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15 per page. The docket index and notice are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing it.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703-412-9810 or TDD 703-412-3323.

For information on specific aspects of this document, contact Rita Chow, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 703-308-6158, e-mail address: chow.rita@epa.gov.

SUPPLEMENTARY INFORMATION: The docket index and the notice are available on the Internet. From the World Wide Web (WWW), type <http://www.epa.gov/fedrgstr>. For the text of the notice, choose: Year/Month/Day. The document may also be obtained

¹ For guidance, see Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology; USEPA, October 23, 1991.

using File Transfer Protocol (FTP) at: <ftp://epa.gov>.

Login: anonymous

Password: your Internet address

Glossary of Acronyms

APCD—Air Pollution Control Device

ATON—Aid-to-Navigation

ATTIC—Alternative Technology

Treatment Information Center

BDAT—Best Demonstrated Available Technology

BIF—Boiler and Industrial Furnace

BRS—Biennial Reporting System

DOE—Department of Energy

IMERC—Incineration of Wastes

Containing Organics and Mercury (Specified Treatment Method)

LDR—Land Disposal Restrictions

MACT—Maximum Achievable Control Technology

NESHAP—National Emissions Standard for Hazardous Air Pollutants

NHWCS—National Hazardous waste Constituent Survey

PBT—Persistent, Bioaccumulative, and Toxic

PCB—Polychlorinated Biphenyls

POTW—Publically Owned Treatment Works

PSD—Prevention of Significant Deterioration Permit

RCRA—Resource Conservation and Recovery Act

RMERC—Roasting or Retorting of Mercury-Bearing Hazardous Wastes (Specified Treatment Method)

RREL—Risk Reduction Engineering Laboratory

S/S—Solidification/stabilization

SPC—Sulfur Polymer Cement

TCLP—Toxicity Characteristic Leaching Procedure

TOC—Total Organic Carbon

TRI—Toxic Release Inventory

VISITT—Vendor Information System for Innovative Treatment Technology

WMNP—Waste Minimization National Plan

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I. Introduction

With this document, the Agency marks the beginning of a comprehensive review of existing RCRA waste treatment regulations applicable to mercury-bearing wastes and of our effort to revise, if necessary and appropriate, these regulations to improve treatment and land disposal methods. We decided to publish an ANPRM at this time because we expect to benefit significantly from early public input on mercury waste generation and treatment, including information on alternative treatment technologies and on source reduction opportunities. The nature and extent of amendments to the mercury treatment standards have not yet been determined. Any potential revisions will ultimately be based on the comments we receive on this ANPRM, as well as data obtained from other sources (e.g., ongoing treatability studies). As warranted, a proposal to amend the current regulations will appear in a future **Federal Register** document.

A. Agency's Concern for Mercury

As evidenced by EPA's Mercury Study Report to Congress², mercury is an element that the Agency has studied quite extensively in recent years. Moreover, a recent Agency **Federal Register** notice identified mercury as one of the "53 persistent, bioaccumulative, and toxic (PBT) chemicals and chemical categories which may be found in hazardous wastes regulated under RCRA" (63 FR 60332, November 9, 1998). In addition, the EPA Action Plan for Mercury³ lists this ANPRM as one of the twelve "most significant actions that EPA is undertaking to deal with the problem of mercury exposure."

This ANPRM deals with a small aspect of the overall mercury problem, this being the treatment and disposal of mercury-bearing hazardous wastes. Nevertheless, the potential problems that exist in this area are significant, as mercury can both leach out of hazardous wastes and also be emitted from the various treatment processes.

B. Key Issues Addressed in the ANPRM

This ANPRM focuses on several key issues with the current LDR mercury treatment standards:

Incineration—We are interested in pursuing further the issue of mercury air emissions from incineration units. One of the original premises behind the current mercury treatment regulations was that incineration would be a pretreatment step to mercury recovery, but this premise should be re-examined at this point, given new information about incineration of mercury wastes as well as the upcoming Hazardous Waste Combustion rule. Also, we currently allow high mercury, low organic wastes to be incinerated, but alternative treatment technologies may be preferable for these wastes. We want to investigate the impacts of reducing the number of waste types allowed or required to be incinerated (e.g., potentially only allow high organic, low mercury wastes, or organomercury wastes).

Retorting—From comments on this ANPRM, we hope to get a better idea of the full environmental impact of our waste treatment standards. Our treatment standards requiring recovery of mercury via retorting are a case in point. For example, air emissions and the disposal of the residues from

secondary production (i.e., recycling-oriented processes) ought to be weighed against the diminishing benefits of recovery when such secondary production exceeds demand for the recycled product. In some cases, direct treatment for disposal could have some environmental advantages in certain supply-demand situations that have not previously been fully appreciated. We also want to investigate whether retorting (i.e., thermal recovery) is currently required for wastes that are either not amenable to or are inappropriate for (e.g., mixed wastes) this treatment. Finally, although several factors suggest that retorting emissions are not significant, we still want to determine if there are data that support this suggestion.

Source Reduction Options—EPA developed the current treatment regulations under statutory deadlines that impeded the exploration of potential source reduction technologies that could reduce or eliminate the generation of mercury-bearing wastes from many sources. The ANPRM contains a discussion of this investigation and potential options that might provide additional incentives for decreasing the amount of mercury in hazardous waste.

II. Background

A. Mercury in the Environment

Control of the environmental risks posed by mercury is a complex problem for a number of reasons. First, mercury and its compounds are mobile in the environment. Elemental mercury is volatile under both ambient and combustion temperatures and is released into the environment mostly through air emissions from commercial and industrial sources. It can remain in the atmosphere for up to one year, and hence can be widely dispersed and transported thousands of miles from the source of the emissions. When in the form of mercury salts, mercury air emissions are deposited more locally.

Second, multiple pathways exist for exposure. The risks associated with various exposure pathways depend strongly on the chemical form (i.e., species) of mercury involved. After deposition from the atmosphere, mercury can be methylated (especially in water bodies) to form the more toxic and bioaccumulative methylmercury. Exposure to levels of methylmercury found in fish taken from polluted water bodies has been associated with neurological and developmental defects in humans, with the developing fetus most at risk. To reduce the risks of exposure to methylmercury over time,

² "Mercury Study Report to Congress," Volumes I–VIII, EPA-452/R-97-003, December 1997.

³ EPA Action Plan for Mercury (Attachment 1 to "An Agency-wide Multi-media Strategy for Priority PBT Pollutants") can be found at www.epa.gov/opptintr/pbt/pbtstrat.htm.

cost-effective strategies are needed both domestically and internationally to minimize the generation of mercury-bearing hazardous wastes.

Some evidence suggests that, because mercury is a persistent, bioaccumulative, and toxic (PBT) substance, small releases may contribute to the build up of mercury in the environment, especially the aquatic environment, over time, which may increase the potential for environmental and human health impacts. Consequently, EPA is looking at whether we may need to change the LDR mercury treatment standards.

B. The Resource Conservation and Recovery Act

One objective of the Resource Conservation and Recovery Act (RCRA)—the major hazardous waste statute—is to minimize the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment (see RCRA section 1003). To further this objective, the Agency has set as goals of its Waste Minimization National Plan (WMNP)⁴ to:

- Reduce, as a nation, the presence of the most persistent, bioaccumulative, and toxic (PBT) chemicals in RCRA hazardous wastes 10 percent by the year 2000, and at least 50 percent by the year 2005 (from a 1991 baseline);
- Promote source reduction (and recycling where RCRA PBT chemicals cannot be reduced at the source) over treatment and disposal technologies; and
- Avoid the transfer of RCRA PBT chemicals across environmental media.

Consistent with the goals of RCRA and the WMNP, the Agency seeks to reduce the generation of hazardous wastes containing mercury. When this is not feasible, the Agency wants to look carefully at other opportunities to improve the recycling and treatment of residual mercury-bearing waste to further reduce air emissions, the mobility of mercury species at the time of disposal, and the potential for future biological or chemical conversion to other mobile and bioaccumulative species of mercury.

C. Mercury Treatment Standards

EPA established treatment standards for mercury-bearing wastes as part of two rulemakings. The LDR First Third final rule (53 FR 31166, August 17, 1988) established standards for RCRA hazardous waste code K071 (brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used), and the LDR Third Third final rule (55 FR 22569, June 1, 1990) established standards for five additional RCRA mercury-bearing waste codes: D009, characteristic mercury wastes; K106, wastewater treatment sludge from the mercury cell process in chlorine production; P065, mercury fulminate wastes; P092, phenyl mercuric acetate wastes; and U151, miscellaneous mercury wastes.

For all of these wastes, EPA established two treatment subcategories: a high mercury subcategory, which includes wastes with a total mercury concentration greater than or equal to 260 mg/kg; and a low mercury subcategory, which includes wastes with a total mercury concentration less than 260 mg/kg.

- High mercury wastes are required to be roasted or retorted ("RMERC"), or incinerated ("IMERC") if organics are present. RMERC residues must then meet a numerical treatment standard of 0.20 mg/L prior to land disposal, as measured by the toxicity characteristic leaching procedure (TCLP). IMERC residues must meet a numerical treatment standard of 0.025 mg/L TCLP.

- Low mercury wastes are not subject to a specific technology for treatment but must meet a numerical treatment standard of 0.025 mg/L TCLP.

III. Mercury Hazardous Waste Generation and Management

A. Industries Generating Mercury-Bearing Wastes

Industrial use of mercury in the U.S. has been on the decline in recent years. Also, mercury is no longer produced from mercury ore in the United States, as the last mercury ore mine closed in 1990. However, mercury is still produced as a byproduct from the mining of gold ores and from secondary production. Nearly all of the mercury used in the United States is derived from secondary sources. Common

secondary sources include spent batteries, chlor-alkali wastewater sludges, mercury vapor and fluorescent lamps, dental amalgams, electrical apparatus, and measuring instruments. The secondary producers typically use high-temperature roasting and retorting to recover mercury from the materials and distillation to purify contaminated liquid mercury metal.

Data on estimated industrial demand for mercury show a general decline in domestic mercury use since demand peaked in 1964. Table 1 describes the mercury production and consumption in the U.S. for 1990–1997. In 1997, 346 metric tons of mercury were used in industrial processes, 389 metric tons were produced by secondary mercury producers (i.e., producers recovering mercury from waste products), 134 metric tons were exported, and 164 metric tons were imported. These figures continued the trend since 1995 of secondary production exceeding industrial consumption.⁵ Domestic demand fell by more than 75% between 1988 (1503 metric tons) and 1997 (346 metric tons). Much of this decline can be attributed to the elimination of mercury as a paint additive and the reduction of mercury in batteries. Other reasons for the reduction include the military phase-out of mercury fulminate as a primer in military explosives and the decline in the number of chlor-alkali facilities using the mercury cell method of chlorine production. Use of mercury by other source categories remained essentially the same between 1988 and 1996.⁶ The data suggest that industrial manufacturers who use mercury are shifting away from its use except where mercury is considered essential. However, mercury consumption in the categories of Electrical and Electronic Uses and Instruments and Related Products is still growing, and is expected to continue to grow due to the increase in the manufacture of computers and other electrical equipment.⁷

⁵Robert G. Reese, Jr, US Geological Survey, Minerals Information, 1997.

⁶Mercury Study Report to Congress, USEPA, December 1997, Volume I: Executive Summary, page 3–8.

⁷The Status of Mercury in the United States, Draft 2, September 10, 1996, page A3–6.

⁴Waste Minimization National Plan, USEPA, 1994, EPA530–R–94–045.

TABLE 1.—MERCURY PRODUCTION AND USE STATISTICS
[Metric tons]

	1990	1991	1992	1993	1994	1995	1996	1997	1998E
Mine Production:									
—Principal product ¹	448								
—Byproduct from gold mines	114	58	64	W	W	W	W	W	W
Secondary Production:									
—Industrial	108	165	176	350	446	534	446	389	400
—Government ²	193	215	103						
Imports for Consumption	15	56	92	40	129	377	340	164	200
Exports	311	786	977	389	316	179	45	134	150
Shipments from National Defense Stockpile ³	52	103	267	543	86				
Industry Stocks, year-end ⁴	197	313	436	384	469	321	446	203	200
Industrial Consumption (reported)	720	554	621	558	483	436	372	346	400
Price, average dollars per flask:									
D.F. Goldsmith	\$249.22	\$122.42	\$201.39	\$186.51	\$194.45	\$247.40	\$261.65	NA	NA
Free market	NA	NA	NA	NA	NA	NA	NA	\$159.52	\$180

Source: Robert G. Reese, Jr, US Geological Survey, Minerals Information, 1997, 1999.

E—Estimated. W—withheld for confidentiality. NA—Not available

¹Comprises only mercury produced at McDermitt Mine, as reported in Placer Dome Inc. Annual and 10-K reports. The mine was closed in November 1990.

²Secondary mercury shipped from U.S. Department of Energy stocks.

³Shipments from the government stockpile were suspended in 1995.

⁴Stocks at consumers and dealers only. Mine stocks withheld to avoid disclosing proprietary data.

Table 2 presents estimates of mercury emissions from the EPA Mercury Study Report to Congress (USEPA, December 1997), and national emission estimates for hazardous waste combustors for 1990, 1994, and 1997. The Report to Congress identifies combustion sources, including utility and commercial/

industrial boilers, as the major source of mercury emissions. Hazardous waste combustion emissions and emissions from secondary mercury production are estimated to be less than five percent of overall mercury emissions. In 1990 and 1994, mercury emissions from hazardous waste combustion sources

totaled approximately 6.4 metric tons per year, and for 1997, these emissions decreased to approximately 6.0 metric tons per year.⁸ Table 2 shows a further breakdown of the mercury emissions contribution from each hazardous waste combustor category.

TABLE 2.—AVAILABLE MERCURY EMISSIONS DATA
[Metric Tons]

	1990 ^(a)	1994 ^(b)	1997 ^(c)
Area sources		3.1	
Combustion sources		125.2	
Manufacturing sources		14.4	
Miscellaneous sources		1.3	
Total Air emissions	213	144	
—HW Cement Kilns	3.2	2.7	1.5
—HW Incinerators	2.9	3.5	4.4
—HW Lightweight Aggregate Kilns	0.3	0.3	0.05
Total HW Combustors ^(d) (% of total emissions)	6.4	6.4 (4.4)	6.0
Secondary Hg Production ^(e) (% of total emissions)	0.7	0.4 (0.3)	

^aSource Category Listing for Section 112(d)(2) Rulemaking Pursuant to Section 112(c)(6) Requirements, USEPA, April 10, 1998; 63 FR 17338, Table 1.

^bMercury Study Report to Congress, USEPA, December 1997, Volume I: Executive Summary, page 3–6.

^cNote to Laura McKelvey, USEPA, from Frank Behan, USEPA, dated July 1, 1998. This emissions inventory supports the rulemaking to revise the technical standards for hazardous waste combustion facilities and will be included in a technical support document for that rule.

^dTotal HW Combustor emissions (6.4 metric tons) are a subcategory of the Combustion source emissions (125.2 metric tons) that appear in the Mercury Study Report to Congress (see note “b” above).

^eSecondary Hg Production emissions (0.4 metric tons) are a subcategory of the Manufacturing source emissions (14.4 metric tons) that appear in the Mercury Study Report to Congress (see note “b” above).

⁸When interpreting any apparent data trends in Table 2, you should note that differences in emissions estimates are due to a combination of

factors including actual data from performance in the field, revisions to our estimation methodology, and changes in the number of facilities operating

within each category. See documents noted as sources for Table 2.

B. Generation of Mercury-Bearing Hazardous Wastes

The background document "Analysis of Current Mercury Waste Generation and Treatment" in the docket for today's notice includes tables that break down the generation of mercury-bearing hazardous wastes by waste code, waste form, and SIC Code based on the National Biennial RCRA Hazardous Waste Report (BRS) database.⁹ While the BRS provides a general idea of how much hazardous waste is generated, the numbers can be misinterpreted. For example, the BRS does not provide mercury concentrations in the waste streams. Therefore, we do not have a good estimate for the total amount of mercury that is treated by non-combustion technologies in the United States.

Another interpretive issue with BRS data is that some waste quantities can be overestimates of the actual amount of waste produced. For example, some waste streams may be given multiple waste codes, one code being the specific waste code (e.g., K071), and another code being the general characteristic code (e.g., D009). This leads to an overestimate of the actual quantity generated.

According to the 1995 BRS, approximately 12.2 million metric tons of mercury-bearing hazardous waste (wastewater and nonwastewater) were generated. This represents an increase

from the 1993 BRS estimate of 11.5 million metric tons. The National Hazardous Waste Constituent Survey (NHWCS), which was designed to correspond with 1993 BRS data, estimated that almost 19 million metric tons of mercury-bearing wastes were managed. This NHWCS was created by EPA's Office of Solid Waste in 1996 and distributed to over 200 of the largest generators and managers of hazardous industrial process wastes in the U.S. These facilities account for over 90 percent of the total waste quantity in the hazardous waste universe as reported in the 1993 BRS.

The NHWCS also included estimates of the total amount of mercury managed by treatment technologies. The three technologies that were listed, and their respective mercury quantities, were "other treatment," 3257 metric tons; "aqueous inorganic treatment," 33 metric tons; and "landfill," 30 metric tons. In the "other treatment" category, one facility (DOE/WRSC Savannah River) accounts for approximately 98 percent of the total constituent quantity. Without this facility, the constituent total for "other treatment" would be 5.6 tons. Since the survey was voluntary and limited to the largest waste streams, it is likely that it did not include many retorters and incinerators of mercury (especially high subcategory mercury) wastes.

Table 3 presents data from the Toxics Release Inventory (TRI) database. The

TRI is an information source about toxic chemicals that are being used, manufactured, treated, transported, or released into the environment. A facility is required to submit a TRI report if it (1) has ten or more full-time employees, and (2) manufactures or processes over 25,000 pounds of the approximately 600 designated chemicals or 28 chemical categories specified in the regulations, or uses more than 10,000 pounds of any designated chemical or category, and (3) engages in certain manufacturing operations in the industry groups specified in the U.S. Government Standard Industrial Classification Codes (SIC) 20 through 39. Federal facilities also are required to report following an August 1995 Executive Order.

EPA emphasizes that the BRS and NHWCS data presented above and the emissions data in Table 3 are estimates that may overestimate generation. The Agency welcomes any information that may help to construct a more accurate picture of the current mercury waste universe. This would include current data on waste generation (types, quantities, and mercury concentrations in the wastes), current waste management practices, problems and/or constraints on treating or recovering these wastes, as well as information on any waste minimization activities that may have been implemented to reduce or eliminate waste generation.

TABLE 3.—TRI DATA
[Metric Tons]

	1993	1994	1995	1996
TRI total production-related waste:				
—Mercury		407.5	459.6	390.1
—Mercury compounds		55.7	70.6	36.1
—Mercury + Mercury compounds		463.2	530.2	426.2
TRI wastes to recycling:				
—Mercury		390.0	443.7	375.4
—Mercury compounds		42.6	56.8	21.9
Mercury + Mercury compounds		432.6	500.5	397.3
TRI mercury + mercury compounds:				
Fugitive air emissions	5.28	4.43	4.85	5.51
Stack emissions	1.57	1.87	2.55	2.24
Surface water discharges	0.20	0.15	0.15	0.25
Underground injection	0.007	0.003	0.003	0.004
On-site land releases	0.82	.061	.046	.024
Off-site disposal	15.7	17.6	94.4	11.7
On-site treatment	NA	5.02	2.86	1.87
Transfers to energy recovery	0	0	0.23	0.23
Transfers to treatment	0.79	1.75	7.59	6.55
Transfers to POTWs	0.007	0.007	0.011	0.007
Other off-site transfers	0	0	0.40	0
TRI total not recycled:				
—Mercury	14.7	18.2	17.8	13.7
—Mercury compounds	9.7	13.2	95.7	15.0

⁹ BRS data can be found at www.epa.gov/epaoswer/hazwaste/data/

TABLE 3.—TRI DATA—Continued
[Metric Tons]

	1993	1994	1995	1996
—Mercury + mercury compounds ^a	24.4	31.4	113.5	28.6

^a totals may not add due to rounding

IV. Current RCRA Regulations Governing Treatment of Mercury-Bearing Hazardous Wastes

A. RCRA Waste Code Classification and Treatment

EPA's hazardous waste classification system identifies six categories of mercury-bearing wastes, each of which has a separate RCRA waste code.

The following is a detailed description of the six mercury waste codes:

D009 Wastes—Characteristic Mercury Wastes. D009 wastes are extremely variable in composition, and depend on the industry and process that generate the waste. Some of the more common types of D009 wastes include miscellaneous wastes from chlor-alkali production facilities (especially cell room trench sludge and activated carbon for liquid or gas purification), used fluorescent lamps, batteries, switches, and thermometers. D009 wastes are also generated in the production of organomercury compounds for fungicide/bactericide and pharmaceutical uses, and during organic chemicals manufacturing where mercuric chloride catalyst is used.¹⁰

Mercury concentrations within D009 wastes may range from 0.20 mg/L TCLP to greater than 75 percent of the total waste composition. D009 wastes may also contain organic compounds, usually when mixed with solvent wastes.

Although characterization data for D009 wastes are limited, some conclusions can be made regarding potential treatment concerns. Wastes with greater than 500 ppm 40 CFR part 261, appendix VIII organics (such as benzene) may be problematic for commercial retorting facilities due to the permitting requirements for boiler and industrial furnaces (BIF) (40 CFR 266.100(c)). At least two facilities are unable to handle wastes with these levels of volatile organics due to the additional permitting that would be required. However, these two facilities are capable of treating non-volatile activated carbons.

K071 Wastes—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. K071 wastes are generated by the chlor-alkali industry in the mercury cell process. In this process, sodium chloride is dissolved to form a saturated brine solution. The brine solution is purified by precipitation, using hydroxides, carbonates, or sulfates. The precipitate is dewatered to form K071 wastes, while the purified brine continues in the process. The depleted solution from the mercury cell is ultimately recycled to the initial step of the process.

Available analytical information for K071 brine purification muds show that these wastes consist primarily of inorganic solids and water. The normal total mercury content of K071 wastes is less than 100 parts per million (ppm) and is normally characterized as metallic mercury or soluble mercuric chloride.¹¹ Mercury from K071 wastes is typically recovered using a wet process, reflecting the BDAT for this waste.

K106 Wastes—Wastewater treatment sludge from the mercury cell process in chlorine production. Like K071 wastes, K106 wastes are generated from chlorine production using the mercury cell process. Effluent from the mercury cell includes spent brine, a portion of which is recycled and a portion of which is purged to wastewater treatment. Other plant area wastewaters (e.g., stormwater, washdown waters) are also typically sent to this treatment system. The wastewater treatment process generates a sludge through precipitation and filtering, which is K106 waste. Sulfides (as either sodium sulfide, Na₂S, and/or sodium bisulfide, NaHS) have been commonly used as a precipitation agent for at least the last 10 years (1988 to 1998), according to data from the Chlorine Institute. Sludges generated in this manner are comprised, in part, of mercuric sulfide. Other (minor) precipitation agents result in the formation of mercury hydroxide or in elemental mercury. However, sulfide precipitation is preferable to hydroxide precipitation using hydrazine because mercury hydroxide is susceptible to

matrix dissolution over a wide range of pH under oxidizing conditions.

Available analytical information for K106 wastes indicates they are primarily composed of water and diatomaceous earth filter aid. This is true for K106 wastes generated by both sulfide treatment and hydrazine treatment. K106 wastes from sulfide precipitation contain approximately 4.4 percent mercury, as mercuric sulfide, while K106 wastes from hydrazine treatment contain approximately 0.5 percent mercury, as mercurous hydroxide.¹²

The mercury concentration in K106 waste is consistently greater than 260 mg/kg and therefore retorting is a required technology for this waste. K106 waste also contains significant levels of sulfides/sulfates, sodium chloride, and organics, although the mercury is likely in an elemental or a sulfide form.

P065 Wastes—Mercury fulminate. P065 wastes consist of discarded mercury fulminate product, off-specification mercury fulminate product, and container or spill residues thereof. No waste characterization data were available for P065 listed wastes. The quantity of P065 waste is expected to have declined, as the military has phased out its use in explosives.¹³

P092 Wastes—Phenylmercury acetate. P092 wastes consist of discarded phenylmercury acetate product, off-specification phenylmercury acetate product, and container or spill residues thereof. There are very little data available on the composition of P092 listed wastes. The primary constituent of P092 listed wastes is phenylmercury acetate; organic constituents (in particular, benzene) are also expected to be present.¹⁴ The use of phenylmercury acetate as a preservative in latex paint was phased out in 1991. Thus, the quantity of P092 waste is expected to decline dramatically as the stock of mercury-bearing paint is depleted.¹⁵

¹² U.S. EPA, BDAT Document for Mercury Wastes, November 1989, page 2–11.

¹³ Mercury Treatment and Storage Options Summary Report, A.T. Kearney report for USEPA Reg 5, May 1997, page 1.

¹⁴ U.S. EPA, BDAT Document for Mercury Wastes, November 1989, page 2–17.

¹⁵ Mercury Treatment and Storage Options Summary Report, A.T. Kearney report for USEPA Reg 5, May 1997, page 1.

¹⁰ U.S. EPA, Best Demonstrated Available Technology (BDAT) Background Document for Mercury Wastes, Nov 1989, page 2–18.

¹¹ U.S. EPA, BDAT Document for Mercury Wastes, November 1989, page 2–11.

U151 Wastes—Mercury. U151 wastes consist of discarded elemental mercury product, off-specification metallic mercury product, and container or spill residues thereof. The majority of U151 wastes reported as a single waste code

(i.e., not mixed with other listed or characteristic wastes) in the EPA 1986 Generator Survey are over 50 percent mercury. The principal constituent of U151 is metallic mercury.¹⁶

B. Existing LDR Regulations for Mercury-Bearing Wastes

Table 4 summarizes the current LDR requirements for these wastes.

TABLE 4.—LDR REGULATIONS FOR MERCURY-BEARING NONWASTEWATERS

Mercury Subcategory Description	LDR treatment requirements	Applicable waste codes	Federal Register publication
	Concentration in mg/l TCLP; or Technology code		
High Mercury-Organic Subcategory (i.e., the waste has a total mercury content greater than or equal to 260 mg/kg), contains organics, and is not an incinerator residue.	Incineration (IMERC); OR Roasting or Retorting (RMERC).	D009 P092	55 FR 22569, (June 1, 1990).
Mercury fulminate waste regardless of total mercury content and is not an incinerator or RMERC residue.	IMERC	P065	55 FR 22569, (June 1, 1990).
Phenylmercury acetate waste regardless of total mercury content and is not an incinerator or RMERC residue.	IMERC; OR RMERC	P092	55 FR 22569, (June 1, 1990).
High Mercury-Inorganic Subcategory (i.e., the waste has a total mercury content greater than or equal to 260 mg/kg), and is inorganic, including residues from incineration, roasting and retorting.	RMERC	D009 K106 U151	55 FR 22569, (June 1, 1990).
Low Mercury Subcategory (i.e., the waste has a total mercury content less than 260 mg/kg), and that are residues from RMERC only.	0.20 mg/l TCLP	D009 ^(a) K071 K106 P065 P092 U151	55 FR 22569, (June 1, 1990). D009 treatment standard revised 63 FR 28568, (May 26, 1998).
Low Mercury Subcategory (i.e., the waste has a total mercury content less than 260 mg/kg), and are not residues from RMERC.	0.025 mg/l TCLP	D009 ^(a) K071 K106 P065 P092	55 FR 22569, (June 1, 1990). D009 treatment standard revised 63 FR 28568, (May 26, 1998).
Elemental mercury contaminated with radioactive materials	AMLGM	D009 U151	55 FR 22569, (June 1, 1990).
Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory.	IMERC	D009	55 FR 22569, (June 1, 1990).

^aD009 wastes with concentration-based standards, rather than specified technology standards, must also meet § 268.48 standards (LDR Phase IV final rule, May 26, 1998).

V. Mercury Treatment Technologies—Roasting and Retorting of Mercury Wastes

A. Process and Regulation

Roasting or retorting of mercury (RMERC) and subsequently condensing the volatilized mercury for recovery is currently required for D009, K106, and U151 wastes in the high mercury-inorganic subcategory (i.e., 260 mg/kg total mercury and above), and P065 and P092 nonwastewaters that are incinerator residues or residues from roasting or retorting that still contain greater than 260 mg/kg total mercury. RMERC is also a treatment option for D009 wastes in the high mercury-organic subcategory that are not incinerator residues, and P092 wastes that are not incinerator or RMERC residues.

Most retort processes use a batch vessel. The mercury-bearing waste is

sealed in the vessel and volatile gases, such as mercury vapor, are released when the vessel is heated (sometimes under vacuum conditions). The mercury vapor is condensed, collected, and subsequently purified by successive distillation. The BDAT Background Document¹⁷ also describes roasting, where air is introduced to the hot waste to oxidize mercury compounds and to help transport mercury vapor to the condenser.

All wastewater and nonwastewater treatment residues derived from the RMERC process must meet various standards that ensure proper mercury removal via RMERC. If treatment residues are still in the high mercury subcategory (i.e., contain 260 mg/kg total mercury or more), they must be retreated. If the RMERC treatment residues are in the low mercury subcategory (i.e., contain less than 260 mg/kg total mercury), they must meet a

standard of 0.20 mg/L TCLP mercury prior to being land disposed. (Note: low mercury subcategory wastes that are not residues of RMERC must meet a more stringent standard of 0.025 mg/L TCLP mercury.) Thus, current LDR regulations mandate recovery (and therefore recycling) of mercury waste that contains greater than or equal to 260 mg/kg total mercury; impose regulatory control over the emissions from roasting and retorting and the disposal of residues derived from the process; and differentiate between the residues from RMERC versus other treatment processes to encourage recycling and recovery. The Agency requests comment on whether RMERC should include types of recycling technologies other than roasting or retorting, which also would allow treatment residues from those technologies to be eligible for the 0.20 mg/L standard.

¹⁶ U.S. EPA, BDAT Document for Mercury Wastes, November 1989, page 2–17.

¹⁷ Final BDAT Background Document for Mercury-Containing Wastes D009, K106, P065, P092, and U151, USEPA, May 1990, page 3–2.

B. Air Emissions from Roasting and Retorting

Air emissions from a mercury retorting or roasting unit (or facility) also are regulated. The unit or facility must be subject to one or more of the following (40 CFR 268.42):

(a) A National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury;

(b) A Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or

(c) A state permit that establishes emission limitations (within meaning of section 302 of the Clean Air Act) for mercury.

Secondary mercury production is estimated to have accounted for approximately 0.4 Metric tons of mercury emissions in 1995.¹⁸ Air emissions from retorting or roasting units are generally scrubbed and passed through carbon filters that efficiently capture mercury vapor. When spent, these filters are retorted or roasted along with other wastes to recover the mercury that has been trapped. The units may also incorporate an afterburner prior to any additional air pollution control devices (APCDs) for odor control.

(a) Chlor-alkali facilities

Of the 14 chlor-alkali facilities using the mercury cell process, six conduct onsite retorting or roasting. The background document "Waste Specific Evaluation of RMERC Treatment Standard" presents air emissions data for these six facilities from the TRI, and for two other facilities that do not conduct onsite mercury recovery. These two facilities ship their wastes off-site to other facilities owned by the same parent company. The releases shown represent all releases, including retorting emissions, fugitive emissions and emissions from hydrogen stream purification.¹⁹ The airborne mercury releases from all facilities with a retort process unit range from 250 to 1,500 pounds for 1995. However, mercury releases from facilities without a retort process unit are comparable to the releases from facilities with retorters, indicating that retort emissions are relatively small compared to total facility emissions.

¹⁸ Mercury Study Report to Congress, USEPA, December 1997, Volume I: Executive Summary, page 3-6.

¹⁹ Telephone conversation, Iliam Rosario, U.S. EPA, and John Vierow, SAIC, July 1998.

(b) Commercial Facilities

The background document "Waste Specific Evaluation of RMERC Treatment Standard" contains data on mercury emissions to air, water, and offsite recycling sites for the three commercial roasting or retorting facilities that submitted TRI reports. No other emissions information is available for other facilities.

Air emissions data for the three facilities indicate that releases are low. Stack emissions data were not obtained, but verbal correspondence indicates that measured emissions are also low. For example, one facility measures for mercury at the stack several times per day. A State official believed that these measurements are normally non-detects and, if any mercury is detected, the operation shuts down.²⁰

Detailed air pollution control device information is also available for several facilities. Air pollution control at several of the commercial roasting/retorting facilities includes carbon adsorption with no scrubbers.²¹ BRS data indicate that at least one facility uses carbon absorption and a scrubber. Literature reviews and discussions with technology vendors indicate that the use of activated carbon beds can achieve 90% or more mercury removal, with some greater than 99%.²²

At one facility, all retorting and ancillary operations (e.g., material handling) are conducted indoors.²³ This facility has emission controls for its furnace operation and for the building where the ancillary operations are conducted. The furnace off gas is cooled, then passed through activated carbon and a gas afterburner. Vent gas from the building passes through activated carbon and is emitted to the atmosphere. A second facility's furnace emissions are cooled, passed through a series of activated carbon absorption, and emitted to the atmosphere.²⁴ A third company's retort process is contained in a multicompartment building and all of the operations are conducted under negative pressure to help control emissions. The facility also uses sealed rooms for the preheating and cooling of the mercury-bearing wastes, and the rooms are equipped

²⁰ Telephone Conversation between John Vierow, SAIC, and Luis Pizarro, USEPA Region 3, June 1998.

²¹ Ibid.

²² Draft Technical Support Document for HWC MACT Standards, USEPA, February 1996, F-96-RCS-P-S0047.

²³ Bethlehem Apparatus, Waste Analysis and Recycling Plan, 1996.

²⁴ Telephone Conversation between John Vierow, SAIC, and Luis Pizarro, USEPA Region 3, June 1998.

with their own carbon adsorption filters to trap mercury vapor.²⁵

The Agency requests additional data on air emissions from roasting and retorting units, including information detailing the effectiveness of existing after burner, carbon bed, and scrubber controls.

C. Request for Comment

The Agency specifically requests comment on the following:

1. What Wastes Are Not Amenable to RMERC?

Mercury recovery facilities are exempt from the boiler and industrial furnace requirements of 40 CFR part 266, subpart H provided they meet certain requirements, such as the rejection of wastes with greater than 500 ppmw of certain organic constituents (i.e., organic compounds on 40 CFR part 261, appendix VIII). However, these units may process wastes containing various plastics, which may require the thermal destruction of odor causing emissions resulting from the pyrolysis (i.e., thermal decomposition) of these plastics. See appendix XIII of part 266. Other problem wastes for mercury recycling include:

- Wastes containing organic forms of mercury (e.g., mercury fulminate, phenylmercury acetate). Independent of regulatory restrictions, some facilities do not accept any organomercury compounds because the compound does not decompose into elemental mercury. Instead, the compound is carried through the retort and distillation system and results in an impurity in the final mercury product.²⁶

- Wastes with a high water content. Large quantities of generated steam interfere with the mercury condensation process. To solve this problem, one facility precipitates or concentrates liquid solutions prior to retorting.

- Wastes containing mercuric chloride, polyvinyl chloride, and halogens. Mercury chloride and other salts carry over during the retorting and condensation process, forming impurities.²⁷ Additionally, in the presence of steam, halogens will form acids, which corrode equipment. One facility pre-treats corrosive solutions using ion-exchange to overcome this problem. Another company uses chemical conversion to mercuric oxide prior to retorting to remove halides before processing.

²⁵ Mercury Refining Company, Facility Information Packet.

²⁶ Frederick J. Manley, USPCI Lab Pack Manager, letter to EPA, July, 2, 1992.

²⁷ Ibid

- Wastes containing volatile metals. Some retorting facilities restrict certain metals, including lithium, arsenic, and thallium. It is not known why these self-imposed restrictions exist.

- Radioactive wastes. For regulatory and safety reasons, most facilities reject radioactive wastes. Only one facility has been identified that accepts radioactive mercury-bearing wastes.

- Mercury nitrate/nitrite solutions. This material typically results in an ignitable solution, which appears to raise permit concerns for facilities²⁸

- Wastes containing mercuric sulfide. These wastes are difficult to retort. Additives are required to scavenge elemental sulfur produced before it can recombine with the mercury.

The Agency requests further information detailing the problems that occur when treating wastes in retorting units, including the forms of mercury wastes that are not technically amenable to retorting and/or are not accepted at retorting facilities.

2. Should Non-Thermal Recycling Technologies Be Allowed for High Mercury Wastes and, if so, Should They Continue To Be Subject to a More Stringent Residual Standard?

Since the RMERC regulations were promulgated, additional recycling technologies have been developed. One such technology is Universal Dynamic's REMERC process. While this process accomplishes mercury recycling in a closed system that limits air emissions, the residues are currently subject to the more stringent 0.025 mg/L TCLP mercury standard for non-RMERC residues. The Agency requests comment and data to determine whether non-RMERC recycling processes, if properly designed and operated, should continue to be under more stringent regulation because these processes may result in less mercury recovery than roasting and retorting processes, increased mercury content of residuals, higher air emissions, or a less stable final waste form. If these alternative recycling technologies are determined to be viable and are demonstrated to be properly designed and operated, the residuals could be subject to the current RMERC residual standard of 0.20 mg/L, or to a new treatment standard that the alternative technology has been demonstrated to achieve. Alternatively, the current regulations could be expanded to include recycling technologies other than RMERC as potential options for treating high mercury subcategory wastes.

3. Should the Mercury Concentration Requirement for RMERC (260 mg/kg or above) Be Adjusted?

The Agency requests data to support the potential adjustment of the 260 mg/kg total mercury distinction between the high and low mercury subcategories. The Agency requests data on difficult to treat wastes, particularly ones that have required one or more processings to achieve a total mercury concentration of less than 260 mg/kg, and on initial total mercury content and total mercury content after each treatment, together with the associated analytical quality assurance measurements and operation and design parameters of the unit. The Agency reminds commenters submitting data in support of their views to include with the data evidence that appropriate quality assurance/quality control²⁹ (QA/QC) procedures were followed in generating the data. Data that the Agency cannot verify through QA/QC documentation may be given less consideration or disregarded in developing regulatory options for proposed and final rules. Also, it is important that commenters demonstrate their processes were optimized and under stable operation during the test period. The Agency also requests information from retorting facilities concerning the minimum, maximum, and average concentration levels of mercury wastes accepted at these facilities.

4. Should the Agency Allow Alternative (Non-Recycling) Treatment Options to RMERC for High Mercury Wastes?

The Agency requests comment on whether treatment options besides recovery should be permissible for high mercury subcategory wastes. Recycling mercury in industrial processes and using recycled mercury as a raw material for commercial products are potential sources of mercury releases into the environment. Because mercury releases to the environment have had adverse impacts on both human health and the environment, federal regulations have concentrated on controlling and, in some cases, phasing out mercury use in industry. At least in part, a result of these findings and actions has been a decline in the use of mercury in U.S. industry over the years.

Therefore, the Agency seeks information on technologies that will treat high mercury wastes into a safe environmental form so that all mercury

release pathways into the environment are minimized. The Agency requests comment on whether alternative land disposal treatment technologies to recovery (e.g., sulfide conversion and stabilization with sulfur-polymer cement) for high mercury wastes should be made an option and requests data on mercury releases from wastes treated by these technologies. Data and information should also be included on the technology's ability to treat wastes containing organics, and the maximum organic level that the technology can handle.

One waste form that deserves particular mention is waste containing mercuric sulfide. These wastes are difficult to retort efficiently, and additives are required to react with or otherwise bind the elemental sulfur to prevent its recombination with the elemental mercury being recovered. As an alternative, precipitation of mercury using sulfide is a technology commonly applied in wastewater treatment. The Agency requests comment and data on whether such wastes should be either exempt from the RMERC requirement, subject to numerical standards, or subject to another technology standard.

5. Can Emissions From Secondary Mercury Production Be Further Reduced?

While the roasting/retorting processes effectively recycle mercury and have air emission controls, an estimated 0.4 Metric tons/yr of air emissions from secondary mercury production still exists. The Agency requests comment on the feasibility of more efficient controls during secondary mercury production and on the use of enclosed treatment processes.

6. Should EPA Consider Revising the Debris Standards To Require That High Mercury Subcategory Wastes That Also Meet the Definition of Debris Be Retorted?

The debris standards for hazardous wastes are listed in Table 1 of 40 CFR 268.45. EPA requests comment on potential revision of these standards to require the roasting or retorting of hazardous debris if the mercury concentration is greater than or equal to 260 mg/kg total mercury. EPA dealt with a specific case of mercury debris in early 1997 involving Aid-to-Navigation (ATON) batteries, and the most appropriate treatment and disposal method. At that time, EPA stated that it is more appropriate to apply the debris standards than the non-debris standards for mercury wastes, the latter of which would require RMERC (if the wastes contain 260 mg/kg or more total

²⁹ For guidance, see Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology; USEPA, October 23, 1991.

²⁸ Ibid

mercury). However, in subsequent discussions with members of the recycling industry, the Agency was informed that retorting is indeed feasible on these types of wastes. We are seeking comments on whether the debris standard should be revised to require RMERC if the waste is in the high mercury subcategory. Commenters are encouraged to also include the possible ramifications of such a revision.

VI. Mercury Treatment Technologies—Incineration of Mercury Wastes

A. Current Regulations

Three categories of waste streams must or can be incinerated under the current LDR treatment standards. These three are: D009 high mercury-organic subcategory; P092 wastes regardless of total mercury content that are not incinerator residues or are not residues from RMERC; and P065 wastes regardless of the total mercury content that are not incinerator or RMERC residues. The current regulations specify that incineration (IMERC) must be performed in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O and 40 CFR part 265, subpart O.³⁰ All wastewater and nonwastewater residues derived from this treatment process must then comply with the corresponding treatment standards per waste code, with consideration of any applicable subcategories.

B. Characteristics of Mercury in Incinerators and Current Emission Control Systems

Mercury is slightly volatile at ambient temperatures but is quite volatile at temperatures common to thermal treatment devices. It boils at approximately 356 degrees Celsius and typically escapes with other stack gases from incineration. With respect to mercury behavior in combustion systems and existing control techniques, mercury is volatilized and converted to elemental mercury in the high temperature regions of furnaces. As the flue gas is cooled, elemental mercury is oxidized to ionic forms. Elemental mercury, mercuric chloride, and mercuric oxide are all in the vapor phase at flue gas cleaning temperatures and special methods must be used for their capture. Each of these forms of mercury can be adsorbed onto porous solids such as fly ash, powdered activated carbon, and calcium based acid gas sorbents for subsequent collection in a particulate matter control

device. Only one hazardous waste incinerator (WTI, Inc., East Liverpool, Ohio) currently has this type of APCD installed. Control of mercury in municipal waste combustors has been based on injection of powdered activated carbon upstream of an electrostatic precipitator or fabric filter, and many municipal units have this type of system installed.

Mercury compounds also can be captured effectively using activated carbon or other sorbents. Fixed bed, fluidized bed, and duct injection arrangements have all been demonstrated to perform at 90% or more mercury removal efficiency, with some as high as 99% or greater. Systems without carbon injection, i.e., wet scrubbing systems designed for acid gases like hydrochloric acid, have much poorer mercury capture efficiency ranging from 0 to 40%. The highest control levels for activated carbon systems are achieved by optimizing the carbon type and the critical operating parameters of the control system. For example, for activated carbon injection, these parameters would include carbon feedrate, injection location, and temperature.³¹

C. Amount of Mercury Emitted from Incinerators and Other Hazardous Waste Combustors

As part of our current MACT rulemaking to upgrade emission standards for hazardous waste incinerators and hazardous waste-burning cement kilns and lightweight aggregate kilns (collectively known as hazardous waste combustors), the Agency developed a database containing detailed information on hazardous waste emissions, including mercury. The database also includes information on the quantity of mercury in each feedstream fed to the combustion unit. These feedstreams include, if applicable, the hazardous waste, coal and other conventional fuels, and raw materials.

Table 2, which is presented earlier in this preamble, shows national emission estimates for hazardous waste combustors for 1990, 1994 and 1997. In 1990, mercury emissions from these sources totaled approximately 6.4 metric tons per year. Table 2 shows a further breakdown of the mercury emissions contribution from each hazardous waste combustor category. For 1994, national emissions from hazardous waste combustors were estimated to be approximately 6.4

metric tons per year. These sources are estimated to contribute approximately 4.4 percent of the total anthropogenic, or man-made, emissions of mercury in the U.S. For 1997, mercury emissions from hazardous waste combustors total approximately 6.0 metric tons per year. In general, mercury emissions from hazardous waste combustors have decreased slightly between 1990 and 1997.³²

D. General Waste Characterization Data on Mercury in Hazardous Waste Streams

Treatment capacity determinations for the LDR program are generally made based upon the broader Biennial Report System database, which covers all types of hazardous waste activities. If we were to amend our LDR treatment standards in any respect, we would also consult this database. The 1995 Biennial Report indicates that for mercury-bearing wastes, 86,400 tons were incinerated and 380,000 tons were reused as fuel (i.e., sent to cement kilns and light weight aggregate kilns). However, the BRS system itself does not distinguish between the high and low mercury subcategories, nor does it show what concentration of mercury is present in these waste streams.

D009 wastes are extremely variable in composition, and their characteristics depend on the industry and process that generate the waste. Mercury concentrations in D009 wastes can range from 0.2 ppm to greater than 75 percent of the total waste composition. Although characterization data for D009 wastes are limited, some conclusions can be made regarding potential treatability issues. According to the 1995 BRS, the three largest volumes of D009 waste by waste form were reported as "halogenated/nonhalogenated solvent mixture" (21,700 tons), "other halogenated solids" (8,400 tons), and "concentrated solvent-water solution" (4,700 tons). These waste form descriptions suggest that the mercury is not the primary contaminant in the wastes. Finally, because concentration data are not provided in the BRS, D009 wastes could be comprised of both high and low mercury subcategory wastes.

Certain D009 waste streams may be incinerated for reasons other than the LDR IMERC treatment requirement. For example, BRS waste streams containing

³⁰ 40 CFR 264 subpart O and 265 subpart O are the regulations for hazardous waste incinerators.

³¹ Draft Technical Support Document for HWC MACT Standards, USEPA, February 1996, F-96-RCSP-S0047.

³² When interpreting any apparent data trends in Table 2, you should note that differences in emissions estimates are due to a combination of factors including actual data from performance in the field, revisions to our estimation methodology, and changes in the number of facilities operating within each category. See documents noted as sources for Table 2.

hazardous materials, particularly dioxins and PCBs, as well as certain ignitables and reactives require incineration treatment. Incineration and other types of combustion are the only common treatment methods that completely destroy dioxins and PCBs. Therefore, many of the waste streams reported to the 1995 BRS may have to be processed using incineration regardless of the mercury content. Many waste streams contain D009 mercury organic-bearing wastes from lab packs, halogenated/nonhalogenated solvent mixtures, certain halogenated solids, oily sludges, and organic paints.

No waste characterization data were found for P065 listed wastes. Two facilities in the 1995 BRS reported incineration of P065.

Very little data are available on the composition of P092 listed wastes. The primary constituent of P092 listed wastes is phenylmercury acetate; organic constituents (in particular, benzene) are also expected to be present (USEPA 1989). Five facilities in the 1995 BRS reported incineration of P092.

E. EPA's Re-Evaluation of the IMERC Standard

As discussed earlier, the current LDR regulations require or allow incineration of three types of waste streams, most notably D009 wastes that contain mercury above 260 mg/kg and that also contain some organics (i.e., the high mercury organic subcategory). The two original premises behind IMERC were that: (1) incineration would destroy the organic component or organomercury complexes in the waste stream, and the residues, if greater than 260 mg/kg total mercury, would be retorted to recover the mercury; and (2) applicable regulatory controls would provide adequate control of mercury air emissions.

With respect to the premise that mercury would be recovered from incineration systems, either incinerator bottom ash residues or emission control residues (e.g., spent activated carbon, scrubber sludges) could be sent to mercury recovery units. Incinerator bottom ash is likely to contain little mercury, however, because mercury is easily volatilized to the combustion gas. In addition, incinerators generally are not equipped with emission control equipment that removes mercury from combustion gas. In fact, the latest BRS report shows no record of incinerator residuals going to mercury recovery units. As a practical matter, although incineration destroys the organics, it does not make the mercury particularly amenable to recovery. It is therefore difficult to regard incineration as

contributing to the recovery of mercury, which was one of our original premises.

With respect to the second premise that applicable regulatory controls would provide adequate control of mercury emissions from incineration, neither the incinerator or BIF regulations nor the LDR regulations specifically require the use of emission control devices that effectively capture mercury (e.g., activated carbon). As implemented in practice, the BIF regulations and some incinerator permits restrict mercury in the hazardous waste feed. Because feed restrictions are not so stringent as to eliminate mercury in the feedstream and because the current regulations do not require the use of emission control devices that efficiently capture and remove mercury, it is still emitted to the atmosphere.³³

While the recently proposed (61 FR 17358, April 19, 1996) Hazardous Waste Combustor Maximum Achievable Control Technologies (MACT) regulations will impose some emission limitations on mercury emissions from hazardous waste incinerators, cement kilns, and lightweight aggregate kilns, these regulations are unlikely to require the capture and recovery of mercury from the combustion emissions or other combustion residuals. Thus, the implementation focus at individual combustion facilities is expected to continue to be controlling feedrate levels of mercury-bearing hazardous waste into the combustion device. The Agency is likely to determine under the final MACT rule that requiring specific APCDs on hazardous waste combustors to capture mercury is not cost-effective.

Although feed restrictions can and do reduce mercury emissions and to some extent the associated risks, we are still concerned with the environmental loading of mercury. The MACT rule does not take into account the long-range transport of mercury emissions, and uncertainties in the HWC MACT risk assessment allow the Agency to conclude only that risks from mercury emissions within 20 kilometers are likely to be small.³⁴ The Agency wishes to consider whether we can further reduce the environmental loading by amending the LDR regulations to reduce the volume of mercury wastes that

require IMERC and to promote the use of alternative treatment methods.

Thus, the IMERC standard bears further investigation to see whether, given the heightened concern over all sources of mercury emissions, even ones at relatively low levels, alternative LDR approaches may be appropriate to ensure better protection of human health and the environment. We note that EPA must address any significant remaining residual risks posed by sources subject to the MACT technology-based standards within eight years after promulgation of the Hazardous Waste Combustor MACT standards. See section 112(f)(2). The Agency is required to impose additional controls if such controls are needed to protect public health with an ample margin of safety, or to prevent adverse environmental effects. Our mercury reevaluation in this proceeding is also expected to assist EPA in any residual risk evaluation.

F. Additional Considerations Related to Alternatives to Incineration

A possible alternative to incineration for some mercury-bearing wastes is the physical separation of the mercury containing and organic components of the waste streams. Mercury retorters report that mercury-bearing organic wastes may be separated prior to treatment, when the mercury is associated with particulates in the waste. After retorting of the particulates, the retort condenser sludge is separated and returned to the retorting process for additional mercury recovery. The residual organic phase with reduced mercury content is then incinerated. While such waste separations may be feasible for organic wastes containing inorganic mercury, such separations would likely not work for organomercury wastes. Thermal or other destruction of the organomercury compounds present appears to be needed to convert the organomercury compounds to a recoverable form, as was originally envisioned in the IMERC standard.

G. Request for Comment

The Agency has several potential concerns with the IMERC standard. Specifically, from the available combustion database and the BRS data, it appears that non-trivial volumes of mercury-bearing waste are going to combustion units. As discussed above, because mercury is a volatile metal and unless the combustion unit has an APCD capable of capturing mercury emissions (normally not the case), potentially all of the mercury fed into

³³ Mercury emissions can also be controlled under special conditions imposed through RCRA omnibus authority. See § 270.32(b).

³⁴ "Risk Assessment Support to the Development of Technical Standards for Emissions from Combustion Units Burning Hazardous Wastes: Background Information Document," February 20, 1996.

the unit will be vaporized and released into the atmosphere.

The Agency specifically requests comment on the following:

1. What Mercury Waste Streams Will Continue to Warrant IMERC?

There may be wastes for which incineration is the best available treatment option, for example, wastes with low mercury concentrations and high levels of organics, mercury wastes containing PCBs, and mercury wastes containing or combined with reactive and ignitable hazardous waste. In an attempt to identify such wastes, the Agency examined BRS data for wastes that are D009 and also contain dioxins or PCBs. A search of the 1995 BRS data showed only one hazardous waste incinerator that processed waste streams containing both D009 wastes and dioxin wastes. (EPA hazardous waste codes F020-F023 and F026-F028). According to the 1995 BRS, the facility processed approximately 80 tons of wastes containing dioxins from 27 separate waste streams. Many of these wastes are from soil and debris from facility decommissioning. However, no concentration data were available. Three facilities process waste streams containing both D009 wastes and PCB wastes. These facilities processed approximately 446 tons of wastes from 22 separate waste streams in 1995. Most of the PCB wastes were organic solids and sludges and again, no concentration data were available. Waste streams containing reactive and ignitable hazardous wastes covered a wide variety of waste stream codes. Many of the ignitable and reactive wastes were flammable liquids, solvents, and petroleum. In addition, it appears there are other waste streams, such as oily wastes, that require incineration.

However, inorganic mercury is generally associated with solids in highly organic wastes. These mercury-bearing solids can be separated by centrifuge prior to retorting. The Agency requests information on mercury-bearing wastes that may continue to require incineration, and on wastes that would be amenable to the separation of mercury solids for recovery prior to incineration of the remainder of the waste. Specifically, the Agency requests comment on the feasibility of requiring the separation of mercury-bearing solids from organic wastes and identification of any wastes for which such pretreatment would not be feasible.

2. What Alternative Technologies Are Available To Treat Mercury Wastes Containing Organics While Also Minimizing Mercury Emissions?

Because mercury emissions from incinerators may be costly to control, alternative technologies are sought that can either recycle the mercury in the wastes, separate the mercury from the organics prior to incineration of the organics, or produce a stable residue for disposal that reduces the risks attributed to the organic and mercury constituents. The Agency seeks waste characterization and technology performance data on alternative technologies for the treatment of wastes that are currently incinerated.

We also request information on the impediments to using alternative technologies, such as RMERC, to treat mercury wastes containing organics (RMERC is currently listed as an alternative in the regulations), and whether the organics can be destroyed or captured. Would an alternative technology such as an oxidation-leaching-precipitation train be more desirable? What are the concentration limits of organics that could be treated by these alternative technologies? If these alternative technologies are shown to effectively treat mercury wastes containing organics, should the incineration standard then be retained only if the unit has appropriate APCDs to capture the mercury and/or only if the organics in the wastes are "hard to treat?" The Agency specifically requests comment and data supporting commenter's views on these issues. The Agency also requests information regarding the current capacity of alternative oxidation technologies.

VII. Regulatory Options Involving Source Reduction

As discussed above, EPA's current LDR regulations set both technology and numerical based treatment standards that require waste management facilities to either retort, roast, or incinerate hazardous wastes that contain greater than 260 mg/kg of total mercury (depending on the presence of organics; see Table 4); or treat hazardous wastes that contain less than 260 mg/kg of total mercury to 0.025 mg/L TCLP prior to land disposal.

Some companies have found ways to reduce or eliminate the amount of mercury in their waste by making changes in their production processes and plant management, including changing raw materials, equipment, process design, and maintenance activities. In some cases, these changes have taken several years to design, test

and install, while simultaneously relying on costly treatment technology to remain in compliance. For example, chlor-alkali producers, which are the largest manufacturing users of mercury in the U.S., have historically relied on a mercury cell process to manufacture chlorine and caustic soda. Caustic soda produced from this process may contain mercury, which in turn may contaminate other products and generate mercury-bearing hazardous wastes. By 1994, approximately one-half of the chlor-alkali plants had changed to a membrane cell production process, which does not use mercury. The membrane cell process has resulted in better environmental results and lower energy and waste management costs for the facilities that use this technology.

EPA wishes to consider regulatory options that produce superior environmental results and cost-savings for the regulated community beyond the requirements of end-of-pipe technology standards. EPA recognizes that once a company invests in end-of-pipe recovery or treatment technologies that meet compliance requirements, there may be little or no incentive to invest more money in process changes that would reduce or eliminate a particular hazardous waste, particularly since there would be no relief from waste management costs while process changes are being designed and tested.

In today's document, EPA is seeking comment on potential regulatory incentives that would encourage companies to invest in manufacturing process redesign, raw materials substitution or other technologies that would reduce the amount of mercury found in hazardous waste. To make this approach incentive-based, EPA is seeking views and information on the possibility of extending LDR compliance dates for companies willing to develop and/or install technologies that could be used instead of, or in combination with, end-of-pipe technologies to reduce the generation of mercury-bearing hazardous wastes.

One approach EPA is considering is a two-part LDR standard. The first part of this standard would be a traditional standard, developed from data on the best available treatment technologies. The second and novel part of the standard would be an alternative standard that facilities could elect in lieu of the first, more traditionally-based standard. This alternative standard would involve the installation of source reduction-oriented process changes that would either reduce the volume of mercury waste produced or the concentration of mercury in the wastes. As an incentive for encouraging

companies to comply with the alternative standard (particularly if the mercury concentration level is lower than the level for the first part of the standard), EPA would extend the generator exclusion from permitting beyond the current 90 days, or provide some other kind of incentive.

EPA is seeking comment on the development of a two-part standard, like the one discussed above, or another standard that provides economic or regulatory incentives to promote source reduction of mercury in hazardous wastes. EPA would also like comment on whether extending the compliance dates would foster reductions in wastes beyond the limits achievable using end-of-the pipe treatment technologies.

VIII. Mixed Wastes

Ongoing inventory of mercury-contaminated wastes currently awaiting disposal at Department of Energy (DOE) facilities has identified 7,284 cubic meters of such wastes. These wastes are the legacy of past nuclear weapons production for national defense. Table 5 presents an inventory of this waste.

TABLE 5.—MERCURY CONTAINING WASTES AT DOE FACILITIES

Category	Inventory (cubic meters)
Elemental	17
<260 mg/kg	6,000
>260 mg/kg	325
Unknown	942
Total	7,284

Source: DOE Mercury Working Group, 1999.

Under current regulations, no separate treatment category exists for high mercury wastes that also contain radioactive materials. Therefore, the regulations direct that high mercury-organic subcategory mixed wastes be subjected to RMERC or IMERC and that high mercury-inorganic subcategory mixed wastes be subjected to RMERC. At the time of promulgation, these regulations intended that the mercury be separated from the wastes and recycled. However, with the cessation of nuclear weapon production, there are no longer any uses for mercury that is still contaminated with radioactive materials. Thus, current regulations may result in the contamination (by radiation) of additional equipment to recover mercury that has no subsequent use and for which the treatment standard for disposal is again RMERC. Department of Energy's (DOE) Mixed Waste Focus Area-Mercury Working

Group, in conjunction with EPA, has initiated studies of the direct treatability of high mercury-inorganic subcategory wastes for direct disposal. Should these tests demonstrate the successful treatment of such wastes, EPA could, as part of this or a separate LDR rulemaking, create a separate subcategory for these mercury-bearing mixed wastes and potentially develop a numerical treatment standard for the subcategory. These treatability studies include the evaluation of technologies such as alternative oxidation technologies, stabilization using specialized amendments, amalgamation technologies, sulfur polymer cement stabilization, and mercury solubilization and removal. Further information on these technologies is located in the docket to today's ANPRM. The Agency expects that several of these studies will be further along by the time of a proposed rule (scheduled to follow this ANPRM by approximately one year). Any available data from these tests will be discussed in the proposed rule and placed in the docket to that rule.

The Agency specifically requests comments on eliminating the RMERC standard for mixed mercury wastes, and on allowing the use of alternative technologies that are currently being investigated by EPA and DOE, with the residuals having to comply with a numerical limit.

IX. Discussion of Alternative Treatment Technologies

A. Possible Alternative Technologies to Retorting

As discussed in the May 1990 Best Demonstrated Available Technology (BDAT) Background Document for Mercury Containing Wastes, retorting is not the only technology that has been used in treating high mercury wastes. Alternative treatment technologies are categorized as either removal/recovery technologies or immobilization technologies. These alternatives are presently used, or could potentially be used for treating such wastes.

Alternative treatment technologies presently exist, or have existed in the past, for two reasons. First, the alternative technology may be simply another competing process to remove mercury from, or fix mercury within, a matrix. Second, the technology may overcome restrictive waste characteristics that cause difficulty during retorting or roasting. For example, several processes are actually "pretreatment" processes to prepare the waste for retorting. These processes remove waste characteristics that restrict treatment, such as water content,

and convert mercury compounds into easier to treat forms.

Several technologies which may hold some promise for the treatment of high mercury wastes include the following:

Removal/Recovery Technologies

(1) Acid/chemical leaching (solids, slurries, or aqueous wastes). The mercury is converted to a more soluble form and thus is removed from the waste matrix.

(2) Carbon adsorption (aqueous wastes or vapors). Mercury retort facilities commonly use carbon adsorption as a way of removing and concentrating mercury removed from stack gas or effluents.

(3) Ion exchange. Ions in the exchange resin are substituted for mercury ions of similar charge.

These technologies are described in more detail in the background document "Waste Specific Evaluation of RMERC Treatment Standard."

Immobilization Technologies

(1) Solidification/stabilization (solids or slurries). Solidification/stabilization(S/S) processes are nondestructive methods to immobilize the hazardous constituents in a matrix while decreasing the waste surface area and permeability.³⁵ Common S/S agents include Type 1 Portland cement, lime, and fly ash. The final product can be a monolith of any practical size or a granular material resembling soil.³⁶ Sulfur polymer cement (SPC) is one stabilization technology that can be used to convert mercury compounds to mercuric sulfide and encapsulate simultaneously (U.S. DOE, 1998). However, the encapsulation process temperatures can volatilize mercury, so the mercury vapor and oxide that forms must be captured and recycled in the process.

(2) Amalgamation. Amalgamation typically involves the mixing of elemental mercury with a powdered granular metal (typically zinc), forming a non-liquid, semi-solid matrix of elemental mercury and the metal. Two generic processes that are used for amalgamating mercury in wastes are an aqueous replacement (solution) process, and a non aqueous process.³⁷

The Agency requests more information, including any data from treatability studies and their

³⁵ U.S. EPA, Technical Resource Document: Solidification/Stabilization and its Application to Waste Materials, EPA/530/R-93/012, June 1993.

³⁶ U.S. EPA, Engineering Bulletin: Solidification/Stabilization of Organics and Inorganics, EPA/540/S-92/015, February 1993.

³⁷ U.S. EPA, Treatment Technology Background Document, January 1991, pages 74-80.

applications to various waste matrices, on these technologies.

B. Possible Alternative Technologies to Incineration

This section discusses the treatment technologies that are being studied to treat high mercury wastes currently requiring incineration. The goal of these technologies is to achieve the same degree of destruction of the organic compounds as is achieved with incineration, while maintaining control over the residual mercury. Many variables need to be considered, including the degree of organic destruction required prior to further mercury treatment, the degree of mercury speciation control required by the waste form, and other operating procedures to ensure mercury extraction from nonwastewaters and wastewaters. Because the mercury cannot be destroyed, various treatment process steps are necessary to treat or recover the mercury, depending on the mercury species present in the waste, its concentration, and the overall waste form.

Currently, the only common process capable of destroying organics is oxidation, which can be done thermally or chemically. It is usually combined with other technologies to form a treatment train. One such train is the oxidation, leaching, and precipitation train, which has been shown to be effective in treating high mercury wastes currently requiring incineration. Once the organics are destroyed, leaching and precipitation treat the inorganic mercury forms, such as oxides and hydroxides. The resulting waste is then suitable for retorting or immobilization prior to disposal. Note that this type of treatment train cannot destroy dioxins, furans, or PCBs.

The Agency also has limited information on a number of developing technologies including nonthermal (i.e., Delphi DETOX (Delphi Research), Direct Chemical Oxidation (LLNL), Acid Digestion (Savannah River)) and thermal processes (such as steam reforming) (ThermoChem Inc.), and Catalytic Chemical Oxidation (LBNL)) under development in support of the waste treatment needs of the Department of Energy facilities. One or more of these technologies may soon be available and used for mercury-bearing wastes, followed by stabilization. EPA requests further information on the aforementioned technologies, as well as any others that may be used in place of IMERC.

C. Current Mercury Treatment Companies

Several sources were researched to identify facilities and companies that provide alternative treatment for mercury-bearing organic wastes. These sources include BDAT capacity background documents, the 1995 Biennial Reporting System (BRS), Alternative Technology Treatment Information Center (ATTIC) database, Vendor Information System for Innovative Treatment Technologies (VISITT) database, technical background documents, online web searches for company and treatment technology profiles, and the Risk Reduction Engineering Laboratory (RREL) database. Limited information is available on vendors and facilities that treat mercury-bearing organic wastes using methods other than incineration or retorting. BRS data indicate that there are numerous facilities that treat mercury-bearing organic wastes. The BRS waste management code, the code used to report the final treatment of the waste, in a few cases indicated there is acid leaching or oxidation used to treat the mercury-bearing organic waste stream. This may be because the final treatment step is the only management code reported, and does not indicate if a multiple step process is used. The predominant treatments reported in BRS are stabilization/chemical fixation using cementitious and/or pozzolanic materials and phase separation. There are several data gaps that require further investigation on a process and waste stream specific level. In addition, the BRS data do not adequately describe the organic content of the actual waste stream being treated, especially where multiple waste form codes are reported together with the D009 code. A table listing the mercury treatment facilities is provided in the background document "Analysis of Alternatives to Incineration for Mercury Wastes Containing Organics," which can be found in the docket to today's ANPRM.

D. Request for Comment

The Agency seeks comments on the viability and parameters of these alternative technologies and any other technologies not specifically mentioned in this ANPRM. Specifically, the Agency seeks the following information: description of the process; types of wastes capable of being treated; total, leachable, and volatile mercury content of the wastes and of the residues following treatment; amount of mercury air emissions from treatment; operating conditions and parameters; data showing the efficiency of the

technology; commercial availability of the technologies and their available capacity; limitations of the technologies; cost information for these alternative technologies; and other potential benefits of using these alternative technologies over the existing treatment technologies. All data submitted should have appropriate QA/QC documentation to ensure their consideration by the Agency. Data without QA/QC may be disregarded.

X. Possible Revisions to the Mercury LDRs

A. Purpose of ANPRM

The Agency plans to examine potential revisions to the LDR mercury treatment standards, including the potential to encourage manufacturing process changes (i.e., source reduction changes) that further reduce the amount of mercury entering hazardous waste streams, as the next step in this rulemaking process. The Agency decided that this ANPRM is necessary before proposal development because the Agency would benefit from additional mercury treatment data, including information on source reduction opportunities, as well as industry information to consider in amending the standards. The nature and extent of these amendments have not yet been determined. This ANPRM is expected to be beneficial to the regulating entities (including States), the regulated community, and the public as a means of public outreach and opportunity for public comment early in the rulemaking process. EPA encourages all interested persons to submit comments, and to identify any relevant issues not addressed by this ANPRM. The Agency also welcomes comments regarding whether the LDR mercury treatment standards should be revised. The Agency encourages commenters to submit examples or documentation to support their positions. The input from public comment will assist the Agency in developing a proposed rule that successfully addresses all appropriate revisions to these standards. An Agency decision to issue a proposed rule to revise LDR mercury treatment standards and the nature of those revisions will be ultimately based on the comments received on this ANPRM, as well as data obtained from other sources (e.g., ongoing treatability studies).

B. Schedule

The Agency has general plans to release a notice of proposed rulemaking by early 2000. The final rule date will depend on the amount of information submitted and the issues raised.

C. Impact on Small Businesses

The Agency believes, at this point, that the impact on small businesses will not be significant. EPA requests comment on the potential costs and benefits to small businesses, should revisions be made to the LDR mercury treatment standards as described in this ANPRM. Suggestions on ways the Agency might mitigate any adverse effects would also be welcome.

D. Impact on State Programs

The Agency will be cognizant of the impact of any proposed revisions to the LDR mercury treatment standards on State programs, and encourages comments on this subject.

XI. Administrative Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions. This ANPRM will not have a significant impact on a substantial number of small entities because it does not create any new requirements. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act: Pursuant to the provision at 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities. However, there is the potential for future actions related to this ANPRM to have a significant economic impact on a substantial number of small entities. Therefore, the Agency will examine whether the Regulatory Flexibility Act applies in the preparation of any future rulemakings related to this ANPRM.

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This ANPRM is not subject to E.O. 13045 because it does not, at this point, involve decisions intended to mitigate environmental health or safety risks. Of course, as the information in response to this ANPRM is evaluated, we will continue to examine whether E.O. 13045 applies.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements

Dated: May 21, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99-13659 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7290]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Iowa	Dickinson County (Unincorporated Areas).	Lower Gar Outlet Channel	Approximately 2,700 feet upstream of confluence with Little Sioux River.	None	*1,354
			Approximately 1.23 miles (6,480 feet) upstream of County Road A34.	None	*1,397
		Spirit Lake	Entire lake shoreline	None	*1,404
		Okoboji Lake Chain	Entire lake shoreline	None	*1,399

Maps are available for inspection at the Dickinson County Zoning Office, 1810 Ithaca Avenue, Spirit Lake, Iowa.

Send comments to The Honorable June Goldman, Chairperson, Dickinson County Board of Supervisors, 1802 Hill Street, Spirit Lake, Iowa 51360.

Nebraska	Platte County (Unincorporated Areas).	Shell Creek	Approximately 27 miles upstream of confluence with the Platte River.	None	*1,446
			Approximately 6 miles upstream of U.S. Route 91.	None	*1,697

Maps are available for inspection at the Platte County Highway Department, 2610 14th Street, Columbus, Nebraska.

Send comments to The Honorable Myron Franzen, Chairman, Board of Commissioners, Platte County Courthouse, 2610 14th Street, Columbus, Nebraska 68601.

North Dakota	Ward County and Incorporated Areas.	Mouse River	Approximately 264 feet downstream of Schilling Bridge.	None	*1,520
			At Lake Darling Dam	None	*1,600

Maps are available for inspection at the Flood Zoning Office, 315 Third Street, Southeast, Minot, North Dakota.

Send comments regarding Ward County and the Townships of Harrison, Kerkelie, Nedrose, New Prairie, Sawyer, and Sundre to The Honorable Karl L. Conrad, Chairperson, Ward County Commissioners, P.O. Box 5005, Minot, North Dakota 58702-5005.

Maps are available for inspection at the City of Sawyer City Hall, 104 Dakota Avenue South, Sawyer, North Dakota.

Send comments to The Honorable Ralph Packulak, Mayor, City of Sawyer, P.O. Box 237, Sawyer, North Dakota 58781.

Maps are available for inspection at the City of Minot City Engineer's Office, 1025 31st Street, Southeast, Minot, North Dakota.

Send comments to The Honorable Carroll W. Erickson, Mayor, City of Minot, 515 Second Avenue Southwest, Minot, North Dakota 58701.

Maps are available for inspection at the City of Burlington City Auditor's Office, 225 Wallace Street, Burlington, North Dakota.

Send comments to The Honorable Jerome Gruenberg, Mayor, City of Burlington, 225 Wallace Street, Burlington, North Dakota 58722.

Maps are available for inspection at the County Flood Zoning Office, 315 Third Street Southeast, Minot, North Dakota.

Send comments to The Honorable Ron Almquist, Chairman, Township of Burlington, 2700 74th Street, Northwest, Minot, North Dakota 58703.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107, 171, 172, 173, 177, 178 and 180

[Docket No. RSPA-98-3684(HM-220)]

RIN 2137-AA92

Hazardous Materials: Requirements for DOT Specification Cylinders; Second Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: RSPA is extending the closing date for filing comments to a notice of proposed rulemaking (NPRM) published under Docket HM-220 from May 28 to September 30, 1999. RSPA is taking this action in response to petitions filed by the National Propane Gas Association (NPGA), the Air-Conditioning and Refrigeration Institute (ARI), the Compressed Gas Association, Inc. (CGA) and Airgas, Inc. The petitioners requested that RSPA provide additional time to allow shippers, the gas and cylinder industries, and other interested parties sufficient time to review and address the proposed changes.

DATES: Comments must be received on or before September 30, 1999.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh St., SW, Washington, DC 20590-0001. Comments should identify the docket number, RSPA 98-3684(HM-220), and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at <http://dms.dot.gov>. Click on "Help & Information" to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket number "3684".

The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed at the address above between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. In addition, the NPRM and all comments can be reviewed on the internet by accessing the Hazmat Safety Homepage at "<http://hazmat.dot.gov>".

FOR FURTHER INFORMATION CONTACT:

Cheryl Freeman, telephone number (202) 366-4545, Office of Hazardous Materials Technology, or Hattie Mitchell, telephone number (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On October 30, 1998, RSPA published an NPRM in the **Federal Register** under Docket HM-220 (63 FR 58460). RSPA proposes in the NPRM to amend certain requirements in the Hazardous Materials Regulations to establish four new DOT cylinder specifications and to revise the requirements for maintenance, requalification, repair and use of DOT specification cylinders. In addition, RSPA held three public meetings to discuss the proposals on December 8, 1998 (63 FR 58460; October 30, 1998), January 28, 1999 (63 FR 72224; December 31, 1998) and April 13-15, 1999 (64 FR 9114; February 24, 1999). Also the December 31 notice provided for a 120-day extension of the comment period from January 28 to May 28.

The NPGA, the ARI, and the CGA petitioned RSPA for another extension of at least 120 days from the May 28 deadline. Airgas Inc. petitioned for a 90-day extension. The petitioners stated that this second extension would allow affected persons more time to provide substantive comments to the proposed changes. Many commenters attending the April public meeting also stated that they would need more time to submit their comments. RSPA agrees that additional time should be provided and is hereby extending the closing date from May 28 to September 30, 1999.

Issued in Washington, DC, on May 24, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99-13643 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 990520140-9140-01; I.D. 041699A]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Eleven New Species Including One New Genus of Bryozoans From Capron Shoal, Florida, as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notification of 90-day petition finding.

SUMMARY: NMFS received on February 11, 1999, a petition to list eleven new species (including one new genus, *Cymulopora*) of bryozoans as threatened or endangered under the ESA. The following are the new species: *Alcyonidium capronae*, *Membranipora triangularis*, *Disporella plumosa*, *Cymulopora uniserialis*, *Cribilaria parva*, *Reginella repangulata*, *Hippothoa balanophila*, *Phylactella ais*, *Trematoecia psammophila*, *Cleidochasma angustum*, and *Drepanophora torquata*, hereafter referred to as "Capron shoal bryozoans." NMFS finds that the petition does not present substantial scientific or commercial information to warrant the petitioned action, per 50 CFR 424.14.

DATES: This petition finding was made on May 18, 1999.

ADDRESSES: Copies of the petition may be obtained from NMFS, Protected Resources Division, 9721 Executive Center Drive N., St. Petersburg, FL 33702; or from NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD 20910. The petition finding and supporting data are available for public inspection by appointment during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Eric Hawk, NMFS, Protected Resources Division, (727)570-5312, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the

Secretary of Commerce (Secretary) to list species under the ESA. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Section 424.14(b)(1) of NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (see 50 CFR 424.14). Section 424.14(b)(2) of these regulations contains factors the Secretary considers in evaluating a petitioned action.

On February 11, 1999, the Secretary received a petition dated that day from Eric R. Glitzenstein and Cara Romanzo, counsels for the St. Lucie County Conservation Alliance, St. Lucie Waterfront Council Inc., St. Lucie County Audubon Society Inc., Dr. Judith E. Winston, and K. Brian Killday, hereafter referred to collectively as "the petitioners," to list the Capron Shoal bryozoans as threatened or endangered. The U.S. Army Corps of Engineers (Corps) intends to dredge the sandy shoal where these bryozoans reside, as a plentiful source of sand for eroded beach restoration. The petitioners cite "significant risk to the well-being" and threat of extinction of these new species (discovered between 1983 and 1985) "not known to exist anywhere other than *** Capron Shoal" from "an ill-conceived, imminent project to dredge and thereby destroy their only known habitat." The petitioners also cite the "potential anti-carcinogenic and other medicinal properties" of the species and genus at issue as additional reasons why the bryozoans should be immediately listed under the ESA. However, the petitioners do not present substantial information with regard to these claims.

The petitioners sought a Temporary Restraining Order (TRO) against the Corps dredging project, alleging that the Corps did not conduct a thorough National Environmental Policy Act (NEPA) analysis, and alleging that immediate and irreparable harm would result if dredging went forward. The Court ruled in favor of the petitioners and issued a TRO on March 5, 1999. Subsequently, the Corps and the petitioners reached a Settlement Agreement, which committed the Corps to fund bryozoan studies of Capron Shoal and nearby shoals (\$200,000), dredge only in the southern portion of the currently authorized borrow area during the first phase of the beach renourishment project, conduct a survey

of the effect of beach nourishment on the near-shore hardbottom, and do additional NEPA analysis before beginning the next phases.

NMFS has reviewed the petition and information available in NMFS files and consulted with one of the petitioners and bryozoan researcher, Dr. Judith E. Winston, as well as with its own experts. There is a fundamental uncertainty about the taxonomy of many marine groups (Knowlton, 1993; Wallace and Willis, 1994; Miller, personal communication, 1999). "The petitioners' scientific paper describing these new species (Winston and Hakansson, 1986) discusses the great morphological plasticity of many of the bryozoan species they found at Capron Shoal. Indeed, these authors describe several of the interstitial bryozoans that they found at Capron Shoal as the same species that grow as encrusting colonies in other habitats. In the absence of any population genetic data, which appears to be absent in this case, the discernment of species within this context of morphological plasticity is extremely problematic." (Miller, personal communication, 1999) Thus, although the data presented by the petitioners appear to support the conclusion that the species are new and to date have been found only on Capron Shoal, without corroborating genetics information, even that conclusion is perhaps premature. Furthermore, the data presented by the petitioners do not support the conclusion that the species are not likely to be found anywhere other than in Capron Shoal or even in deeper portions of Capron Shoal. The petitioners state that "the only assertion which rises to the level of a scientific certainty is that these bryozoans are not currently known to exist anywhere other than the shallower portions of Capron Shoal where [Drs. Winston and Hakansson's] research was actually conducted." In her February 10, 1999 affidavit, Dr. Winston states that "there is no scientific basis for concluding that the newly discovered bryozoans exist throughout the entire shoal" or at other nearby shoals. However, she acknowledges that her sampling of subtidal habitats off Fort Pierce was "preliminary."

Dr. Winston's statement in her affidavit that whether or not bryozoans exist elsewhere on Capron Shoal and at other nearby shoals "is an important question that must be answered" indicates that these bryozoans may exist elsewhere or that they may exist throughout Capron Shoal. Further, when contacted by NMFS on February 12, 1999, Dr. Winston stated that she happened to discover these species

while sampling the biodiverse Capron Shoal (Nammack, personal communication, 1999); no bryozoan-specific surveys have ever been conducted in the area. At the time, Dr. Winston also denied stating that these bryozoans did not occur anywhere else (Nammack, personal communication, 1999).

NMFS does not dispute the petitioners' assertion that, currently, the "shallow areas of Capron Shoal are the only known habitat for the bryozoans at issue." However, NMFS is convinced that this is due to sampling limitations and incompleteness of the sampling regime. NMFS feels that the limited and preliminary nature of the surveys which led Drs. Winston and Hakansson to the discovery of these new species of bryozoans does not preclude their existence on other portions of Capron Shoal or at nearby shoals with similar sand characteristics. NMFS feels that, due to the limited and preliminary nature of the sampling, this should not be used as a basis to assert that these bryozoans may not exist elsewhere and are threatened with extinction.

Bryozoans are found in many aquatic and marine environments. It is likely that many species of bryozoans have never been described because they are not very well studied as a group. NMFS believes that the petitioners' argument that the Capron Shoal bryozoans are "unique" is weak and undocumented. NMFS believes that discovery of a new species (especially of a poorly studied group of organisms) does not automatically mean the species is rare, threatened, or endangered.

The petitioners raise concerns that the bryozoans, even if they exist throughout the entirety of Capron Shoal, might not survive a dredging project which involves the removal of sand from even a portion of Capron Shoal. The petitioners cite concerns over direct destruction of habitat and "secondary impacts from dredging, in the form of increased turbidity and the constant resuspension of fine sediments over the medium coarse sand the bryozoans select for." The petitioners are concerned that dredging would interrupt and possibly stifle bryozoan reproduction. The petitioners assert that, because bryozoan larvae are non-feeding organisms, they must settle on an appropriate grain of sand quickly and metamorphose to form a new colony before they die. According to the published literature, bryozoan larvae must disperse and settle within hours. "They spend a very short period of time (less than 24 hours) in the plankton." (Winston and Hakansson, 1986) Thus, the larvae do not generally disperse far

from the parent organism. Dr. Winston asserts that "Bryozoan larvae, therefore, do not cover great distances before settling and it is erroneous to suggest that their reproductive mechanisms make it extremely likely that they occur elsewhere in the region." (Winston, 1999)

In asserting the limited distribution of the bryozoans, the petitioners did not adequately consider the natural dispersal action of winter wave patterns that cause breaking waves and strong currents over and on Capron Shoal nor the strong tidal and wind-generated currents typical of the area. Significant wave action and 3 to 6-knot currents are not uncommon, according to professional mariners familiar with the area (Hawk, personal communication, 1999). During spring tides (full moon events) at Fort Pierce Inlet, predicted maximum flood and ebb tide currents may reach 4 to 5 knots (NOAA, 1993). The nearshore effects of the northward flowing Gulf Stream cannot be discounted. The proximity of other nearby shoals also can reasonably be expected to provide suitable substrate for settling planktonic bryozoan larvae from Capron Shoal and serve as a source of planktonic larvae for Capron Shoal. Pierce Shoal, St. Lucie Shoal, Indian River Shoal and various unnamed shoals are all within 10 nautical miles of Capron Shoal, and several are much closer. NMFS believes that the petitioners' argument that the larvae may exist nowhere else but in Capron Shoal is inaccurate, particularly since adequate larval dispersal mechanisms and nearby shoals with similar sand characteristics to Capron Shoal are present (Corps, 1998). These shoals would, in all likelihood, provide fertile substrate for settling larvae.

NMFS acknowledges that dredging Capron Shoal will temporarily remove a portion of the bryozoan population and some features that make this area suitable habitat for bryozoans. However, NMFS biologists are confident that new surfaces exposed by dredging, when reshaped by natural events such as prevailing currents and wave action, will support the recolonization of the site by bryozoan larvae. The source for these bryozoan larvae will be undredged portions of Capron Shoal, nearby shoals, and the Indian River Lagoon system.

Further, NMFS does not believe the bryozoan population of Capron Shoal is a precariously small population. The average abundance of living encrusting (nonlunulitiform) bryozoan species found in Capron Shoal samples taken by Winston and Hakansson was 0.75 per cm². Thus, one square meter of sediment 1 cm in depth would contain

7,500 living colonies. Winston and Hakansson calculated that for the inner continental shelf of Florida alone this would yield a population of about 1.2×10^{12} colonies, and "this estimate is conservative, as living colonies are known to occur much deeper than 1 cm into the sediment." (Winston and Hakansson, 1986) The researchers state that "In fact, the interstitial refuge may be an important factor in maintaining distributions of encrusting species, acting almost like the seed bank for populations of plants, by buffering the effects of physical and biological perturbations and lowering the chances of local extinction." (Winston and Hakansson, 1986)

This documented abundance and intrinsic though unquantifiable degree of protection from local extinction offered by the interstitial habitat characteristic of these species, coupled with their current-mediated reproductive dispersal mechanism, supports the strong likelihood that the subject bryozoans exist as yet undiscovered on other parts of Capron Shoal as well as on other nearby shoals and that their existence is not as precarious as the petitioners present. Further, NMFS believes that these species are much more abundant than the petitioners suspect, and it is very unlikely that the dredging of significant portions or even all of Capron Shoal by the Corps would jeopardize the existence of these species which are likely to occur on other nearby shoals.

In summary, the strong currents, seasonal high energy environment that prevails in and near Fort Pierce Inlet and Capron Shoal, current-mediated reproductive dispersal mechanism characteristic of these species, and proximity of other nearby shoals which provide similar depth and sand characteristics to those found on Capron Shoal all combine to make it highly probable that healthy populations of the bryozoans listed by the petitioners exist elsewhere.

The Conservation Alliance of St. Lucie County, Inc. (CASLCI) (one of the petitioners) affirms that "*Bugula neritina* ... a common inhabitant of the Indian River lagoon just a few miles from Capron Shoal ... has been found to contain a potent anti-cancer agent, Bryostatin 1." (CASLCI, 1998) Another of the petitioners, organic chemist/marine natural products chemistry researcher K. Brian Killday, asserts that "Bryostatin 1 is currently in Phase II human clinical trials for the treatment of lymphoma and leukemia." (Killday, 1998) Dr. Winston asserts that the Capron Shoal bryozoans for which ESA listing and protection are sought

"belong to the same order taxonomically as the bryozoan species which is the source of a potent anti-cancer agent, Bryostatin 1." She also asserts that "Bryostatin 1 derives from the bryozoan *Bugula* species of bryozoan which is also present in ... Capron Shoal." (Winston, 1999)

NMFS does not accept the implication or characterization of *Bugula neritina* as closely related to the species in question. NMFS feels that the implication of close biological relatedness between *Bugula neritina* and the Capron Shoal bryozoans (i.e., between bryozoans of the same Order but different Genus)—with implied potential commonality of highly beneficial (but as yet unproven) pharmaceutical properties—is questionable. Regardless, the petitioners' appeal to the potential pharmaceutical applications of one or all of these bryozoans is irrelevant because it does not provide any information indicating that the species may be threatened or endangered.

Therefore, NMFS finds that the petition does not present substantial scientific information indicating that listing the Capron Shoal bryozoans as threatened or endangered under the ESA may be warranted.

References Cited:

- CASLCI. 1998. Letter from Grace Stock, President of Conservation Alliance of St. Lucie County, Inc. to U.S. Army Corps of Engineers, Jacksonville District, May 29.
- Corps. 1998. U.S. Army Corps of Engineers. General re-evaluation report with environmental assessment. Appendix B: Geotechnical Investigations. Fort Pierce Shore Protection Project, St. Lucie County, FL. September.
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Author:

The primary author of this document is Mr. Eric Hawk, NMFS, St. Petersburg, FL (see **ADDRESSES**).

Authority

The authority for this action is the ESA (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 1998.

Andrew A. Rosenberg,

*Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 99–13556 Filed 5–25–99; 3:10 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 103

Friday, May 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Small Business Timber Sale Set-Aside Program Share Recomputation

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for public comment.

SUMMARY: The Forest Service proposes to revise the formulas used for calculating timber sale set-aside market shares. The formula would be revised to use only purchased timber sale data for the recomputation of shares to ensure that the most significant factor affecting recomputations is given the appropriate weight in the formula. This change is needed to make the recomputation process as fair and accurate as possible as well as simplifying the process. The agency also proposes to change structural recomputation procedures to make structural change implementation more timely and responsive to the actual market conditions.

DATES: Comments must be received in writing by June 28, 1999.

ADDRESSES: Send written comments to Director, Forest Management, MAIL STOP 1105, Forest Service, USDA, PO Box 96090, Washington, DC 20090-6090. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Persons wishing to inspect the comments are encouraged to call ahead at (202) 205-1766 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Rod Sallee, Small Business Timber Sale Set-aside Program Manager, Forest Management Staff, by telephone at (202) 205-1766 or by internet at rsallee/wo@fs.fed.us.

SUPPLEMENTARY INFORMATION: Developed in cooperation with the Small Business Administration, the Forest Service Small Business Timber Sale Set-aside

Program is designed to ensure that qualifying small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale. The current Small Business Timber Sale Set-aside Program was adopted July 26, 1990 (55 FR 230485). Direction that guides Forest Service employees in administering the Small Business Timber Sale Set-aside Program is issued in the Forest Service Manual, Chapter 2430, and Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH 2409.18).

According to the guidelines of this program, the Forest Service recomputes the shares of timber sales to be set aside for qualifying small businesses every 5 years. The recomputation percentage is based on the actual volume of sawtimber that has been purchased and/or harvested by small businesses. In addition to the 5-year requirement, shares must be recomputed whenever manufacturing capability changes, purchaser class size changes, or when certain purchasers discontinue operations.

In the early 1980's, forest Service Regions, except the Eastern and Southern Regions, used a formula for the recomputation of small business market shares based on timber harvest data gathered from scaling logs. The Eastern and Southern Regions, however, have been using tree measurement data in the recomputation formula for many years because the trees marked for sale in the East are much smaller than the trees included in timber sales in the West and three measurement data has been found to be a more accurate measurement of the timber volume for smaller trees. In western regions the log scaling method has been used previously to allow volume deductions since a greater amount of defective wood is found in larger, older trees.

In the past 15 years, the volume of timber sold and harvested in all regions has declined substantially. For example, the timber program budget has decreased from 12 billion board feet in Fiscal Year 1990 to less than 4 billion board feet in Fiscal Year 1998. In recent years, nearly half of the National Forest timber volume sold has been salvaged from areas damaged by fire and other catastrophic events.

Furthermore, trees currently included in timber sales in western regions are

significantly smaller (as measured by diameter at breast height) than trees typically marked for sale in the 1980's and early 1990's. This change in size has resulted in an increase in tree measurement sales in all regions. Now that most timber sales are comprised of younger, healthier trees, the tree measurement method of scaling is more efficient and easier to use; therefore, the Forest Service proposes to revise the formula for calculating the recomputation of shares to use tree measurement data.

The Forest Service also proposes to revise the procedures for recalculating the small business share of timber sales to shorten the time period for responding to a determination that a market structural change has occurred. An increase in administrative appeals and litigation have resulted in significant delays in harvesting timber sales. Due to the reduction in the number and volume of timber sales available, timber purchasers are not able to have under contract the number of timber sales or the amount of timber volume they have held in the past. Because of the decreased opportunity to buy Forest Service timber, competition between timber sale purchasers has increased, and some timber businesses have closed. The Forest Service proposes to revise the time period for recomputing shares when a structural change occurs to respond to the reduction in the number of timber purchasers and other structural changes in the industry. The time period would be changed to recompute and implement small business shares within 18 months of a determination by the Forest Service and the Small Business Administration that a structural change has occurred, rather than the 36 months currently allowed. With the reduced number of purchasers and mills, this adjustment in responding to a structural change would provide more time for other operators to respond and fill any void caused by a structural change. This proposed policy revision would result in more timely availability of timber sale shares that actually reflect timber industry conditions for the market area. The Forest Service is seeking written comment on this proposal or other suggestions for improving the implementation of structural change recomputations.

Summary

The Forest Service proposes to revise the Forest Service Timber Sale Preparation Handbook (FSH 2409.18) to remove the harvest volume data from the recomputation formula and require the use of volume of timber purchased data to determine the small business share. The agency also proposes to reduce the time period for structural change implementation.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory and Review. It has been determined that this is not a significant policy. This proposed policy will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed policy will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this proposed action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed policy is not subject to OMB review under Executive Order 12866.

Moreover, this proposed policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this proposed policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of

this policy on state, local, and tribal governments and the private sector. This policy does not compel the expenditure of \$100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

This policy does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3510 et seq.) and implementing regulations at 5 CFR 1320 do not apply.

Dated: April 13, 1999.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 99-13634 Filed 5-27-99; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Michigan

AGENCY: Natural Resources Conservation Service (NRCS) in Michigan, US Department of Agriculture.

ACTION: Notice of availability of proposed changes in Michigan NRCS FOTG, Section IV for review and comment.

SUMMARY: It is the intention of NRCS in Michigan to issue revised conservation practice standards in Section IV of the FOTG. The revised standards include: Water and Sediment Control Basin (638) Grade Stabilization Structure (410) Cross Wind Trap Strip-Filter (589C) Cross Wind Trap Strip-Field (589C) Filter Strip-Animal Waste Management (780) Fueling Facility, Above Ground Storage (701) Dry Hydrant-Interim (995) Conservation Crop Rotation (328) Narrow Strip Cropping-Interim (996) Well Decommissioning (351) Cross Wind Stripcropping (589B) Residue Management, No-Till or Strip Till (329A) Residue Management, Mulch Till (329B) Tree/Shrub Establishment (612)

Waste Storage Facility (313) Waste Utilization (633) Alley Cropping (311) Filter Strip (393A) Wetland Creation (658) Wetland Enhancement (659) Wetland Restoration (657)

DATES: Comments will be received until June 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Inquire in writing to Kevin Wickey, Assistant State Conservationist for Technology, Natural Resources Conservation Service, 1405 S. Harrison Rd., Room 101, E. Lansing, MI 48823. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to kwickey@mi.nrcs.usda.gov.

FOR FURTHER INFORMATION CONTACT:

Kevin Wickey, 517-337-6701 ext. 1242.

SUPPLEMENTARY INFORMATION:

Section 393 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Michigan will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Michigan regarding disposition of those comments and a final determination of change will be made.

Dated: May 14, 1999.

Jane E. Hardisty,

State Conservationist, E. Lansing, Michigan.

[FR Doc. 99-13590 Filed 5-27-99; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet for the second time in FY 1999 to discuss the relationship between agricultural production and air quality. Special emphasis will be placed on promoting a greater understanding of agriculture's impact on air quality and the role it plays in the local and national economy. The meeting is open to the public.

DATE: The meeting will convene Tuesday, June 22, 1999 at 9:00 a.m. and

continue until 4:00 p.m. The meeting will resume Thursday, June 24, 1999 from 9:00 a.m. to 3:00 p.m.. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service on or before June 18, 1999.

ADDRESSES: The meeting will be held at the Double Tree Hotel, Spokane City Center, 322 N. Spokane Falls Ct., Spokane, Washington 99201, telephone (509) 455-9600. Written material and requests to make oral presentations should be sent to George Bluhm, University of California, Land, Air, and Water Resources, 151 Hoagland Hall, Davis, CA 95616-6827.

FOR FURTHER INFORMATION: Questions or comments should be directed to George Bluhm, Designated Federal Official, telephone (530) 752-1018, fax (530) 752-1552, email bluhm@crocker.ucdavis.edu.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the June 22 and 24, 1999 meeting that may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at <http://www.nhq.nrcs.usda.gov/faca/aaqtf.html>.

Draft Agenda of the June 22 and 24, 1999 Meeting

- A. Welcome to Washington State and the Pacific Northwest
 1. Leonard Jordan, State Conservationist, NRCS
 2. Dr. Jim Zuiches, Dean, WSU College of Agriculture
 3. Grant Pfeiffer, Director, WA Dept. Ecology
 4. Lynn McKee, USEPA, Region X
 5. Terry Jacquilin, Northern ID Farmers Assoc.
 6. Gretchen Borck, WA Wheat Growers Assoc.
 7. Dr. Jane Koenig, U of Washington Medical Center
 8. Rich Fisher, Forest Service, Air Quality Specialist
- B. Old business
 1. Approve minutes of the March 3-4, 1999 AAQTF meeting
 2. Monitoring and health effects subcommittee report
 3. Voluntary program subcommittee report
 4. Research priorities and oversight subcommittee report
 5. Agricultural burning subcommittee report
 6. Confined animals and emission factors subcommittee report
- C. New business
 1. EPA's new regional haze rule
 2. Implication of the federal appeals court decision on the 1997 NAAQS implementation

3. EPA's new Nonroad Diesel Standards (Tier 2 and 3) and proposed standards for Light-Duty Vehicles/Trucks (Tier 2) and for low sulfur gasoline and diesel fuel

D. Set date and location for next meeting

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may present oral presentations during the June 22 and 24, 1999 meeting. Persons wishing to make oral presentations should notify George Bluhm no later than June 18, 1999. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to George Bluhm no later than June 18, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact George Bluhm as soon as possible.

Dated: May 20, 1999.

Richard Van Klaveren,

Acting Deputy Chief for Science and Technology, Natural Resources Conservation Service.

[FR Doc. 99-13589 Filed 5-27-99; 8:45 am]

BILLING CODE 3410-16-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 28, 1999

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41

U.S.C. 47(a) (2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center

Aberdeen Proving Ground, Aberdeen, Maryland

NPA: Blind Industries & Services of Maryland, Baltimore, Maryland

CD-Rom Duplication Services

U.S. Army Corps of Engineers, 100 Liberty Avenue, Pittsburgh, Pennsylvania

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Hospital Housekeeping Services

U.S. Army Medical Activity & U.S. Army Dental Activity (including Evans Army Community Hospital), Fort Carson, Colorado

NPA: Development Resources, Inc., San Antonio, Texas

Janitorial/Custodial

VA Medical Center, 3350 La Jolla Village Drive, San Diego, California

NPA: Job Options, Inc., San Diego, California

Mailroom Operation

U.S. Army Construction Engineering
Research Laboratory, Champaign, Illinois
NPA: The Chicago Lighthouse for People
who are Blind or Visually Impaired,
Chicago, Illinois

Warehouse Operation

U.S. Army Construction Engineering
Research Laboratory, Champaign, Illinois
NPA: The Chicago Lighthouse for People
who are Blind or Visually Impaired,
Chicago, Illinois

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Ion Exchange Compound
6810-00-873-2554

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99-13627 Filed 5-27-99; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 28, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On March 22, 26 and April 9, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 13767, 14687, and 17312) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Tool, McLeod
4210-00-203-3512

Services

Central Facility Management, Southern Maryland District Courthouse, Greenbelt, Maryland

Computer Facilities Management Services, Federal Center, Defense Reutilization & Marketing Service (DRMS), 74 North Washington, Battle Creek, Michigan

Warehouse Operation, U.S. Geological Survey, Western Region, 1020 O'Brien Drive, Menlo Park, California

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99-13628 Filed 5-27-99; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[Docket 25-99]

Foreign-Trade Zone 65—Panama City, FL; Application for Subzone Status; Halter Marine, Inc. (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Panama City Port Authority, grantee of FTZ 65, requesting special-purpose subzone status for the shipbuilding facility of Halter Marine, Inc. (HMI), located in Allanton, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 19, 1999.

The HMI shipyard (126 acres, 300 employees) is located at 6100 Halter Marine Drive, Allanton, Florida, about 15 miles southeast of Panama City, and is used in the construction, repair, and conversion of commercial and military vessels for domestic and international customers. Foreign components used at the HMI shipyard (up to 20% of total) include propulsion units, main engines and related parts, gears, pumps, flywheels, pulleys, compressor parts, measuring instruments, casting plates, bow thrusters, and pilot chairs (duty rate range: free—10%, ad valorem).

FTZ procedures would exempt HMI from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. The manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products, which requires that full duties be paid on such items. Foreign-sourced steel mill products, such as pipe and plate, would be subject to the full Customs duties applicable to those items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to

investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 27, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 11, 1999).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, Room 103, 5321 W. US Highway 98, Panama City, FL 32401

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 19, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-13688 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD

Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 351.213(b) (1979), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Roller Chain, Other Than Bicycle from Japan.

Initiation of Reviews

In accordance with section 19 C.F.R. 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2000.

	Period to be reviewed
Antidumping Duty Proceedings	
France: Sorbitol, A-427-001	4/1/98-3/31/99
Roquette Freres	
Greece: Electrolytic Manganese Dioxide, A-484-801	4/1/98-3/31/99
Tosoh Hellas A.I.C.	
Japan: Roller Chain, Other Than Bicycle, A-588-028	4/1/98-3/31/99
Daido Kogyo Co., Ltd.	
Enuma Chain Mfg. Co. Ltd.	
HKK Chain Corp./Hitachi Metals Techno, Ltd.	
Izumi Chain Mfg. Co.	
Kaga Kogyo/Kaga Industries/KCM	
Oriental Chain Manufacturing Co., Ltd.	
Pulton Chain Co., Inc.	
RK Excel Co. Ltd.	
Sugiyama Chain Co., Ltd.	
Alloy Tool Steel Inc. (ATSI)	
Daido Tsusho Co., Ltd./Daido Corporation	
HKK Chain Corp./Hitachi Metals Techno, Ltd./Hitachi Maxco, Ltd.	
Nissho Iwai Corporation	
Tsubakimoto Chain Co./U.S. Tsubaki	
Taiwan: Static Random Access Memory Semiconductors, A-583-827	10/1/97-3/31/99
Alliance Semiconductor Corporation	
Galvantech, Inc	
G-Link Technology Corporation	
GSI Technology*	10/1/98-3/31/99
Winbond Electronics Corporation	
* The review period for GSI will be 10/1/98 through 3/31/99, for all other firms listed for SRAMs the review period is 10/1/97 through 3/31/99.	
Thailand: Certain Welded Carbon Steel Pipes and Tubes,* A-549-502	3/1/98-2/28/99
Saha Thai Steel Company, Ltd.	
* Inadvertently omitted from previous initiation notice.	
The People's Republic of China: Brake Rotors,* A-570-846	4/1/98-3/31/99
Jilin Provincial Machinery & Equipment Import & Export Co.	
Laizhou Auto Brake Equipments Factory	
Longjing Walking Tractor Works Foreign Trade Import & Export Co.	
Longkou Haimeng Machinery Co.	
Qingdao Gren Co.	
Yantai Chen Fu Enterprise Corporation	

	Period to be reviewed
Yantai Import & Export Co. Yantai Winhere Auto-Part Manufacturing Co. Yenhere Corporation Zibo Botai Machinery Manufacturing Co. Zibo Luzhou Automobile Parts Co.	
* If one of the named companies does not qualify for a separate rate, all other exporters of brake rotors from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Turkey: Certain Steel Concrete Reinforcing Bars, A-489-807	4/1/98-3/31/99
Colakoglu Metalurji A.S.	
Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S.*	8/1/98-3/31/99
* The review period for Icdas Celik will be 8/1/98 through 3/31/99, for the other firm listed for reinforcing bars the review period is 4/1/98 through 3/31/99.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1-2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 20, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99-13562 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

March and April 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Sunset Reviews, Revocation of Antidumping Duty Order on Solid Urea from Latvia (A-449-801), and Termination of Suspended Antidumping Duty Investigation on Potassium Chloride (Potash) from Canada (A-122-701).

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on solid urea from Latvia. On April 1, 1999, the Department initiated a sunset review of the suspended antidumping duty investigation on potassium chloride ("potash") from Canada. Because no domestic party responded to the sunset review notices of initiation by the applicable deadline, the Department is revoking this order and terminating this suspended investigation.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482-1560.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on solid urea from the Union of Soviet Socialist Republics (USSR) on July 14, 1987 (52 FR 26367). On June 29, 1992, following

the dissolution of the USSR, the Department transferred the order to the Commonwealth of Independent States (CIS) and the Baltic States, including Latvia (57 FR 28828, June 29, 1992). The substance of the order remained the same. The Department also suspended the antidumping duty investigation on potash from Canada (53 FR 1393, January 19, 1988). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of this order and this suspended investigation by publishing notices of the initiation in the **Federal Register** (64 FR 9970, March 1, 1999, and 64 FR 15727, April 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on this order and this suspended investigation.

No domestic interested parties in the sunset reviews on this order or this suspended investigation responded to the notice of initiation by the March 16, 1999, or April 16, 1999, deadlines, respectively (see section 351.218(d)(1)(i) of the *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("Sunset Regulations")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review,

revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadlines, March 16, 1999, or April 16, 1999, we are revoking this antidumping duty order and terminating the suspended antidumping duty investigation.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The suspension agreement on potash from Canada will remain in effect until January 1, 2000. The Department will complete any pending administrative reviews on this order and this suspension agreement and will conduct administrative reviews of all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: May 19, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-13560 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-301-602]

February 1999 Sunset Review: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Sunset Reviews and Revocation of Antidumping Duty Order: Fresh Cut Flowers from Colombia.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on fresh cut flowers from Colombia. Because the domestic interested parties have withdrawn, in full, their participation in the ongoing sunset review, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jason M. Appelbaum or Melissa G.

Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-5050 or (202) 482-1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on fresh cut flowers from Colombia (52 FR 8492, March 18, 1987). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated a sunset review of this order by publishing notice of the initiation in the **Federal Register** (64 FR 4840, February 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review on this order.

In the sunset review of the antidumping duty order on fresh cut flowers from Colombia, we received a notice of intent to participate from Mr. Timothy Haley, President of Pikes Peak Greenhouses, the Floral Trade Council ("FTC") in its entirety, the FTC's Committee on Miniature Carnations, Committee on Standard Carnations, Committee on Standard Chrysanthemums, and Committee on Pompom Chrysanthemums (collectively, "the FTC and its Committees") by the February 16, 1999, deadline. We also received a complete substantive response from the FTC and its Committees by the March 3, 1999, deadline (see section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("Sunset Regulations")).

On May 21, 1999, we received a notice from the FTC and its Committees withdrawing in full their participation in the five-year (sunset) review of the antidumping duty order on fresh cut flowers from Colombia. The FTC and its Committees further expressed that they no longer have an interest in maintaining the antidumping duty order. As a result, the Department determined that no domestic party intends to participate in the sunset review and, on May 24, 1999, we notified the International Trade Commission that we intended to issue a final determination revoking this antidumping duty order.

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because the FTC and its Committees withdrew both its notice of intent to participate and its complete substantive response from the review process, and no other domestic interested party filed a substantive response (see sections 351.218(d)(1)(i) and 351.218(d)(3) of the *Sunset Regulations*), we are revoking this antidumping duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and countervailing duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: May 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-13685 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-007]

Preliminary Results of Full Sunset Review: Carbon Steel Wire Rod From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: carbon steel wire rod from Argentina.

SUMMARY: On November 2, 1998, the Department of Commerce ("the

Department") initiated a sunset review of the antidumping order on carbon steel wire rod from Argentina (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of the domestic industry and adequate substantive comments filed on behalf of the domestic industry and a respondent interested party, the Department is conducting a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Preliminary Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: May 28, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is carbon steel wire rod from Argentina. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.20.00, 7213.31.30, 7213.39.00, 7213.41.30, 7213.49.00, and 7213.50.00. Although the item numbers are provided for convenience and U.S. Customs purposes, the written description remains dispositive.

Background

On November 2, 1998, the Department initiated a sunset review of the antidumping order on carbon steel wire

rod from Argentina (63 FR 58709), pursuant to section 751(c) of the Act. On November 16, 1998, the Department received a Notice of Intent to Participate on behalf of North Star Steel, Co-Steel Raritan (formerly Raritan River Steel), and GS Industries, Inc. (collectively "Domestic Parties") within the applicable deadline (November 16, 1998) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Each of the Domestic Parties claimed interested party status under section 771(9)(C) of the Act. We received complete substantive responses to the notice of initiation on December 2, 1998, on behalf of the Domestic Parties and Acindar Industria Argentina de Aceros S.A. ("Acindar"). In its substantive response, Acindar claimed interested party status under section 771(9)(A) of the Act, as an Argentine producer of carbon steel wire rod.

In its substantive response, Acindar provided the volume and value of its exports to the United States for the years 1993 through 1997. Acindar explained that because statutory record-keeping requirements in Argentina and internal record-keeping policies within Argentina do not provide for the keeping of records dating back to 1982, the year preceding the investigation of this case, it no longer had information relating to exports dating back to 1982. As a substitute, Acindar relied on import volumes reported by the Commission for this year.¹ Further, Acindar stated that, as far as it is aware, it accounted for 100 percent of the total exports of Argentine subject merchandise to the United States during each of the five calendar years preceding the year of publication of the notice of initiation. Based on the volume of exports information submitted by Acindar, the volume of imports as reported by the U.S. Department of Commerce, Bureau of the Census and Trade Info, and Acindar's claim that it accounted for 100 percent of exports, we find that Acindar accounted for significantly more than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review. Therefore, respondent interested parties provided an adequate response to the notice of initiation and the Department is conducting a full sunset review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations*.

¹ For information concerning the import volumes of the subject merchandise for 1981, 1982 and 1983, Acindar cited to the U.S. International Trade Commission Pub. 1598, Carbon Steel Wire Rod from Argentina and Spain (Nov. 1984), at A-30, Table 18.

The Department determined that the sunset review of the antidumping duty order on carbon steel wire rod from Argentina is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act.) Therefore, on January 15, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than May 23, 1999, in accordance with section 751(c)(5)(B) of the Act.²

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Parties' Comments

In their substantive response, the Domestic Parties argued that dumping is likely to recur if the order is revoked since imports from Argentina declined significantly from 1983 to 1997 (see Substantive Response of the Domestic Parties, at 3, December 2, 1998). Import statistics presented by the Domestic Parties show that imports declined from the 1983 high of 68,335 net tons down to 2,756 net tons in 1997.³ Additionally, there were no imports from 1986–1988.

² See *Carbon Steel Wire Rod from Argentina: Extension of Time Limit for Preliminary Results of Five-Year Reviews* 64 FR 9475 (February 26, 1999).

³ See Substantive Response of the Domestic Parties, at 3 and Attachment 1 (December 2, 1998).

As a result, the Domestic Parties argued that, consistent with the *Sunset Policy Bulletin*, it is reasonable to assume that the Argentine exporters could not sell in the United States without dumping. Further, to reenter the U.S. market, Argentine exporters would have to resume dumping.

In its substantive response, Acindar argued that dumping would not be likely to continue or resume in the absence of the order. Acindar based this argument on the fact that, the only time the Department made a determination using actual company data, the Department found that no dumping margin existed. Acindar argued that since the margin likely to prevail if the order is revoked is zero, no dumping would occur if the order were revoked.

In their rebuttal comments, the Domestic Parties argued that the fact that the Department calculated a zero margin for the 1988–1989 administrative review, does not require the Department to reach a negative determination with respect to the likelihood of continuation or recurrence of dumping. Rather, referring to section 752(c)(4)(A) of the Act, the Domestic Parties asserted that the present absence of dumping is not necessarily indicative of how exporters would behave in the absence of the order.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

The antidumping duty order on carbon steel wire rod from Argentina

was published in the **Federal Register** on November 23, 1984 (49 FR 46180). Since that time, the Department has conducted three administrative reviews.⁴ The order remains in effect for all manufacturers and exporters of the subject merchandise.

Consistent with section 752(c) of the Act, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the order. In the administrative review covering the period November 1, 1988 through October 31, 1989, the Department determined that no dumping margin existed for Acindar (56 FR 47064, September 17, 1991). In addition, Acindar, as well as all other Argentine producers/exporters of the subject merchandise, received a cash deposit rate of zero at this time. In the next administrative review, based on the absence of shipments, the deposit rate remained unchanged. There have been no subsequent administrative reviews, therefore, this deposit rate has remained in effect. Further, according to the statistics provided by both the Domestic Parties and Acindar, shipments of the subject merchandise have continued. Therefore, we preliminarily determine that dumping did not continue at any level above *de minimis* after the issuance of the order.

In addition, consistent with section 752(c) of the Act, the Department also considered whether imports ceased after the issuance of the order. The Department, using U.S. Census Bureau IM146 Reports, determined that imports of the subject merchandise decreased sharply following the imposition of the order, and although non-existent in some years, imports have, nonetheless, continued. Because imports of subject merchandise from Argentina continued after the issuance of the order, we preliminarily determine that imports did not cease after the issuance of the order.⁵

⁴ See *Carbon steel wire rod from Argentina; Final Results of Antidumping Duty Administrative Review*, 54 FR 49322 (November 30, 1989); *Carbon steel wire rod from Argentina; Final Results of Antidumping Duty Administrative Review*, 56 FR 47064 (September 17, 1991); and *Carbon steel wire rod from Argentina; Final Results of Antidumping Duty Administrative Review*, 56 FR 49455 (September 30, 1991). There is a pending administrative review of this order; the proposed date for the completion of the preliminary results of this review is September 30, 1999 (see *Carbon Steel Wire Rod from Argentina; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 23053 (April 29, 1999)).

⁵ The Department bases this determination on information submitted by Acindar in its December 2, 1998 submission, as well as U.S. IM146 Reports, U.S. Department of Commerce statistics, U.S. Department of Treasury statistics, and information

The Department also considered whether dumping was eliminated after the issuance of the order and whether import volumes of the subject merchandise declined significantly. As noted above, the Department has preliminarily determined that dumping was eliminated following the issuance of the order. However, U.S. Census Bureau IM146 Reports indicate that, while dumping may have been eliminated, import volumes of the subject merchandise fell dramatically following the imposition of the order and have not resumed their pre-order levels. The U.S. Census Bureau information indicates that imports of the subject merchandise decreased by more than 97 percent in the year following the issuance of the order. Further, imports have consistently remained at less than 10 percent of their pre-order levels, excluding 1996.⁶ Therefore, the Department preliminarily determines that although dumping was eliminated by Acindar, its export volumes have declined significantly since the issuance of the order.

As set forth in the *Sunset Policy Bulletin* (section II.A.3), and consistent with the SAA at 889–90, and the House Report at 63, where dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly, the Department normally will determine that revocation of the antidumping duty order would be likely to lead to recurrence of dumping. Therefore, although dumping has been eliminated, shipments of the subject merchandise have declined dramatically. Therefore, we preliminarily determine that, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, dumping is likely to recur if the order were revoked.

Magnitude of the Margin

Parties' Comments

In their substantive response, the Domestic Parties argue that the dumping margin likely to prevail is the margin calculated in the original investigation—119.11 percent. The Domestic Parties state that selection of this margin would be consistent with the SAA and Policy Bulletin, which provide that the Department generally will select a margin from the original investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of

supplied by the U.S. International Trade Commission.

⁶ U.S. Census Bureau IM146 Reports indicate that for 1996, import volumes were approximately 20 percent of their pre-order level.

the order in place. Arguing that since the volume of imported wire rod from Argentina has declined to extremely low levels since the imposition of the order, the use of a more recently calculated margin is not appropriate in this case. Specifically, the Domestic Parties argued that the zero rate calculated in the 1988–1989 administrative review was based on sales of approximately 543.78 metric tons of wire rod, which is not a commercial quantity and, therefore, not representative of Acindar's behavior in the absence of the order.

As noted above, Acindar states that the antidumping rate in the original investigation was based on so-called "best information available," the dumping margins alleged by the petitioners, rather than Acindar's own information. Further, Acindar argues that the dumping margin calculated by the Department in the only administrative review in which the Department based its determination on actual company data, is the most reliable gauge of the antidumping duty margin likely to prevail when the order is revoked.

Department's Determination

The Department agrees with the Domestic Parties. We find that the consistently low level of imports of the subject merchandise that have existed since the imposition of the order is not indicative of the behavior of Argentine producers/exporters in the absence of the order. Furthermore, the Department finds the establishment of a zero deposit rate coupled with a dramatic decrease in import volumes suggests that Argentine producers/exporters find it difficult to sell subject merchandise in the United States without dumping. The Department finds reason to believe that the consistently low level of exports can be attributed to Argentine producers'/ exporters' difficulty in selling subject merchandise in the United States at a fair market value. Because of this, the Department finds the margin from the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin*, we preliminarily determine that the margin from the Department's original investigation is probative of the behavior of Argentine producers and exporters of carbon steel wire rod if the order were revoked. We will report to the Commission the company-specific and "all others" rates from the original investigation contained in the *Preliminary Results of Review* section of this notice.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the order is likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Acindar	119.11
All Others	119.11

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on July 19, 1999. Interested parties may submit case briefs no later than July 12, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than July 15, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than September 28, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-13686 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-U

DEPARTMENT OF COMMERCE

International Trade Administration

[C-357-004]

Preliminary Results of Full Sunset Review: Carbon Steel Wire Rod From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Carbon steel wire rod from Argentina.

SUMMARY: On November 2, 1998, the Department of Commerce ("the Department") initiated a sunset review of the suspended countervailing duty investigation on carbon steel wire rod from Argentina (63 FR 58709) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of the domestic industry and substantive comments filed on behalf of the domestic industry and respondent interested parties, the

Department is conducting a full review. As a result of this review, the Department preliminarily finds that termination of the suspended countervailing duty investigation would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the "Preliminary Results of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT:

Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: May 28, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 C.F.R. Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to this suspended countervailing duty investigation is carbon steel wire rod, both high carbon and low carbon, manufactured in Argentina and exported, directly or indirectly from Argentina to the United States. The term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.02 inches nor over 0.74 inches in diameter, not tempered, not treated, and not partly manufactured, and valued at over 4 cents per pound. As of the publication of the last administrative review,¹ the merchandise subject to this order was classifiable under item numbers 7213.20.00, 7213.31.30, 7213.39.00, 7213.41.30, 7213.49.00, and 7213.50.00

¹ See Carbon Steel Wire Rod from Argentina; Final Results of Countervailing Duty Administrative Review, 56 FR 40309 (August 14, 1991).

of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

History of the Investigation

On July 14, 1982, the Department issued a preliminary affirmative countervailing duty determination with respect to imports of carbon steel wire rod from Argentina.² In the preliminary determination, the Department found a total export subsidy of 13.80 percent ad valorem, based on two programs: 10.33 percent under the "reembolso" (tax rebate on exports) and 3.36 percent under pre-financing of exports through dollar-indexed pesos.

On September 27, 1982, the Department suspended the countervailing duty investigation on the basis of a suspension agreement by the Government of Argentina to eliminate all benefits which the Department found to be bounties or grants on exports to the United States of the subject merchandise.³ Specifically, the Government of Argentina agreed, through its Ministry of Economy, that: (1) it would not provide to manufacturers, producers, or exporters of carbon steel wire rod, any reembolso payment constituting a bounty or grant, as determined by the Department, (2) the Central Bank would not provide preferential dollar-indexed pre-export financing, and (3) no new or equivalent benefits would be granted. In the notice announcing the suspension agreement, the Department identified a change since the preliminary determination with respect to the reembolso. Specifically, the Department stated that, of the total 10 percent reembolso, the portion that constituted an allowable rebate is 7.60 percent and the over rebate to be eliminated as a condition of the suspension agreement is currently 2.40 percent.

In conjunction with the administrative review of the period September 27, 1982 through December 31, 1982, the suspension agreement was revised to clearly specify the scope of the agreement and include renunciation of a program not included in the original investigation, that was subsequently found countervailable in other investigations involving products

from Argentina.⁴ Specifically, the suspension agreement was revised to clarify that both high carbon and low carbon were within the scope of the agreement. Further, the Ministry of Economy agreed that the Central Bank would not provide post-shipment financing for exports under Circular OPRAC 1-9. The Department has conducted one additional administrative review of this suspended countervailing duty investigation covering the period January 1, 1989 through December 1, 1989.⁵ The Department found that both the Government of Argentina and Acindar Industria Argentina de Aceros S.A. ("Acindar") had complied with the terms of the suspension agreement.

Background

On November 2, 1998, the Department initiated a sunset review of the suspended countervailing duty investigation on carbon steel wire rod from Argentina (63 FR 58709), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Co-Steel Raritan (formerly Raritan River Steel), GS Industries, Inc., and North Star Steel (collectively "the domestics") on November 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Each company claimed interested party status under section 771(9)(C) of the Act. We received complete substantive responses on behalf of the Argentine Republic, Acindar, and the domestics on December 2, 1998, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i).

In its substantive response, the domestics stated that all three domestic producers participated as petitioners in the original investigation and the administrative reviews for the periods of September 27, 1982, through December 31, 1982, and January 1, 1989, through December 31, 1989.

In its substantive response, the Embassy of Argentina stated that the Argentine Republic was a participant in the original countervailing duty proceeding and in all of the administrative reviews of the suspension agreement. The Argentine Republic qualifies as an interested party under section 771(9)(B) of the Act. In its substantive response, Acindar claimed

interested party status under section 771(9)(A) of the Act, as an Argentine producer of carbon steel wire rod. Further, Acindar stated that, as far as it is aware, Acindar accounted for one hundred percent of the total exports of Argentine subject merchandise to the United States during each of the five calendar years preceding the year of publication of the notice of initiation.

On December 7, 1998, we received rebuttal comments from the domestics. We did not receive rebuttal comments from the Argentine Republic or Acindar. On the basis of complete substantive responses from the Argentine Republic and Acindar to the notice of initiation, and in accordance with section 351.218(e)(2) of the Sunset Regulations, the Department is conducting a full review.

The Department determined that the sunset review of the suspended countervailing duty investigation on carbon steel wire rod from Argentina is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act.) Therefore, on January 15, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than May 23, 1999, in accordance with section 751(c)(5)(B) of the Act.⁶

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the suspended countervailing duty investigation would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the ITC") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the ITC information concerning the

² See Carbon Steel Wire Rod from Argentina; Preliminary Affirmative Countervailing Duty Determination, 47 FR 30539 (July 14, 1982).

³ See Carbon Steel Wire Rod from Argentina; Suspension of Investigation, 47 FR 42393, (September 27, 1982).

⁴ See Carbon Steel Wire Rod from Argentina; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44649 (December 11, 1986).

⁵ See Carbon Steel Wire Rod from Argentina; Final Results of Countervailing Duty Administrative Review, 56 FR 40309 (August 14, 1991).

⁶ See Carbon Steel Wire Rod from Argentina; Extension of Time Limit for Preliminary Results of Five-Year Reviews, 64 FR 9475 (February 26, 1999).

nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The Department's preliminary determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Party Comments

In its substantive response, the domestics stated that the three programs identified in the suspension agreement, as amended—the “reembolso” (an over-rebate of indirect taxes on exports), pre-financing through dollar-indexed pesos, and post-shipment financing of exports under Circular OPRAC 1–9—still exist. The domestics refer to the final results of administrative review of the countervailing duty order on oil country tubular goods from Argentina as evidence that the programs continue to exist.⁷

Acindar argued that countervailable subsidies would not be likely to continue or resume if the suspended investigation were terminated for two reasons. First, Acindar argued that there is currently no U.S. authority to maintain the suspension agreement in effect. Citing to the 1997 revocation of the countervailing duty orders on leather, wool, oil country tubular goods, and carbon steel cold-rolled flat products from Argentina,⁸ Acindar asserted that by revoking those orders without consideration of the current status of countervailable subsidies, the Department was following the dictates of the Federal Circuit in *Ceramica*.⁹ Acindar argued that the principles of *Ceramica* apply equally to suspension agreements entered into without the benefit of a preliminary injury

determination. Further, Acindar stated that according to *Ceramica*, “Section 1303 ceases to operate as authority for countervailing duties on goods imported after a country has become a ‘country under the Agreement.’” 64 F.3d at 1582.” Thus, Acindar argued, the Department may only maintain a countervailing duty regime under Section 1671, which requires a preliminary injury determination. Therefore, since no injury determination underpins the suspension agreement, the United States should terminate the suspension agreement.

Second, Acindar noted that in the most recent administrative review, the Department found that Argentina was in compliance with the suspension agreement. Acindar stated that there is no reason to assume that it would start receiving, or that the Argentine Government would start conferring on Acindar, benefits that the Department determines to constitute countervailable subsidies. The Argentine Republic did not address this issue.

In their rebuttal comments, the domestics stated that neither *Ceramica* nor *Leather* addressed the issue of suspension agreements. Rather, the domestics point out that the Federal Circuit focused on the Department's ability to assess duties, not the ability to administer a suspension agreement or resume a suspended investigation. The domestics stated that since the Department's sunset review will reactivate this investigation, and Argentina is now a “country under the Agreement,” the special regime for a simultaneous injury and sunset review set forth in 19 U.S.C. 1677b and 19 CFR 207.46 should apply to this case. The domestics concluded that, for the reasons stated in their substantive response, the Department should find that subsidization is likely to recur at the rate determined in the preliminary investigation (as adjusted for new subsidies).

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“the SAA”), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-

wide basis (see section III.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of a countervailing duty order or termination of a countervailing duty investigation is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (see section III.A.3.a of the Sunset Policy Bulletin). Exceptions to this policy are provided where a company has a long record of not using a program (see section III.A.3.b of the Sunset Policy Bulletin).

With respect to Acindar's argument that, based on *Ceramica*, the Department must terminate the suspension agreement, we disagree. Rather, we agree with the domestics that *Ceramica* addresses the issue of the Department's authority to assess countervailing duties on imports that did not receive an injury test. However, in this case, the Department is not assessing countervailing duties and, in fact, terminated the suspension of liquidation as a result of the conclusion of the suspension agreement. Since the administration of the suspension agreement does not include the assessment of duties, the principles of *Ceramica* do not apply.

On the basis of information submitted during this sunset review, we have no reason to believe that any of the three programs covered by the suspension agreement have been eliminated by the Government of Argentina. In their substantive responses, neither the Government of Argentina nor Acindar argued that the programs had been terminated. Rather, Acindar argued that the government and Acindar have been complying with the terms of the suspension agreement. As noted above, the terms of the suspension agreement do not require the termination of the programs found countervailable. Rather, the terms of the agreement merely provide that the Government of Argentina (through the Ministry of Economy and Central Bank) shall not provide pre-export and post-shipment financing on exports of carbon steel wire rod and shall not provide any reembolso payments constituting a bounty or grant to manufacturers, producers, or exporters of carbon steel wire rod.

In their substantive response, the domestics relied on the final results issued in 1997 in the administrative review covering OCTG and the period January 1, 1991 through September 19, 1991, as support for their assertion that

⁷ See Oil Country Tubular Goods From Argentina; Final Results of Countervailing Duty Administrative Review, 62 FR 55589 (October 27, 1997) and Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty Administrative Review, 62 FR 32307 (June 13, 1997) (“OCTG”).

⁸ See Substantive response of Acindar, page 3 (December 2, 1998) and *Leather* from Argentina, Wool from Argentina, Oil Country Tubular Goods from Argentina, and Carbon Steel Cold-rolled Flat Products from Argentina, Final Results of Changed Circumstance Reviews, 62 FR 41361 (August 1, 1997) (“*Leather*”).

⁹ See Substantive response of Acindar, page 3 (December 2, 1998) and *Ceramica Regiomontana v. United States*, 64 F.3d 1579 (Fed. Cir. 1995) (“*Ceramica*”).

the three programs continue to exist. Consistent with the findings in the latest administrative review of the suspension agreement, in the review on OCTG the Department found that the pre-export financing program was totally suspended on March 8, 1991, by Communique A-1807. In the OCTG review, the Department found the post-export financing was not used. However, in the latest review of the suspension agreement, the Department found that the post-export financing was also totally suspended on March 8, 1991, by Communique A-1807. With respect to the reembolso, in the administrative review of OCTG, the Department found that the legal structure of the reembolso program was changed by Decree 1011/91 in May 1991. Specifically, the Department found that the rebate system was changed to cover only the reimbursements of indirect local taxes and does not cover import duties, except reimbursement of duties paid on imported products which are re-exported. Additionally, the Department found that the rates of reimbursement were reduced by 33 percent for all products and, for OCTG that reduction was from 12.5 to 8.3 percent. Despite the changes found in the programs, we have no evidence that the programs have been terminated.

The SAA at 888, states that temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary. As noted above, neither the Government of Argentina, nor Acindar, provided any argument or evidence that any of the three programs have been terminated. Therefore, absent evidence to the contrary, the Department preliminarily determines that termination of the suspended countervailing duty investigation would likely result in the recurrence of countervailable subsidies.

Net Countervailable Subsidy

Party Comments

In their substantive response, the domestics asserted that the Department should find the base countervailing duty rate likely to prevail if the suspended investigation is terminated to be the rate calculated in the preliminary determination of the original investigation—13.70 percent, as adjusted to reflect likely benefits under the post-export financing program. The domestics stated that this approach would be consistent with the SAA, Sunset Policy Bulletin, and section 752(b)(1)(B) of the Act.

As noted above, Acindar argued that the countervailable subsidy rate that is likely to prevail if the agreement is terminated is zero. Acindar supported this argument by noting that both the government and Acindar have complied with the terms of the suspension agreement. Further, Acindar asserted that there is no reason to assume that Acindar would start receiving, or the Argentine Government would start conferring on Acindar, countervailable subsidies if the investigation were terminated.

Department's Determination

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, "the Department normally will select a rate "from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place." The Department went on to clarify that, in a sunset review where the Department did not issue a final determination because the investigation was suspended and continuation was not requested, the Department may provide to the Commission the net countervailable subsidy that was determined in the preliminary determination in the original investigation (*see* Section III.B.1 of the Sunset Policy Bulletin). The Department noted that the rate from the original investigation may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. (*See* section III.B.3 of the Sunset Policy Bulletin).

We agree with the domestics that, in the original investigation, the Department preliminarily found the net subsidy to be 13.70 percent. However, as noted above, the Department revised the subsidy rate attributable to the reembolso program at the time it concluded the suspension agreement. Specifically, the Department found that 7.6 percent of the 10 percent reembolso constituted an allowable rebate and the overrebate, the amount to be eliminated as a condition of the suspension agreement, was 2.40 percent. Therefore, it is appropriate to reduce the export subsidy attributable to the reembolso from the preliminary 10.44 percent to 2.40 percent. Thus, the net subsidy found in the original investigation was actually 5.36 percent, the sum of 3.36 percent from pre-financing of exports

through dollar-indexed pesos and 2.40 percent from the reembolso.

Consistent with the Department's Sunset Policy Bulletin and section 752(b)(1)(B) of the Act, the domestics requested that the Department adjust the net countervailable subsidy from the preliminary determination to reflect the likely benefits under the post-export financing program, the renunciation of which was included in the revised suspension agreement on the basis that it had been found countervailable in countervailing duty investigations on two other Argentine products. The domestics did not specify, however, how, or on what basis, the Department should determine the likely benefits under this program. As a result, we have not adjusted the subsidy to reflect an amount for post-export financing.

Finally, as noted above, in the final results of administrative review on OCTG from Argentina, the Department found that the legal structure of the reembolso program had been changed in May 1991, by Decree 1011/91. Not only had the rebate system been changed to cover only the reimbursement of indirect local taxes and reimbursement of duties paid on imported products which are re-exported, but the rate of reimbursement was reduced by 33 percent for all products. While such a change could potentially have an effect on the level of countervailable subsidy, if any, attributable to the reembolso, we have no basis to determine whether this change would have an effect on exports of carbon steel wire rod. Therefore, we have not made any adjustment for this program-wide change.

Nature of the Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the ITC concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Neither of the parties specifically addressed this issue.

Because receipt of the benefits provided under the reembolso, pre-export financing, and post-export financing programs, are contingent upon export, each program falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

Preliminary Results of Review

As a result of this review, the Department finds that termination of the suspended countervailing duty investigation would be likely to lead to recurrence of a countervailable subsidy. The net countervailable subsidy is 5.36

percent ad valorem. Additionally, each of the three programs (reembolso, pre-export financing, and post-export financing) are subsidies within the meaning of Article 3 of the Subsidies Agreement.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on July 17, 1999. Interested parties may submit case briefs no later than July 10, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than July 15, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than September 28, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-13687 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-846]

Brake Rotors From the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. In accordance with 19 CFR 351.214(d), we are initiating this review.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brian Ledgerwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482-1766 or 482-3836, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to the provisions codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a timely request from Laizhou Hongda Auto Replacement Parts Co., Ltd., ("Laizhou Hongda"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"), which has an April anniversary date. As required by 19 C.F.R. 351.214(b)(2)(i) and (iii)(A), Laizhou Hongda ("the respondent") has certified that it did not export brake rotors to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. Laizhou Hongda further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Laizhou Hongda submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of its first sale to an

unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review as requested.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly we will issue a separate rates questionnaire to the above-named respondent, allowing 37 days for response. If the response from the respondent provides sufficient indication that Laizhou Hongda is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, this review will proceed. If, on the other hand, Laizhou Hongda does not demonstrate its eligibility for a separate rate, then Laizhou Hongda will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate, and this review will be terminated.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. On April 30, 1999, Laizhou Hongda agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the second annual administrative review of this order for the period April 1, 1998-March 31, 1999, which is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the final results of this review not later than 245 days after the last day of the anniversary month.

Antidumping duty proceeding	Period to be reviewed
PRC: Brake Rotors, A-570-846. Laizhou Hongda Auto Replacement Parts Co., Ltd	04/01/98-03/31/99

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported

by the above-listed company. This action is in accordance with 19 CFR 351.214(e) and (j)(3).

Interested parties that need access to the proprietary information in this new shipper review should submit

applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are in accordance with section 751(a) of the

Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: May 20, 1999.

Bernard Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 99-13561 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-601][A-421-701][A-201-504][C-201-505]

Brass Sheet and Strip From Canada, Brass Sheet and Strip From the Netherlands, Porcelain-on-Steel Cooking Ware From Mexico, Porcelain-on-Steel Cooking Ware From Mexico: Extension of Time Limit for Preliminary Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of five-year ("Sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset reviews on the antidumping duty orders on brass sheet & strip from Canada, brass sheet & strip from the Netherlands, and porcelain-on-steel cooking ware from Mexico, and on the countervailing duty order on porcelain-on-steel cooking ware from Mexico. Based on adequate responses from domestic and respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of these extensions, the Department intends to issue its preliminary results not later than August 20, 1999.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Martha Douthitt or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482-3207, or (202) 482-1560 respectively.

Extension of Preliminary Results

The Department has determined that the sunset reviews of the antidumping

duty orders on brass sheet & strip from Canada, brass sheet & strip from the Netherlands, and porcelain-on-steel cooking ware from Mexico, and on the countervailing duty order on porcelain-on-steel cooking ware from Mexico are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). See section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of these reviews until not later than August 20, in accordance with section 751(c)(5)(B) of the Act. The final results of these reviews will, therefore, be due not later than December 28, 1999.

Dated: May 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-13563 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-832]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Futtner at (202) 482-3814, Alexander Amdur at (202) 482-5346 (Etron), Ronald Trentham at (202) 482-6320 (MVI), Nova Daly at (202) 482-0989 (Nanya), or John Conniff at (202) 482-1009 (Vanguard), Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to

the regulations at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that DRAMs from Taiwan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Period of Investigation

The period of investigation ("POI") is October 1, 1997 to September 30, 1998.

Case History

Since the initiation of this investigation on November 18, 1998 (*Notice of Initiation of Antidumping Investigations: Dynamic Random Access Memory Semiconductors From Taiwan*, 63 FR 64040 (November 18, 1998) (*Notice of Initiation*)), the following events have occurred:

On November 13, 1998, the Department sent a cable to the American Institute in Taiwan requesting information identifying producers/exporters of the subject merchandise. We did not receive a response to our request. On November 17, 1998, the Department requested comments from the petitioner and potential respondents regarding model matching criteria. In the *Notice of Initiation*, the Department requested that parties submit any comments regarding the scope of the investigation. On December 1, 1998, the respondents, Powerchip Semiconductor Corp., Mitsubishi Electric Corporation, Mitsubishi Electronics America, Inc., Mitsubishi Semiconductor America, Inc., Alliance Semiconductor Corporation and Taiwan Semiconductor Industry Association submitted comments on the model matching criteria. We did not receive any comments regarding the scope language used for this investigation.

In December 1998, the International Trade Commission ("ITC") issued its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Taiwan. See ITC investigation No. 731-TA-811, 63 FR, 69304 (December 16, 1998).

On December 4, 1998, Acer Semiconductor Manufacturing Inc. ("Acer") requested that the Department not issue Acer a questionnaire.

On December 8, 1998, based on information contained in the petition, the Department issued questionnaires to the following companies: Acer, Alliance Semiconductor Corporation

("Alliance"), Etron Technology, Inc. ("Etron"), G-Link Technology Corp. ("G-Link"), Macronix International Co., Ltd. ("Macronix"), Mosel-Vitellic, Inc. ("MVI"), Nan Ya Technology Corporation ("Nanya"), Powerchip Semiconductor Corp. ("Powerchip"), Taiwan Memory Technology, Inc. ("TMT"), Taiwan Semiconductor Manufacturing Corporation ("TSMC"), United Microelectronics Corporation ("UMC"), Vanguard International Semiconductor Corp. ("Vanguard"), and Winbond Electronics ("Winbond").

On December 18, 1998, based on additional research, the Department issued partial Section A questionnaires to the following companies: Fujitsu Ltd. ("Fujitsu"), Integrated Silicon Solutions, Inc. ("ISSI"), Matsushita Electronics Corporation ("Matsushita"), Monolithic Technology Systems, Inc. ("MoSys"), Siemens A.G. ("Siemens"), and Toshiba Corporation ("Toshiba").

In January 1999, the Department received responses to Section A and partial Section A questionnaires from all of the respondents. On January 6, 1999, Etron requested that it be selected as a mandatory respondent. On January 15, 1999, the Department decided to limit the number of respondents and notified Etron, MVI, Nanya and Vanguard that they had been selected as mandatory respondents in this investigation. On January 21, 1999, the Department notified Acer, Alliance, Fujitsu, G-Link, ISSI, Macronix, Matsushita, Mosys, Powerchip, Siemens, TMT, TSMC, Toshiba, UMC and Winbond that they had not been selected as mandatory respondents. See Memorandum on Respondent Selection, dated January 15, 1999 ("Respondent Selection Memo"). On January 21, 1999, Powerchip requested that it be selected as a mandatory respondent. On January 26, 1999, Powerchip withdrew its request.

In its January 5, 1999 Section A response, MVI requested that it not be required to report certain U. S. sales made by an affiliate during the last five days of the POI, and all U.S. sales of memory modules that were further-manufactured in the United States by an affiliate. On January 26, 1999, the petitioner submitted a letter to the Department opposing only the exclusion request of MVI's U.S. sales of memory modules that were further-manufactured in the United States by an affiliate. On February 2, 1999, the Department granted MVI's request. See "Transactions Excluded" section of this notice.

On January 25, 1999, Etron requested that the Department exclude from its analysis and from the reporting requirements that portion of Etron's U.S.

sales which Etron characterized as constructed export price ("CEP") sales. On January 28, 1999, the petitioner submitted a letter to the Department opposing Etron's request to exclude these sales. On February 2, 1999, the Department granted Etron's request. See "Transactions Excluded" section of this notice.

We received comments from the petitioner concerning the information reported in the respondents' Section A questionnaire responses in February 1999. In February 1999, we received comments from Etron, MVI and Siemens in reply to the petitioner's comments.

On February 4, 1999, Compaq Computer Corporation ("Compaq") requested that the Department establish per megabit cash deposit rates for imports of certain memory modules containing DRAMs from Taiwan. See "Per Megabit Cash Deposit Rates for Certain Memory Modules" section of this notice.

On February 11, 1999, the Department issued supplemental Section A questionnaires to the respondents and received responses to these questionnaires in February and March of 1999.

On February 18, 1999, pursuant to section 733(c)(1)(A) of the Act, the petitioner made a timely request to postpone the preliminary determination. On February 22, 1999, we granted this request and postponed the preliminary determination until no later than May 21, 1999. See 64 FR 10443, March 4, 1999.

In March 1999, we received comments from the petitioner concerning the information reported in the respondents' Section B, C and D questionnaire responses. We issued supplemental Section B, C and D questionnaires in March, April and May 1999, and received responses to these questionnaires in those same months.

On May 3, 1999, we received comments from the petitioner on the calculation of the respondents' dumping margins. On May 12 and 13, 1999, Vanguard and Etron, respectively, submitted rebuttals to the petitioner's comments.

On May 14, 1999, we received information from the petitioner concerning cross-fertilization of research and development ("R&D") among semiconductor products.

On May 14, 1999, we also received responses from all of the respondents to supplemental Section D questionnaires. Due to the lack of time to analyze these responses before the preliminary determination, we will consider these responses for the purposes of verification and the final determination.

Respondent Selection

Based on the information received from the responding companies in their Section A responses, the Department determined that it did not have the administrative resources to investigate all known producers and/or exporters of DRAMs from Taiwan during the POI. Accordingly, the Department decided to limit the number of mandatory respondents in this investigation to four companies which had the largest sales volumes of DRAMs to the United States during the POI, pursuant to section 777A(c) of the Act. See Respondent Selection Memorandum. These companies are: Etron, MVI, Nanya and Vanguard.

On March 29, 1999, MoSys requested that it be selected as a respondent in this investigation. The Department denied MoSys' request on the basis that it did not meet the selection criteria as explained above, and that the request was untimely.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on May 10, 1999, MVI, Nanya and Vanguard, and on May 12, 1999, Etron, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**, and extend the provisional measures from a four-month period to not more than six months. In accordance with 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) Etron, MVI, Nanya and Vanguard account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The products covered by this investigation are DRAMs of one megabit or above from Taiwan, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers fabricated in Taiwan, but packaged or assembled into finished semiconductors in a third country, are included in the scope. Wafers fabricated

in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), dual in-line memory modules ("DIMMs"), memory cards or other collections of DRAMs whether mounted or unmounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items that alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. Modules containing DRAMs made from wafers fabricated in Taiwan, but either assembled or packaged into finished semiconductors in a third country, are also included in the scope.

The scope includes, but is not limited to, video RAM ("VRAM"), Windows RAM ("WRAM"), synchronous graphics RAM ("SGRAM"), as well as various types of DRAMs, including fast page-mode ("FPM"), extended data-out ("EDO"), burst extended data-out ("BEDO"), synchronous dynamic RAM ("SDRAMs"), and "Rambus" DRAMs ("RDRAMs"). The scope of this investigation also includes any future density, packaging or assembling of DRAMs. The scope of this investigation does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this investigation are currently classifiable under subheadings 8542.13.80.05 and 8542.13.80.24 through 8542.13.80.34 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Also included in the scope are Taiwanese DRAMs modules, described above, entered into the United States under subheading 8473.30.10 through 8473.30.90 of the HTSUS or possibly other HTSUS numbers. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Affiliation and Collapsing

Pursuant to section 771 (33) of the Act, the Department shall consider the following persons to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For the purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

Section 351.401(f) of the Department's regulations outlines the criteria for collapsing (*i.e.*, treating as a single entity) affiliated producers. Pursuant to section 351.401(f), the Department will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.

In identifying a significant potential for the manipulation of price or production, the Department may consider the following factors:

- (i) the level of common ownership;
- (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

A. Etron and Vanguard

The Department has preliminarily determined that Etron and Vanguard were not under the common control of the Lu family, and not affiliated, under section 771(33)(F) of the Act during the POI. Based upon the information contained in the administrative record, the Department found that the Lu family, including Chau-Chun Lu, the Chairman and CEO of Etron, was in position of legal and operational control of Etron during the POI. However, the Department also determined that the Lu family, and specifically, C.Y. Lu, the President of Vanguard during the last five months of the POI, was not in a position to exercise restraint or direction over Vanguard. As a result, we

have preliminarily determined that Etron and Vanguard are not affiliated. Because of the proprietary nature of certain aspects of these relationships, for a detailed discussion, *see* Memorandum on Whether Etron Technology, Inc. and Vanguard International Semiconductor Corporation are Affiliated Under Section 771(33) of the Act, dated May 21, 1999.

B. MVI and ProMOS Technologies Inc. ("ProMOS")

ProMOS is a joint venture between MVI and Siemens. Pursuant to section 771(33)(E) of the Act and the Department's practice in this area, the Department has preliminarily determined that MVI is affiliated with ProMOS because MVI has a 59 percent equity interest in ProMOS.

C. MVI and Siemens

As noted above, MVI and Siemens are partners in the joint venture, ProMOS. MVI has a 59 percent equity interest in ProMOS, while Siemens retains a 37 percent equity share in the venture. The Department has preliminarily determined that, under section 771(33)(F) of the Act, MVI and Siemens are affiliated by virtue of their joint control of ProMOS. However, we have preliminarily determined not to collapse these entities, given that we found that there is no potential to influence the pricing or production decisions between MVI and Siemens. *See* Memorandum Re: Affiliation Between Mosel Vitelic, Inc. (MVI), and ProMOS Technologies, Inc. (ProMOS), Affiliation Between MVI and Siemens Aktiengesellschaft (Siemens) and Whether to collapse ProMOS with MVI, dated May 21, 1999 ("MVI, ProMOS, Siemens Affiliation Memo").

D. Collapsing MVI and ProMOS

In determining whether to collapse affiliated producers of the subject merchandise, the Department's regulations provide a two-prong test. According to 19 CFR 351.401(f)(1), the Department will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.

Section 771(28) of the Act explains that the term "producer" means the "producer of the subject merchandise." As further clarified under 19 CFR 351.401(h), the Department "will not

consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of, the subject merchandise or foreign like product."

Based upon our analysis of the terms of the shareholders and purchase agreements between MVI and Siemens, we find that ProMOS is not a "producer" of the subject merchandise within the meaning of section 771(28) of the Act. Rather, the terms of the agreements indicate that ProMOS is a "subcontractor," as defined by 19 CFR 351.401(h). Given that ProMOS did not acquire ownership and did not control the sale of its merchandise, we preliminarily determine that, under 19 CFR 351.401(h), ProMOS served as a subcontractor to MVI and should be treated as such in our analysis. See MVI, ProMOS, Siemens Affiliation Memo.

Our determination is consistent with the Department's current policy on subcontracted operations. For example, in the *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductor from Taiwan*, 63 FR 8909 (February 23, 1998) ("SRAMs from Taiwan"), the Department decided to exclude a foundry, as a respondent, because it did not control the production of wafers. The Department determined that it was the design house, rather than the foundry, which retained ownership of the wafers at all stages of production. The design house in that case subcontracted the production of processed wafers with the foundry and determined how many wafers would be produced. The foundry had no right to sell the wafers to any party other than the design house. Further, the design house arranged for the subsequent steps in the production process. See also *Notice of Final Determination of Sales at Less Than Fair Value, Certain forged Stainless Steel Flanges from India*, 58 FR 68853, 68855 (Dec. 29, 1993).

Given that ProMOS is not a producer but a subcontractor under 19 CFR 351.401(h) and that it does not sell subject merchandise, we determine that the collapsing is not appropriate in this case. See MVI, ProMOS, Siemens Affiliation Memo.

E. MVI and ChipMOS Technologies Inc., ("ChipMOS")

ChipMOS is a joint venture between MVI and Siliconware Precision Industries Co., Ltd. ("SPI"), pursuant to a joint venture agreement between MVI and SPI. Pursuant to section 771(33)(E) of the Act and the Department's practice in this area, the Department has preliminarily determined that MVI is

affiliated with ChipMOS because MVI has a 48 percent equity interest in ChipMOS.

According to information on the record, ChipMOS is engaged in the testing and packaging of integrated circuits. As such, ChipMOS is not a producer of the subject merchandise. Because ChipMOS is neither a producer or seller of the subject merchandise, the question of collapsing MVI and ChipMOS is moot. See Memorandum Re: Affiliation Between Mosel Vitelic, Inc. (MVI), and ChipMOS Technologies, Inc. (ChipMOS), Affiliation Between MVI and Siliconware Precision Industries Co., Ltd. (SPI), and Collapsing MVI and ChipMOS, dated, May 21, 1999 ("MVI, ChipMOS, SPI Affiliation Memo"). However, as mentioned above, we intend to examine the relationship between MVI, ChipMOS and SPI more closely at verification.

F. MVI and SPI

As noted above, MVI and SPI are partners in the joint venture, ChipMOS. According to the joint venture agreement, MVI and SPI own 48 percent and 30 percent of ChipMOS, respectively. The Department has preliminarily determined that, under section 771(33)(F) of the Act, MVI and SPI are affiliated by virtue of their joint control of ChipMOS.

According to information on the record, SPI is engaged in the testing and packaging of integrated circuits. As such, SPI is not a producer of the subject merchandise. Because SPI is neither a producer or seller of the subject merchandise, the question of collapsing MVI and SPI is moot. See MVI, ChipMOS, SPI Affiliation Memo.

Treatment of Foundry Sales

During the course of this investigation, we found that Nanya and Vanguard, two of the companies selected as respondents, also acted as foundries for DRAM design houses. As foundries, they processed DRAM wafers according to designs provided by the design houses. In other words, they did not control the production of the processed wafers in question but merely translated the design of other companies into actual products. The record evidence indicates that the design houses then arranged for the probing, testing and assembly of the processed wafers into individual DRAMs that the design houses ultimately sold to unaffiliated purchasers.

In accordance with 19 CFR 351.401(h), and consistent with the Department's determination in *SRAMs from Taiwan*, 63 FR at 8918-8919, we

have determined that, for the transactions in question, the design house controls the production, and ultimate sale, of the subject merchandise. Consequently, we did not include these foundry sales in our analysis of sales of subject merchandise by Nanya and Vanguard for purposes of this investigation. For further discussion, see Memorandum Regarding Design Houses and Foundries, dated May 21, 1999.

Per Megabit Cash Deposit Rates for Certain Memory Modules

On February 4, 1999, Compaq requested that the Department establish per megabit cash deposit rates for imports of certain memory modules containing DRAMs from Taiwan, consistent with the Department's decision in the LTFV investigation of DRAMs from the Republic of Korea. See *Final Determination of Sales at LTFV: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467 (March 23, 1993) ("DRAMs from Korea"). Compaq noted that non-subject DRAMs or components could be subject to cash deposit requirements when individual memory modules imported into the United States include subject DRAMs as well as other non-subject components. Compaq states that the per megabit cash deposit method would allow Compaq and other importers to limit their cash deposits solely to subject merchandise that the Department finds is dumped.

Consistent with the practice established in the LFTV investigation of DRAMs from Korea, the Department is establishing per megabit cash deposit rates to be applied to memory modules containing subject and non-subject merchandise. For a detailed discussion, see Memorandum on Application of a Per Megabit Cash Deposit Rate on Memory Modules, dated May 21, 1999.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value ("NV") based on sales in the comparison market at the same level of trade ("LOT") as the export price ("EP") or CEP. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is

the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

None of the respondents claimed a LOT adjustment. Nevertheless, we evaluated whether a LOT adjustment was necessary by examining each respondent's distribution system, including selling functions, classes of customers, and selling expenses. For Etron, we found that the selling functions are sufficiently similar in the United States and the home market to consider them at the same LOT in the two markets. Accordingly, all comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted. For further discussion, *see Memorandum on Level of Trade Analysis—Etron Technology, Inc.*, dated May 21, 1999.

For MVI, Nanya and Vanguard, after making deductions pursuant to section 772(d) of the Act, we found that the selling functions performed at the CEP LOT were sufficiently different from the selling functions performed at the NV LOT to consider these to be different LOTs. We therefore evaluated whether the difference in LOT affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant LOTs in the comparison market. However, because the POI sales of the merchandise under investigation in the comparison market for all three respondents were at only one LOT, we were unable to determine whether there was a pattern of consistent price differences.

The Statement of Administrative Action ("SAA") provides that, "if information on the same product and company is not available, the LOT adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different LOTs by the exporter or producer under investigation, the Department may further consider the selling expenses of other producers in the foreign market for the same product or other products." *See SAA* at 830. In accordance with the SAA, we have considered alternative sources of information to make the necessary LOT adjustment. However, we did not have information on the record that would allow us to examine or apply these alternative methods for calculating a LOT adjustment.

Since we were unable to quantify a LOT adjustment based on a pattern of consistent price differences, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset to MVI, Nanya and Vanguard, given that all of the comparison sales in the home market were at a more advanced LOT than the sales to the United States. For further discussion of these issues, *see Memoranda on Level of Trade Analyses—Mosel-Vitellic, Inc., Nan Ya Technology Corporation, and Vanguard International Semiconductor Corp.*, dated May 21, 1999.

Transactions Excluded

The Department granted Etron's and MVI's requests not to report certain U.S. sales based on their representation that these transactions account for an insignificant portion of their U.S. sales. Specifically, the Department granted Etron's request not to report that portion of Etron's U.S. sales which Etron characterized in its Section A response as CEP sales. The Department also granted MVI's request not to report certain home market and U.S. sales made by an affiliate during the last five days of the POI, and all U.S. sales of memory modules that were further-manufactured in the United States by an affiliate. *See letters from the Department to Etron and MVI dated February 2, 1999.*

In addition, the Department excluded certain other sales from its analysis. Etron and MVI reported sales of non-prime merchandise in the home market during the POI. However, given the limited home market sales quantity of non-prime merchandise, and the fact that no such sales were made to the United States during the POI, we excluded non-prime sales from our analysis in accordance with our past practice. *See, e.g., Final Determinations*

of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea, 58 FR 37176, 37180 (July 9, 1993).

We also excluded from our analysis free samples provided for no consideration in either the home or U.S. markets, in accordance with *NSK Ltd. v. United States*, 969 F.Supp. 34 (CIT 1997). For a detailed discussion and analysis of Etron's free samples, *see Memorandum on Etron Technology, Inc.: Company-Specific Issues for the Preliminary Determination*, dated May 21, 1999 ("Etron Issue Memo"). For Etron, we also excluded from our analysis certain sales that Etron made to third countries but originally reported as home market sales. *See Memorandum on Etron Technology, Inc.: Calculations for the Preliminary Determination*, dated May 21, 1999.

For Nanya, we excluded from our analysis those sales to affiliated customers in the home market which were not made at arm's-length prices because we considered them to be outside the ordinary course of trade. *See 19 CFR 351.102(b)*. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, prices of sales to affiliated and unaffiliated customers net of discounts, all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to an affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See 19 CFR 351.403(c)* and Preamble to the Department's regulations; 62 FR at 27355. In instances where no affiliated-customer price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Time Period for Cost and Price Comparisons

Section 777A(d) of the Act states that, in an investigation, the Department will compare the weighted average of the normal values to the weighted average of the EPs or CEPs. Generally, the Department will compare sales and conduct the sales below cost test using annual averages. However, where prices have moved significantly over the course of the POI, it has been the Department's practice to use shorter time periods. 19 CFR 351.414(d)(3) *See, e.g., Final Determination of Sales at Less Than Fair Value; Erasable Programmable Read Only Memories (EPROMs) from Japan*, 51 FR 39680, 39682 (October 30, 1986); *DRAMs from Korea*, 58 FR at 15476 and *SRAMs from Taiwan*; 63 FR 8911. As was demonstrated in each of these cases, the semiconductor industry is characterized by significant and consistent price and cost declines over time. The evidence on the record in this investigation shows the same pattern. Therefore, for this case, the Department has compared prices and conducted the sales below cost test using quarterly data. However, in accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

Fair Value Comparisons

To determine whether sales of DRAMs from Taiwan to the United States were made at LTFV, we compared the EP or the CEP to the NV, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

In making our comparisons, in accordance with section 771(16) of the Act, we considered all products sold in the home market, fitting the description specified in the "Scope of Investigation" section of this notice, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics listed in Sections B and C of the Department's antidumping questionnaire.

Export Price/Constructed Export Price

For Etron, we based our calculations on EP, in accordance with section 772(a) of the Act, when the subject

merchandise was first sold (or offered for sale) by the exporter outside of the United States to an unaffiliated purchaser before the date of importation into the United States, and CEP methodology was not otherwise indicated. In addition, for Etron, MVI, Nanya and Vanguard, when the subject merchandise was first sold in the United States by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, we used CEP, in accordance with section 772(b) of the Act.

Vanguard classified some of its sales of DRAMs in the United States as EP sales in its questionnaire response, including those sales made prior to importation through a U.S. affiliate or, in some cases, unaffiliated U.S. sales agents. Etron classified all of its sales of DRAMs in the United States as EP sales in its questionnaire response, including those sales made prior to importation through an unaffiliated U.S. sales representative. To determine whether Etron's and Vanguard's sales involving affiliates, agents or sales representatives are properly classified as EP sales, we have examined three criteria: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. affiliate or selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Only when all criteria are met does the Department treat the sales as EP sales. *See, e.g., E.I. Du Pont v. United States*, 841 F. Supp. 1237, 1248-50 (CIT 1993); *AK Steel Corp. v. United States*, Consolidated Court No. 97-05-00865, 1998 WL 846764 at 6 (CIT 1998). In other words, where the factors indicate that the activities of the U.S. affiliate and selling agent are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. affiliate or selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18389, 18391 (April 15, 1997).

Based on our review of the selling activities of Vanguard's U.S. affiliate and unaffiliated U.S. selling agents, we reclassified Vanguard's U.S. sales of DRAMs through its U.S. affiliate and unaffiliated U.S. selling agents as CEP

sales because the agents and the affiliate acted as more than a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. customer. For further discussion of this issue, *see* Memorandum on Whether to Treat Vanguard International Semiconductors' (Vanguard's) U.S. Sales of Subject Merchandise During the Period of Investigation as Export Price Sales, as Claimed by Vanguard, or as Constructed Export Price Sales, dated March 26, 1999.

Furthermore, we reclassified Etron's U.S. sales of DRAMs through its unaffiliated U.S. sales representative as CEP sales because the sales representative acted as more than a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. customer. For further discussion of this issue, *see* Memorandum on Whether Etron Technology's U.S. Sales Made Through An Unaffiliated Sales Representative Are Export Price or Constructed Export Price Sales, dated May 21, 1999.

A. Export Price

For Etron, we calculated EP based on packed, delivered and FOB prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for discounts and other price adjustments. We made deductions from the starting price, where appropriate, for discounts, foreign inland freight, foreign brokerage and handling expenses, international freight, marine insurance pursuant to section 772(c)(2)(A) of the Act.

B. Constructed Export Price

For all respondents, we calculated CEP based on the packed, delivered and FOB price to the first unaffiliated customer in the United States in accordance with section 772(b) of the Act. We made adjustments to the starting price for discounts and other price adjustments. We made deductions from the starting price for discounts, science-industrial park charges, postal charges, foreign inland freight and insurance, foreign brokerage and handling, international freight, marine insurance, U.S. duty and U.S. brokerage and warehousing expenses, as appropriate, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we made additional adjustments to the starting price by deducting direct and indirect selling expenses associated with economic activities occurring in the United States, including credit expenses and

commissions. Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. However, for Etron and Vanguard, because the deduction of the commission results, in certain cases, in a price corresponding to an EP, in these cases we have not made any additional deduction of CEP profit. *See Certain Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Review*, 62 FR 53287 (October 14, 1997).

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

Cost-of-Production Analysis

Based on the cost allegation contained in the petition, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of production ("COP"), in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act. *See Notice of Initiation*. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a quarterly weighted-average COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs. We preliminarily determine that R&D related to semiconductor benefits all semiconductor products, and that

allocation of R&D on a product-specific basis was not appropriate. In support of our methodology, we have placed on the record information regarding the cross-fertilization of semiconductor R&D. *See Memorandum regarding Cross Fertilization of Research and Development in the Semiconductor Industry*, dated May 21, 1999.

We relied on the COP and CV data submitted by Etron, MVI, Nanya and Vanguard, adjusted as discussed below, to compute quarterly weighted-average COPs during the POI. In cases where there was no production within the same quarter as a given sale, we referred to the most recent quarter, prior to the sale, for which costs had been reported. In cases where there was no cost reported for either the same quarter as the sale, or for a prior quarter, we used the reported costs from the closest subsequent quarter in which production occurred.

We made company-specific adjustments to the reported COP as follows:

Etron: 1. We included stock bonuses paid to employees in the calculation of Etron's cost of manufacturing ("COM").

2. We recalculated Etron's R&D expense rate by excluding revenue earned from R&D projects performed for outside parties from the R&D expenses, and dividing the recalculated R&D expenses by cost of goods sold plus R&D expenses and the bonus adjustment.

3. We adjusted Etron's general and administrative ("G&A") expense ratio to include an amount for inventory write-offs.

4. We adjusted Etron's G&A and interest expense rates after increasing the cost of goods sold by the amount of the bonus adjustment.

See Preliminary Determination Cost Calculation Memo for Etron dated, May 21, 1999.

MVI: 1. MVI claimed a startup adjustment for wafers produced at ProMOS, its new fab facility. We disallowed the claimed startup adjustment because ProMOS reached commercial production levels prior to the start of the POI.

2. We included ProMOS' G&A and R&D expenses in the COP for wafers purchased from ProMOS.

3. Pursuant to section 773(f)(2) of the Act, and section 351.407(b) of the Department's regulations, we compared the transfer price paid by MVI to ProMOS for wafers to ProMOS' COP for these wafers. For the fourth quarter of the POI, we increased MVI's reported cost for these wafers to the higher of COP or transfer price.

4. We recalculated the stock bonuses using the market value at the

declaration date. We included the stock bonus amount (*i.e.* profit sharing) in COM. We excluded packing costs from the cost of goods sold used in the denominator of the rate.

5. We recalculated the G&A rate based on unconsolidated amounts and excluded packing costs from the denominator.

6. We recalculated the financial expense rate by excluding the dividend income offset from the net financial expense used in the numerator of the rate, and by excluding packing costs from the cost of goods sold used in the denominator of the rate. In addition, we also excluded the net exchange gains offset since the claimed offset did not agree with the amount presented on the audited financial statements.

7. We recalculated MVI's R&D expense rate using R&D for all semiconductors divided by MVI's unconsolidated cost of goods sold plus bonuses. We also excluded packing costs from the cost of goods sold used in the denominator of the R&D rate.

See Preliminary Determination Cost Calculation Memo for MVI dated, May 21, 1999.

Nanya: Pursuant to section 773(f)(2) of the Act, and section 351.407(b) of the Department's regulations, for DRAM assembly and test performed by affiliates, we used the higher of cost, transfer price, or market price.

2. We adjusted the reported R&D rate to include all of Nanya's semiconductor R&D expenses divided by company-wide cost of goods sold.

3. We reclassified expenses incurred by Genesis Semiconductor, Inc. (GSI), a U.S. affiliate of Nanya that performs DRAM R&D, as R&D expense.

4. We adjusted Nanya's reported G&A expenses to include certain "other revenue" items.

5. We recalculated Nanya's reported production-related royalty expense rate by dividing the total expense incurred by the cost of goods sold for DRAMs.

6. Since wafers processed in a country other than Taiwan are not subject to this investigation, we have excluded the costs and sales of fully-processed wafers purchased from a third country.

See Preliminary Determination Cost Calculation Memo for Nanya, dated May 21, 1999.

Vanguard: 1. Pursuant to section 773(f)(2) of the Act, and section 351.407(b) of the Department's regulations, for DRAM assembly performed by an affiliate, we adjusted the reported cost to the highest of cost, transfer price, or market price.

2. We adjusted the R&D expense rate by including all R&D expenses divided by cost of goods sold.

3. We reduced G&A expenses by other operating income and sales administrative fees and included losses on sales of fixed assets and other non-operating charges.

See Preliminary Determination Cost Calculation Memo for Vanguard dated, May 21, 1999.

B. Test of Home Market Sales Prices

We compared the weighted-average quarterly COP figures for each respondent, adjusted where appropriate (see above), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts and rebates, other selling expenses and home market packing.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. To determine whether the below cost sales were at prices which permit recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit COP at the time of the sale (i.e., the quarterly cost) were below the weighted-average per-unit COP for the POI, in accordance with section 773(b)(2)(D). If they were, we disregarded below-cost sales in determining NV.

We found that, for all respondents, for certain models of DRAMs, more than 20 percent of the home market sales within an extended period of time were at prices less than COP. Further, the prices did not permit for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost

sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those U.S. sales of DRAMs for which there were no comparable home market sales in the ordinary course of trade, we compared EPs or CEPs to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, G&A expenses, U.S. packing costs, direct and indirect selling expenses, interest expenses, R&D expenses and profit. We made adjustments to each respondent's reported cost as indicated above in the COP section. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Taiwan. Where respondents made no home market sales in the ordinary course of trade (i.e., all sales failed the cost test), we based profit and SG&A expenses on the weighted average of the profit and SG&A data computed for those respondents with home market sales of the foreign like product made in the ordinary course of trade in accordance with section 773(e)(2)(B)(ii) of the Act.

Price-to-Price Comparisons

For each company, we calculated NV based on packed, delivered and FOB prices to unaffiliated home market customers and, for Nanya, on prices to affiliated customers that were determined to be at arm's length. For Etron, we calculated NV based on the unit prices, and the currency of those unit prices, that were listed on its invoices. For all respondents, we made adjustments to the starting price for discounts and other price adjustments. We made deductions for foreign inland freight, insurance, industrial park charges and bonded warehouse expenses, where appropriate, pursuant to section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments, where appropriate, for differences in royalties, commissions credit, discounts and bank charges. In cases where a respondent paid a commission on U.S. sales, and paid no commission on the matching home market sales, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses incurred on the home

market sales for the comparison product, up to the amount of the U.S. commissions. In cases where a respondent paid a commission on home market sales, and paid no commission on the matching U.S. sales, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses and inventory carrying costs incurred on the U.S. sales (or for CEP sales, the weighted-average amount of such expenses that are not associated with economic activities in the United States) for the comparison product, up to the amount of the home market commissions. See 19 CFR 351.410(e) and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43670-43671 (August 14, 1998).

For Etron, MVI and Vanguard, where the respondent has not yet received payment for certain transactions, we used the date of the preliminary determination as the date of payment to calculate credit, in accordance with the Department's established practice. See, e.g., *SRAMs from Taiwan*, 62 FR at 51446. We also adjusted Etron's and MVI's inventory carrying costs to account for the adjustments made to the COM, as specified above. For Etron, we also reclassified reported home market warranty expense as an inventory write-off (see Etron Issue Memo) and recalculated U.S. indirect selling expenses using the amount of the gross sales prices in U.S. dollars, the currency in which Etron made its U.S. sales.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where CV was compared to EP, we deducted from CV the weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act. Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses (which included credit expenses) incurred on sales made in the ordinary course of trade.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when

the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions*, 61 FR 9434 (March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar and, for Vanguard, the Japanese Yen, did not undergo a sustained movement during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs

Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price, as indicated in the chart below. For memory modules containing both subject and non-subject merchandise, we will instruct Customs to require a cash deposit or the posting of a bond equal to the weighted-average dollar amount per megabit by which the NV exceeds the U.S. price, as indicated in the chart below (see "Per Megabit Cash Deposit Rates for Certain Memory Modules" section of this notice). These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Weighted-average per megabit rate
Etron Technology, Inc	4.96	\$0.03
Mosel-Vitelco, Inc	30.89	0.11
Nan Ya Technology Corporation	9.03	0.01
Vanguard International Semiconductor Corp	10.36	0.24
All Others	16.65	0.06

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 19, 1999, and rebuttal briefs no later than July 26, 1999. A list of authorities used and an executive summary of issues must accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 27, 1999, with the time and room to be determined, at the U.S. Department of Commerce, 14th Street

and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time and place of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within thirty days of the publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 773(d) and 777(i) of the Act.

Dated: May 21, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-13684 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 052199D]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Coastal Ocean Program Grants Proposal Application Package.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 1,100 hours.

Number of Respondents: 300.

Avg. House Per Response: Varies between 10 minutes and 10 hours depending on the requirement.

Needs and Uses: The NOAA Coastal Ocean Program is a unique federal-academic partnership designed to provide predictive capability for managing coastal ecosystems. Grant

applicants and grant recipients must provide certain documents. The information is used to evaluate proposals, and once funded, to monitor grantee performance.

Affected Public: Not-for-profit institutions, individuals, state, local or tribal government.

Frequency: On occasion, other.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via Internet at Lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503 within 30 days of publication.

Dated: May 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-13566 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040799A]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in the Beaufort Sea

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from Western Geophysical/Western Atlas International of Houston, Texas (Western Geophysical) for an authorization to take small numbers of marine mammals by harassment incidental to conducting seismic surveys in the Beaufort Sea in state and Federal waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Western Geophysical to incidentally take, by harassment, small numbers of bowhead whales and other

marine mammals in the above mentioned areas during the open water period of 1999.

DATES: Comments and information must be received no later than June 28, 1999.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Acting Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application, a list of references used in this document, and/or an environmental assessment (EA) may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713-2055, Brad Smith, (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 24, 1999, NMFS received an application from Western Geophysical requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in

the Beaufort Sea between western Camden Bay and Harrison Bay off Alaska. Weather permitting, the survey is expected to take place between approximately July 1 and mid- to late-October, 1999. However, only a small portion of the area between western Camden Bay and Harrison Bay will be surveyed this year. A detailed description of the work proposed for 1999 is contained in the application (Western Geophysical, 1999) and is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the EA prepared for this authorization or in other documents (Corps of Engineers, 1999; Minerals Management Service (MMS), 1992, 1996). The relevant information contained in these documents is incorporated by citation into this section and need not be repeated here. A copy of the EA is available upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in the previously referenced EA, the 1999 application from Western Geophysical, the annual monitoring reports for seismic surveys in the Beaufort Sea (LGL Ltd. and Greeneridge Sciences Inc, 1997, 1998, and 1999a) and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Hill *et al.*, 1997). Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft will provide a potential secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues.

Seismic surveys are used to obtain data about formations several thousands of feet deep. The proposed seismic operation is an ocean bottom cable (OBC) survey. For this activity, OBC surveys involve dropping cables from a ship to the ocean bottom, forming a

patch consisting of 4 parallel cables 8.9 kilometers (km) (4.8 nautical miles (nm)) long, separated by approximately 600 meters (m) (1,968 feet (ft)) from each other. Hydrophones and geophones, attached to the cables, are used to detect seismic energy reflected back from underground rock strata. The source of this energy is a submerged acoustic source, called a seismic airgun array, that releases compressed air into the water, creating an acoustical energy pulse that is directed downward toward the seabed. The source level planned for this project - a maximum of 247 dB re 1 μ Pa-m or 22.3 bar-meters (zero to peak), or a maximum of 252 dB re 1 μ Pa-m or 39 bar-meters (peak-to-peak) - will be from an airgun array with a air discharge volume of 1,210 in³. This compares to the 1,500 in³ array used on Western Geophysical's primary source vessel in 1998 and will be the only airgun array used by Western Geophysical in the Beaufort Sea this year.

It is anticipated that 34 seismic lines will be run for each patch, covering an area 5.0 km by 15.7 km (2.7 nm by 8.1 nm), centered over the patch. Source lines for one patch will overlap with those for adjacent patches.

After sufficient data have been recorded to allow accurate mapping of the rock strata, the cables are lifted onto the deck of a cable-retrieval vessel, moved to a new location (ranging from several hundred to a few thousand feet away), and placed onto the seabed again. For a more detailed description of the seismic operation, please refer to the 1999 application from Western Geophysical.

Depending upon ambient noise conditions and the sensitivity of the receptor, underwater sounds produced by open water seismic operations may be detectable a substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or of masking a signal of comparable frequency (Western Geophysical, 1999). An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source, the seismic vessel, other vessels, or aircraft react to the generated sounds or to visual cues.

Seismic pulses are known to cause strong avoidance reactions by many of the bowhead whales occurring within a distance of several kilometers and may sometimes cause avoidance or other changes in bowhead behavior at considerably greater distances (Richardson *et al.*, 1995; Rexford, 1996; MMS, 1997). Results from the 1996-

1998 BP and Western Geophysical seismic program monitoring indicate that most bowheads avoided an area within about 20 km (10.8 nm) of nearshore seismic operations (Miller *et al.*, 1998, 1999). It is also possible that seismic pulses may disturb some other marine mammal species occurring in the area.

Although some limited masking of low-frequency sounds (e.g., whale calls) is a possibility, the intermittent nature of seismic source pulses (1 second in duration every 16 to 24 seconds) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (LGL and Greeneridge, 1997, 1998, 1999a; Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of belugas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds (Western Geophysical, 1999).

Hearing damage is not expected to occur during the project. It is not positively known whether the hearing systems of marine mammals very close to an airgun might be subject to temporary or permanent hearing impairment (Richardson *et al.*, 1995). However, planned monitoring and mitigation measures (described later in this document) are designed to avoid sudden onsets of seismic pulses at full power, to detect marine mammals occurring near the array, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Bowhead Whales

Various studies (Reeves *et al.*, 1984, Fraker *et al.*, 1985, Richardson *et al.*, 1986, Ljungblad *et al.*, 1988) have

reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. In studies prior to 1996, bowheads exposed to seismic pulses from vessels more than 7.5 km (4.0 nm) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (Western Geophysical, 1999).

Within a 6- to 99-km (3.2 to 53.5 nm) range, it has not been possible to determine a specific distance at which subtle behavioral changes no longer occur (Richardson and Malme, 1993), given the high variability observed in bowhead whale behavior (Western Geophysical, 1999). However, in three studies of bowhead whales and one of gray whales, surfacing-dive cycles have been unusually rapid in the presence of seismic noise, with fewer breaths per surfacing and longer intervals between breaths (Richardson *et al.*, 1986; Koski and Johnson, 1987; Ljungblad *et al.*, 1988; Malme *et al.*, 1988). This pattern of subtle effects was evident among bowheads 6 km to at least 73 km (3.2 to 39 nm) from seismic vessels. However, in the pre-1996 studies, active avoidance usually was not apparent unless the seismic vessel was closer than about 6 to 8 km (3.2 to 4.3 nm) (Western Geophysical, 1999).

Inupiat whalers believe that migrating bowheads are sometimes displaced at distances considerably greater than 6 to 8 km (3.3 to 4.3 nm) (Rexford, 1996). Also, whalers have mentioned that bowheads sometimes seem more "skittish" and more difficult to approach when seismic exploration is underway in the area. It is possible that, when additional data are available and analyzed, it may be demonstrated that isolated bowheads avoid seismic vessels at distance beyond 20 km (10.8 nm). Also, the "skittish" behavior may be related to the observed subtle changes in the behavior of bowheads exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those of bowheads. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that approximately 50 percent showed avoidance when the average received

pulse level was 170 dB (re 1 μ Pa). By some behavioral measures, clear effects were evident at average pulse levels of 160+dB; less consistent results were suspected at levels of 140–160 dB. Recent research on migrating gray whales showed responses similar to those observed in the earlier research when the source was moored in the migration corridor 2 km (1.1 nm) from shore. However, when the source was placed offshore (4 km (2.2 nm) from shore) of the migration corridor, the avoidance response was not evident on track plots (Tyack and Clark. 1998).

Beluga

The beluga is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Because their hearing threshold at frequencies below 100 Hz (where most of the energy from airgun arrays is concentrated) is poor (125 dB re 1 μ Pa @ 1 m) or more depending upon frequency (Johnson *et al.*, 1989; Richardson *et al.*, 1991, 1995), beluga are not predicted to be strongly influenced by seismic noise. However, because of the high source levels of seismic pulses, airgun sounds sometimes may be audible to beluga at distances of 100 km (54 nm)(Richardson and Wursig, 1997). The reaction distance for beluga, although presently unknown, is expected to be less than that for bowheads, given the presumed poorer sensitivity of belugas than that of bowheads for low-frequency sounds (Western Geophysical, 1999).

Ringed, Largha and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (LGL and Greeneridge, 1997, 1998, 1999a; J. Parsons as quoted in Greene, *et al.* 1985; Anon., 1975; Mate and Harvey, 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources. Underwater audiograms have been obtained using behavioral methods for three species of phocinid seals, ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson *et al.* (1995) and Kastak and Schusterman (1998). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat down to at least 1 kHz and ranges between 60 and 85 dB (re 1 μ Pa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1 μ Pa @ 1 m) at 100 Hz (Kastak and Schusterman, 1998). While no detailed studies of reactions of seals from open-water seismic exploration have been published (Richardson *et al.*, 1991, 1995), some data are available on the reactions of seals to various types of impulsive sounds (see LGL and Greeneridge, 1997, 1998, 1999a; Thompson *et al.* 1998).

These references indicate that it is unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within relatively close proximity of the seismic array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while seals may be capable of hearing sounds from seismic arrays, they appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/ Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time. Since seismic work is fairly common in Beaufort Sea waters, pinnipeds have been previously exposed to seismic noise and may not react to it after initial exposure.

For a discussion on the anticipated effects of ships, boats, and aircraft, on marine mammals and their food sources, please refer to the application (Western Geophysical, 1999). Information on these effects is incorporated in this document by citation.

Numbers of Marine Mammals Expected to Be Taken

Western Geophysical estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Population	Harassment Takes in 1999	
	Size	Possible	Probable
Bowhead	9,900		
160 dB criterion		1,000	<500
20 km criterion		2,500	1,250
Gray whale	26,600	<10	0
Beluga	39,258	250	<150
Ringed seal*	1–1.5 million	400	<200
Spotted seal*	>200,000	10	<2
Bearded seal*	>300,000	50	<15

* Some individual seals may be harassed more than once.

Effects of Seismic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principle concerns related to subsistence use of the area. The harvest

of marine mammals (mainly bowhead whales, ringed seals, and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more

difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years,

Nuiqsut whalers typically take two to four whales each season (Western Geophysical, 1999). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m

(65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located within the general area of the proposed seismic area. Thus, the possibility and timing of potential seismic operations in the Cross Island area requires Western Geophysical to provide NMFS with either a Plan of Cooperation with North Slope Borough residents or to identify measures that have been or will be taken to avoid any unmitigable adverse impact on subsistence needs. Western Geophysical's application has identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of seismic operations in and east of the Cross Island area will be addressed in a Conflict and Avoidance Agreement (C&AA) with the Nuiqsut whalers and the AEWC (Western Geophysical, 1999).

Whalers from the village of Kaktovik search for whales east, north, and west of the village. Kaktovik is located 60 km (32.4 nm) east of the easternmost end of Western Geophysical's planned 1999 seismic exploration area. The westernmost reported harvest location was about 21 km (11.3 nm) west of Kaktovik, near 70°10'N, 144°W (Kaleak, 1996). That site is approximately 40 km (21.6 nm) east of the closest part of Western Geophysical's planned seismic exploration area for 1999 (Western Geophysical, 1999).

Whalers from the village of Barrow search for bowhead whales much further from the planned seismic area, >200 km (>108 nm) west (Western Geophysical, 1999).

The location of the proposed seismic activity is south of the center of the westward migration route of bowhead whales, but there is some overlap. Seismic monitoring results from 1996–1998 indicate that most bowheads avoid the area within about 20 km (11 nm) around the array when it is operating. In addition, bowheads may be able to hear the sounds emitted by the seismic array out to a distance of 50 km (27 nm) or more, depending on the ambient noise level and the efficiency of sound propagation along the path between the seismic vessel and the whale (Miller *et al.*, 1997). Western Geophysical (1999) believes it is unlikely that changes in migration route will occur at distances greater than 25 km (13 nm) from an array of maximum volume of 1,210 in³ operating in water less than 30 m (100 ft) deep. However, subtle changes in

behavior might occur out to longer distances. Inupiat whalers believe that bowheads begin to divert from their normal migration path more than 35 miles away (MMS, 1997).

It is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, Western Geophysical will participate in a C&AA with the whalers to reduce any potential interference with the hunt. Also, it is believed that the monitoring plan proposed by Western Geophysical (1999; also see LGL Ltd. and Greeneridge Sciences Inc, 1999b) will provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowheads to hunters.

Many Nuiqsut hunters hunt seals intermittently year-round. However, during recent years, most seal hunting has been during the early summer in open water. In summer, boat crews hunt ringed, spotted and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island. This area overlaps with the westernmost portion of the planned seismic area. In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals. However, these subsistence hunters have not perceived any interference between recent open-water seismic activities in the Alaskan Beaufort Sea. Therefore, because Western Geophysical is proposing similar mitigation and consultation procedures this year, it is unlikely that seismic activities would have more than a negligible impact on Nuiqsut seal hunting.

Mitigation

This year, Western Geophysical will reduce its airgun array from the 1,500 in³ used in 1998 to 1,210 in³ and investigate whether it is practical to modify the design to reduce horizontal propagation of sound. These changes are expected to result in lower received levels and therefore smaller safety ranges and reduced takes by harassment than in 1998. However, because the 1,210 in³ array is a subset (with some minor variations) of the 1,500 in³ array (with 4 guns not firing), NMFS proposes to prohibit Western Geophysical from firing more than the 8 airguns that total 1,210 in³ during the 1999 open water seismic survey without an amendment to the IHA (if issued).

Vessel-based observers will monitor marine mammal presence in the vicinity of the seismic array throughout the seismic program. To avoid the potential

for serious injury to marine mammals, Western Geophysical proposes to power down the seismic source if pinnipeds are sighted within the area delineated by the 190 dB isopleth or 240 m (787.4 ft) from the array operating at 5 m (16.4 ft) depth or 80 m (262.5 ft) from the array operating at 2 m (6.6 ft) depth. Western Geophysical will power down the seismic source if bowhead, gray, or beluga whales are sighted within the area delineated by the 180 dB isopleth or within 750 m (2,460.6 ft) of the array operating at 5 m (16.4 ft) depth or 360 m (1,181.1 ft) of the array operating at 2 m (6.6 ft) depth. However, because these safety zones were based on the 1998 array configuration, within the first 10 days of Beaufort Sea operations in 1999, Western Geophysical will measure and analyze the sounds from Western's 1999 array operating at both 5 m (16.4 ft) and 2 m (6.6 ft) depths. This information will be provided to NMFS, along with the contractor's recommendation as to whether any adjustments in the safety radii are needed to meet the 190 and 180 dB_{rms} shutdown criteria.

In addition, Western Geophysical proposes to ramp-up the seismic source to operating levels at a rate no greater than 6 dB/min anytime the array has not been firing for 1–2 minutes (depending upon vessel speed). Ramp-up will begin with an air volume discharge not exceeding 80 in³ with additional guns added at intervals appropriate to limit the rate of increase to 6 dB/min.

Monitoring

As part of its application, Western Geophysical provided a monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea. This monitoring plan is described in Western Geophysical (1999) and in LGL Ltd. and Greeneridge Sciences Inc. (1999b). As required by the MMPA, this monitoring plan will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

Preliminarily, Western Geophysical plans to conduct the following:

Vessel-based Visual Monitoring

It is proposed that one or two biologist-observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress, and for at least 30 minutes prior to planned start of shooting. These observers will scan the area immediately around the vessels with reticle binoculars during the daytime supplemented with night-vision equipment during the night (prior to mid-August, there are no hours of

darkness). In addition, Western Geophysical proposes to experiment with the illumination of the safety zone with high-intensity lighting this year.

A total of four observers (three trained biologists and one Inupiat observer/communicator) will be based aboard the seismic vessel. Use of four observers is an increase over 1998 and will allow two observers to be on duty simultaneously for up to 50 percent of the active airgun hours. Use of two observers will increase the probability of detecting marine mammals and two observers will be required to be on duty whenever the seismic array is ramped up. Individual watches will normally be limited to no more than 4 consecutive hours.

When mammals are detected within or about to enter the safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately.

Aerial Surveys

If the seismic program continues after August 31, Western Geophysical proposes to conduct daily aerial surveys, weather permitting, from September 4, 1999, until September 20, 1999, or until 1 day after the seismic program ends, if earlier than September 20. This reduction in survey effort is considered appropriate because some of the main questions about disturbance to bowheads from a nearshore seismic operation have been answered previously.

The primary objective will be to document the occurrence, distribution, and movements of bowhead and (secondarily) beluga and gray whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and to assess the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen. Aerial surveys will be at an altitude of 300 m (1,000 ft) above sea level. Western Geophysical proposes to fly at 457 m (1500 ft) altitude over areas where whaling is occurring on that date and to avoid direct overflights of whaleboats and Cross Island, where whalers from Nuiqsut are based during their fall whale hunt.

The daily aerial surveys are proposed to cover a grid of 14 north-south lines spaced 8 km (4.3 nm) apart and will extend seaward to about the 100 m (328 ft) depth contour (typically about 65 km (35 nm) offshore. This grid will extend from about 40 km (22 nm) east to 40 km

(22 nm) west of the area in which seismic operations are underway on that date. This design will provide extended coverage to the west to determine the westward extent of the offshore displacement of whales by seismic. In 1999, no "intensive" grid surveys are planned, as conducted in previous years.

Detailed information on the survey program can be found in Western Geophysical (1999) and in LGL Ltd. and Greeneridge Sciences Inc. (1999b), which are incorporated in this document by citation.

Acoustical Measurements

The acoustic measurement program proposed for 1999 is designed to be continue work conducted in 1996 through 1998 (see LGL and Greeneridge Sciences Inc., 1997, 1998, 1999a). The acoustic measurement program is planned to include (1) vessel-based acoustic measurements, (2) OBC-based acoustic measurements, (3) use of air-dropped sonobuoys and (4) bottom-mounted acoustical recorders.

(1) A vessel-based acoustical measurement program is proposed for a few days early in the seismic program. The objectives of this survey will be as follows: (a) To measure the levels and other characteristics of the horizontally propagating seismic survey sounds from the type of airgun array to be used in 1999 as a function of distance and aspect relative to the seismic source vessel and in relation to the operating depth of the airguns, and (b) to measure the levels and frequency composition of the vessel sounds emitted by vessels used regularly during the 1999 program in those cases when these vessels have not previously been measured adequately.

(2) Western Geophysical and its proposed consultant (Greeneridge Sciences) will use recorded signals from Western's OBC system to help document horizontal propagation of the seismic survey pulses.

(3) Sonobuoys will be dropped and monitored from bowhead survey aircraft during September 4 through 20, 1999 (if the seismic operations are continuing at that time). Sonobuoys will provide data on characteristics of seismic pulses (and signal-to-ambient ratios) at offshore locations, including some of those places where bowhead whales are observed.

(4) Autonomous seafloor acoustic recorders will be placed on the sea bottom at three locations to record low-frequency sounds nearly continuously for up to 3 weeks at a time during September (if seismic operations are continuing at that time). Information

includes characteristics of the seismic pulses, ambient noise, and bowhead calls.

For a more detailed description of planned monitoring activities, please refer to the application and supporting document (Western Geophysical, 1999; LGL Ltd. and Greeneridge Sciences Inc., 1999b).

Estimates of Marine Mammal Take

Estimates of takes by harassment will be made through vessel and aerial surveys. Preliminarily, Western Geophysical will estimate the number of (a) marine mammals observed within the area ensonified strongly by the seismic vessel; (b) marine mammals observed showing apparent reactions to seismic pulses (e.g., heading away from the seismic vessel in an atypical direction); (c) marine mammals subject to take by type (a) or (b) here when no monitoring observations were possible; and (d) bowheads displaced seaward from the main migration corridor.

Reporting

Western Geophysical will provide an initial report on 1999 activities to NMFS within 90 days of the completion of the seismic program. This report will provide dates and locations of seismic operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by Western Geophysical within 20 working days of receipt of the document from the contractor, but no later than April 30, 2000. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act (ESA), NMFS completed an informal consultation on the issuance of an IHA for similar activities on July 23, 1998. If an authorization to incidentally harass listed marine mammals is issued under the MMPA, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act (NEPA)

In conjunction with the 1996 notice of proposed authorization (61 FR 26501, May 28, 1996) for open water seismic operations in the Beaufort Sea, NMFS released an EA that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. No comments were received on that

document and, on July 18, 1996, NMFS concluded that neither implementation of the proposed authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an environmental impact statement on this action is not required by section 102(2) of NEPA or its implementing regulations.

While this year's activity is a continuation of the seismic work conducted between 1996 and 1998, NMFS determined that a new EA was warranted based on the proposed construction of the Northstar project, the collection of data from 1996 through 1998 on Beaufort Sea marine mammals and the impacts of seismic activities on these mammals, and the analysis of scientific data indicating that bowheads avoid nearshore seismic operations by up to about 20 km (10.8 nm). Accordingly, a review of the impacts expected from the issuance of an IHA has been assessed in detail in the EA and in this document, and NMFS has preliminarily determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization and that there will not be any unmitigable impacts to subsistence communities, provided the mitigation measures required under the authorization are implemented.

Conclusions

NMFS has preliminarily determined that the short-term impact of conducting seismic surveys in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and possibly pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed seismic activity in waters generally too shallow and distant from the edge of the pack ice for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no

take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact subsistence hunting of bowhead whales prior to that date. After September 4, 1999, aerial survey flights for bowhead whale assessments will be initiated. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between Western Geophysical and subsistence users.

Also, while open-water seismic exploration in the U.S. Beaufort Sea has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta, and (3) the zone of influence by seismic sources on beluga and seals is fairly small, NMFS believes that Western Geophysical's seismic survey will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Proposed Authorization

NMFS proposes to issue an IHA for the 1999 Beaufort Sea open water season for a seismic survey provided the above mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of bowhead whales, beluga whales, ringed seals, bearded seals, and possibly spotted seals and gray whales; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request (see ADDRESSES).

Dated: May 21, 1999.

Hilda Diaz-Soltero,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 99-13565 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052499A]

Atlantic Highly Migratory Species and Billfish Advisory Panels; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a joint meeting of the Atlantic Highly Migratory Species (HMS) and Billfish Advisory Panels (APs) to discuss management issues under consideration.

DATES: The joint HMS/Billfish AP meeting will be held on Thursday, June 10, 1999, from 1:00 p.m. to 4:00 p.m., and from 8:00 a.m. to 4:00 p.m. on Friday, June 11, 1999. A public comment session will be held from 4:00 p.m. to 6:00 p.m. on Thursday, June 10, 1999.

ADDRESSES: The APs will meet at the NOAA Science Center, 1301 East-West Highway, Silver Spring, Maryland 20910. Informational materials related to the AP meetings are available from Alicon Morgan, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, Maryland 20910. The public comment session will be held at the same location.

FOR FURTHER INFORMATION CONTACT: Alicon Morgan or Pat Wilbert at 301-713-2347, or Jenny Lee at 727-570-5447.

SUPPLEMENTARY INFORMATION: The HMS and Billfish APs were established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1901 *et seq.* The APs assist the Secretary of Commerce in collecting and evaluating information relevant to the management of Atlantic tunas, swordfish, and sharks, and Billfish. All AP meetings are open to the public and are attended by members of the AP, including appointed members, representatives of the five fishery management councils that work with Atlantic HMS, and the Chair, or his or

her representative, of the U.S. Advisory Committee to the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Agenda items for the joint AP meeting will include:

1. Analysis of time/area closures to protect HMS;
2. Bluefin Tuna purse seine quota allocation; and
3. Other issues.

The public is reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, a NMFS representative will explain the ground rules (e.g. alcohol in the meeting room is prohibited, attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, and attendees should not interrupt one another). The NMFS representative will attempt to structure the session so that all attending members of the public are able to comment, if they so choose, regardless of the controversiality of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the meeting.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Alicon Morgan (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Dated: May 21, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 99-13564 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051899D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Council (Council) will hold its 100th meeting in Honolulu, HI.

DATES: The full Council meeting will be held on June 16-18, 1999. The Council's Standing Committees will meet on June 15, 1999. See SUPPLEMENTARY INFORMATION for specific times.

ADDRESSES: The 100th Council meeting will be held at the Hibiscus Ballroom, Ala Moana Hotel, 410 Atkinson Road Honolulu, HI; telephone: (808) 955-4811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION:

June 15, 1999

7:30 a.m. to 9:30 a.m.—Enforcement/Vessel Monitoring System (VMS)

9:30 a.m. to 11:30 a.m.—International Fisheries/Pelagics Fisheries

10:00 a.m. to 11:30 a.m.—Bottomfish Fisheries

1:00 p.m. to 3:00 p.m.—Ecosystem & Habitat

1:30 p.m. to 3:00 p.m.—Native and Indigenous Rights

3:00 p.m. to 4:00 p.m.—Precious Corals Fisheries

3:00 p.m. to 4:00 p.m. — Crustaceans Fisheries, and

4:00 p.m. to 6:00 p.m. — Executive/Budget & Program.

The full Council will meet on June 16, 17 and 18, 1999, from 8:30 a.m. to 5:00 p.m., each day.

June 16-18, 1999

The agenda during the full Council meeting will include the items here. The order in which agenda items will be addressed can change. The Council will meet as late as necessary to complete its scheduled business.

1. Introductions
2. Approval of Agenda
3. Approval of 99th Meeting Minutes
4. Island Reports

A. American Samoa

B. Guam

C. Hawaii

D. Northern Mariana Islands (NMI)

5. Enforcement

A. U.S. Coast Guard enforcement activities

B. NMFS enforcement activities and status of violations

C. Cooperative agreements for Guam

D. Illegal immigration related to the foreign fishing fleet

E. Update on U.S. Customs harassment of fishermen

6. VMS

A. Hawaii VMS report

B. Report on Marine Fisheries Advisory Committee meeting

C. Report on Forum Fisheries Agency Monitoring, Control and Surveillance Working Group Meeting

D. Advisory Panel recommendations regarding VMS

7. Ecosystems and Habitat

A. Draft Coral Reef Ecosystem Fishery Management Plan (FMP), including review of first draft and representative maps for Essential Fish Habitat. The Council may take initial action to select preferred management alternatives for various permit requirements, prohibitions, allowable practices, marine protected areas and framework process; preliminary identification of management unit species/taxa, management unit areas, essential fish habitat and habitat areas of particular concern.

B. Scientific and Statistical Committee (SSC) recommendations

8. Native and Indigenous Rights issues

A. Marine conservation plans for American Samoa and Guam

B. Native and Indigenous Rights Advisory Panel recommendations relating to an amendment to the Endangered Species Act so that a take of green sea turtles for cultural purposes is permitted in Hawaii, American Samoa, Guam and the NMI; set aside for Western Pacific Community Development Programs consisting of 30 Hawaii longline limited access permits and/or 20 percent of the annual harvest guideline for the Northwestern Hawaiian Islands (NWHI) lobster fishery; and an amendment to the Magnuson-Stevens Act which would require that representatives of the indigenous peoples of the Western Pacific be appointed to the Council.

9. Pelagic FMP issues

A. 1st quarter reports for Hawaii and American Samoa longline fisheries

B. Akule and opelu study

C. Yellowfin and bigeye tagging in Hawaii

D. Council authority with respect to remote Pacific insular areas

E. Issues relating to shark incidental catch and shark finning/utilization in the Hawaii-based longline fishery

F. The Council will assess whether the bottom longline gear currently being used to harvest coastal sharks in Hawaii is detrimental to conservation and management efforts. The Council may decide to proceed with further action concerning the use of this gear.

G. Albatross/longline interactions in the Hawaii-based longline fishery, including the recommendations from the 1998 Blackfooted Albatross Population Dynamics Workshop. The Council will review the results of NMFS and Council longline-albatross

mitigation projects and discuss which mitigation measures are most appropriate for the Hawaii-based longline fishery. This will be the first meeting under the Council's two-meeting framework process for implementing "new management measures." While final action will not be taken, the Council might adopt a preferred alternative.

H. Turtle/longline interactions; including effective alternatives to mitigate longline-turtle interactions in the Hawaii-based longline fishery

I. International meetings

J. Recreational fisheries data task force

K. Final action on Data Regulatory Amendment. The Council is considering final action on a comprehensive permit and logbook requirement for all non-longline vessels harvesting pelagic management unit species in the exclusive economic zone waters off Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Midway Island, Kingman Reef, Palmyra Atoll, and Wake Island. Further, vessels holding a Hawaii longline limited access or longline general permit might be required to submit a logbook to NMFS regardless of the port of landing in the Pacific region. This meeting shall serve as a public hearing for the proposed Council action. This is the second Council meeting considering this "new measure" under the Pelagics FMP's framework procedure.

L. Pelagic Advisory Panel recommendations relating to enforcement and vessel monitoring systems on domestic and foreign fishing boats; management initiatives for the American Samoa longline fishery; international management of tunas in the Central-West Pacific and reduction of bycatch of small tunas in Pacific purse seine fisheries; incidental longline catches of billfish and use of archival tagging for management data, management of shark fishing and marketing of shark products, pelagic fisheries interactions; use of circle hooks to reduce bycatch of protected species in the Hawaii longline fishery; economic impact analysis of recreational fisheries in the Western Pacific Region, studies on effect of blue dyed bait on longline catch rates.

M. Pelagic Plan Team recommendations

N. SSC recommendations

10. Bottomfish FMP issues

A. Overview of the Northwestern Hawaiian Islands Mau Zone limited entry program

B. Hoomalu Zone permit review

C. 1998 draft bottomfish annual report recommendations

D. Report on state bottomfish management in Main Hawaiian Islands (MHI), including status of Federal list of overfished stocks, final report on genetic stock structure of onaga and ehu, genetic research needs for hapu'upu'u

E. Plan Team/Advisory Panel recommendations, including draft annual report recommendations, recommending changes to the Marine Mammal Protection Act regarding the fishermen reporting interactions with marine mammals without the possibility of self-incrimination.

F. SSC recommendations

11. Precious corals FMP issues

A. Recent research and surveys have provided new information on precious corals in the waters around Hawaii, including information on the size and condition of certain classified precious coral beds, potential increases in fishing pressure on black corals, the presence of a new precious coral bed near French Frigate Shoals and the possible importance of precious coral beds as foraging areas for Hawaiian monk seals. Based on this new information, the Council's precious corals plan team and advisory panel have recommended modifications to the precious corals FMP. Possible changes in the FMP include suspending the harvest quota for live gold coral at the Makapu'u Bed; redefining live precious coral as precious coral that has live coral polyps or tissue and redefining dead precious coral as precious coral that no longer has any live coral polyps or tissue; applying size limits to harvested live coral only; implementing a minimum size limit for black coral; prohibiting the use of non-selective gear except for scientific research activity; prohibiting the harvest of pink coral from any established or conditional bed unless it has attained a minimum height of 10 inches; revising the boundaries of Brooks Bank; increasing the annual harvest quota for live pink coral at Brooks Bank; suspending the harvest quota for live gold coral at Brooks Bank; restricting the harvest quota for all types of live precious coral at the newly-discovered bed near French Frigate Shoals; and revising the fishing logbooks to require additional information. This will be the first meeting under the Council's two-meeting framework process for implementing "new management measures". While final action will not be taken, the Council might adopt a preferred alternative.

B. Proposed changes in State of Hawaii regulations

C. Plan Team/Advisory Panel recommendations

D. SSC recommendations

12. Crustaceans FMP issues (NWHI lobster fishery)

A. 1998 Draft Annual Report

B. NWHI 1999 harvest guidelines and data collectors

C. NMFS tagging research on NWHI lobster stocks

D. Necker Island Refuge Boundary

E. Plan Team/Advisory Panel recommendations

F. SSC recommendations

13. Program Planning

A. Review of Pelagic Fisheries

Research Program Terms of Reference

B. Disapproval of American Samoa Area Closure

C. Addressing disapproved sections of Council's Sustainable Fisheries Act amendment related to bycatch, overfishing and fishing communities

D. Program planning document

E. Magnuson-Stevens Act amendments

F. Advisory Panel Chairman Outreach Plan

G. Marine Fisheries Advisory Committee Meeting

H. Carbon monoxide-treated tuna update

I. Western Pacific Fisheries Information Network

J. SSC recommendations

14. Administrative Matters

A. Administrative reports

B. Statement of Organizational Practices and Procedures

C. Appointments to advisory bodies

D. Meetings and workshops

E. 101st Council Meeting

F. Advisory Panel recommendations

G. Standing Committee recommendations

15. Other Business

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to meeting date.

Dated: May 20, 1999.

Bruce C. Morehead,

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

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BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033099C]

Notice of Availability of Draft Stock Assessment Reports

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS has revised the Alaska, Atlantic, and Pacific marine mammal stock assessment reports in accordance with the Marine Mammal Protection Act (MMPA). Draft revised 1999 reports are available for public review and comment.

DATES: Comments must be received by August 26, 1999.

ADDRESSES: Send requests for printed copies of the draft Reports to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Stock Assessments. Copies of the regional reports may also be requested from Douglas P. DeMaster, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115-0070 (Alaska); Richard Merrick, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 (Atlantic); and Irma Lagomarsino, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802-4213 (Pacific). Electronic copies of the reports can be found at http://www.nmfs.gov/prot_res/mammals/sa_rep/sar.html.

FOR FURTHER INFORMATION CONTACT: Cathy Eisele, Office of Protected Resources, NMFS, at (301) 713-2322, Douglas P. DeMaster (206) 526-4045, regarding Alaska regional stock assessments; Irma Lagomarsino, (310) 980-4020, regarding Pacific regional stock assessments; or Richard Merrick, (508) 495-2311, or Steven Swartz, (305) 361-4487, regarding Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments reports for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population

growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

The MMPA also requires NMFS and FWS to review these reports annually for strategic stocks of marine mammals and at least every 3 years for stocks determined to be non-strategic. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups, has reviewed the MMPA status of marine mammal stocks, and has revised reports for which significant new information was available. Tables 1-3 contain lists of all the stock assessment reports which NMFS has revised. Tables 1-3 also detail changes that have been made to their estimated abundance, human-caused mortality, or other relevant items. NMFS solicits public comments on these draft revised Alaska, Atlantic, and Pacific reports.

NMFS has chosen to label these reports the 1999 Stock Assessment Reports, as the intent is to finalize and publish these reports in 1999. It should be noted that the previous reports, labeled the 1998 Stock Assessment Reports, were finalized on February 19, 1999 (64 FR 8323).

Alaska Stocks

NMFS, in conjunction with the Alaska Scientific Review Group, reviewed information available for all strategic stocks of Alaska marine mammals under its authority, as well as for several other stocks. A total of 13 of the 33 Alaska stock assessment reports were revised for 1999 (Table 1). Most proposed changes to the stock assessment reports incorporate new information into mortality estimates. The revised stock assessment reports include western U.S. Steller sea lions, eastern U.S. Steller sea lions, all five beluga whale stocks (Cook Inlet, Bristol Bay, Eastern Bering Sea, Eastern Chukchi Sea, and Beaufort Sea), western North Pacific humpback whales, central North Pacific humpback whales, Baird's beaked whales, Stejneger's beaked whales, and Cuvier's beaked whales. In addition, the stock assessment report for the Eastern North Pacific transient killer whale stock was revised and moved to the Pacific region document. The new information on abundance and mortality did not change the status (strategic or not) of any of these 13 Alaska stocks relative to the last time the respective stock assessment report was revised (1996 or 1998).

Fishery mortality sections in the revised reports have been updated to include observer program, fisher self-reporting, and stranding data through

1997, where possible. Similarly, subsistence harvest information through 1997 has been included for those stocks which are taken by Alaska Natives for subsistence purposes. New abundance estimates are available and have been included in the revised assessments for two stocks: western U.S. Steller sea lions and Cook Inlet beluga whales. New Potential Biological Removal level (PBR) estimates have been calculated for those stocks having new abundance estimates.

Atlantic Stocks

The 1999 Atlantic stock assessment reports (including the Gulf of Mexico) were prepared by staff of the Northeast Fisheries Science Center and Southeast Fisheries Science Center. NMFS staff presented the Reports at the November 1998 meeting of the Atlantic Scientific Review Group and subsequent revisions were based on their contributions and constructive criticism.

Major revisions and updating of the stock assessment reports were completed only for Atlantic Coast strategic stocks and Atlantic Coast and Gulf of Mexico stocks for which significant new information was available. The stock definitions were changed for four Atlantic stocks (Sei whale; gray, harp and hooded seal) based on stock area definitions used by international scientific organizations (i.e., the International Whaling Commission and the International Council for Exploration of the Sea).

Table 2 contains a summary, by species, of the information included in the stock assessments, and also indicates those assessments that have been revised since the 1998 publication. A total of 31 of the 60 Atlantic and Gulf of Mexico stock assessment reports were revised for 1999. Most proposed changes incorporate new information into mortality estimates. The revised stock assessment reports include 14 strategic and 17 non-strategic stocks. Information on human interactions (fishery and ship strikes) between the North Atlantic right whale, North Atlantic humpback whale, and Canadian east coast minke whale stocks were re-reviewed and updated. Further, the status of three western North Atlantic stocks (Atlantic spotted dolphin, pantropical spotted dolphin, and dwarf sperm whale) were changed to non-strategic because the 5-year (1993-1997) mean annual mortalities in fishing operations were below PBR. Conversely, the western North Atlantic stock of long-finned pilot whale was changed to strategic.

Pacific Stocks

NMFS reviewed new information pertaining to the status of all stocks within the Pacific Region (including Hawaii) and, in consultation with the Pacific Scientific Review Group, decided that there was sufficient new information to warrant the revision of assessment reports for 11 stocks (Table 3). The draft stock assessment reports for 1999 include four written by staff of the National Marine Mammal Laboratory: Oregon and Washington Coast Harbor Porpoise, Inland Washington Harbor Porpoise, Eastern North Pacific Southern Resident Killer Whale and Eastern North Pacific Transient Killer Whale. The Southwest Fisheries Science Center personnel prepared stock assessments for the following seven stocks: Hawaiian Monk Seal, Central California Harbor Porpoise, Northern California Harbor Porpoise, Eastern North Pacific Offshore Killer Whale, California/Oregon/ Washington Short-finned Pilot Whale, California/Oregon/Washington Sperm Whale, and California/Oregon/Washington-Mexico Humpback Whale.

In the draft 1999 stock assessment reports, fishery mortality sections have been updated to include information on fishery mortality, fisher self-reporting, and stranding data through 1997, where possible. New abundance estimates are available and have been included for 10 of the 11 stocks. Additional information on historic whaling has been included for sperm whales, and several distribution maps have been revised to include survey data through 1996 and to exclude data from the 1970s and early 1980s that are now considered outdated. The recovery factor was revised for four stocks (central California harbor porpoise, California/Oregon/ Washington short-finned pilot whale, eastern North Pacific southern resident killer whale and eastern North Pacific transient killer whale). The previous California/Oregon/Washington Killer Whale stock has been eliminated, based on new information on stock structure of eastern North Pacific killer whales. The animals from this stock have now been divided among two other stocks: (1) The existing Eastern North Pacific Transient stock, whose range description has been expanded southward to include California, and (2)

a new 'Eastern North Pacific Offshore' stock, ranging from Southeast Alaska to California. The Eastern North Pacific Transient Killer Whale stock, which was previously published in the stock assessment reports for the Alaska Region, has also been moved and is now included with the 1999 Pacific Region reports.

There were no changes in the status of any of the 11 Pacific Region stocks, with four remaining strategic and seven non-strategic. The four strategic stocks include three stocks of endangered species that are automatically considered strategic, and the California/Oregon/ Washington short-finned pilot whale, for which a take reduction plan has been implemented.

New information may become available during the comment period for these draft stock assessment reports. This new information may be incorporated into final stock assessment reports without additional public review and comment if incorporation of the new information does not change the status of the affected stock (e.g., strategic to non-strategic).

BILLING CODE 3510-22-P

Table 1--list of Alaska Marine Mammal Stocks Which Have Revised 1999 Stock Assessment Reports.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality	Annual Fish. Mortality	Strategic Status
Steller sea lion	Western US	AKC	~~38,893~~ 38,067	0.12	~~0.15~~ 0.10	~~350~~ 228	~~444~~ 442	~~32~~ 30	Y
Steller sea lion	Eastern US	AKC	30,403	0.12	0.75	1,368	19	~~15~~ 16	Y
Beluga whale	Beaufort Sea	AKC	32,453	0.04	1.0	649	~~160~~ 184.0	0.0	N
Beluga whale	Eastern Chukchi Sea	AKC	3,710	0.04	1.0	74	~~54~~ 68	0.0	N
Beluga whale	Eastern Bering Sea	AKC	6,439	0.04	1.0	129	~~127~~ 122	0.0	N
Beluga whale	Bristol Bay	AKC	1,316	0.04	1.0	26	~~20~~ 19	1	N
Beluga whale	Cook Inlet	AKC	~~712~~ 273	0.04	~~1.0~~ 0.5	~~14~~ 2.7	~~72~~ 87	0.0	Y
Baird's beaked whale	Alaska	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Cuvier's beaked whale	Alaska	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Stejneger's beaked whale	Alaska	AKC	N/A	0.04	0.5	N/A	0.0	0.0	N
Humpback whale	Western North Pacific	AKC	394	0.04	0.1	0.7	~~0.0~~ 0.2	~~0.0~~ 0.2	Y
Humpback whale	Central North Pacific	AKC	3,698	0.04	0.1	7.4	~~1.6~~ 1.4	~~1.2~~ 1.0	Y

Table 2--list of Atlantic Marine Mammal Stocks Which Have Revised 1999 Stock Assessment Reports.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality	Annual Fish. Mortality	Strategic Status
Harbor seal	Western North Atlantic	NEC	30,990	0.12	1.0	1,859	~~898~~ 934	~~898~~ 934	N
Gray seal	~~Northwest~~ Western North Atlantic	NEC	~~2010~~ NA	~~0.12~~ NA	~~1.0~~ NA	~~122~~ NA	~~41~~ 70	~~41~~ 70	N
Harp seal	~~Northwest~~ Western North Atlantic	NEC	N/A	N/A	N/A	N/A	394	394	N
Hooded seal	~~Northwest~~ Western North Atlantic	NEC	N/A	N/A	N/A	N/A	5.6	5.6	N
Harbor porpoise	Gulf of Maine/Bay of Fundy	NEC	48,289	0.04	0.5	483	~~1,667~~ 1,895	~~1,667~~ 1,895	Y
Risso's dolphin	Western North Atlantic	NEC	11,140	0.04	~~0.5~~ 0.48	~~111~~ 107	~~18.3~~ 7.2	~~18.3~~ 7.2	N
Atlantic white-sided dolphin	Western North Atlantic	NEC	19,196	0.04	~~0.5~~ 0.48	~~192~~ 184	~~218~~ 291	~~218~~ 291	Y
Common dolphin	Western North Atlantic	NEC	16,060	0.04	~~0.5~~ 0.48	~~161~~ 154	~~247~~ 780	~~247~~ 780	Y
Atlantic spotted dolphin	Western North Atlantic	NEC	1,617 ¹	0.04	0.5	16	~~19.9~~ 9.9 ²	~~19.9~~ 9.9 ²	~~Y~~ N
Pantropical spotted dolphin	Western North Atlantic	NEC	1,617 ¹	0.04	0.5	16	~~19.9~~ 9.9 ²	~~19.9~~ 9.9 ²	~~Y~~ N
Bottlenose dolphin	Western North Atlantic, offshore	NEC	8,794 ³	0.04	0.5	88	~~58~~ 10	~~58~~ 10	N
Bottlenose dolphin	Western North Atlantic, coastal	SEC	2,482	0.04	0.5	25	29	29	Y
Dwarf sperm whale	Western North Atlantic	SEC	N/A	0.04	N/A	N/A	~~0.2~~ 0.0	~~0.2~~ 0.0	~~Y~~ N
Pygmy sperm whale	Western North Atlantic	SEC	N/A	0.04	N/A	N/A	0.00	0.00	N
Cuvier's beaked whale	Western North Atlantic	NEC	895 ⁴	0.04	0.5	8.9	9.7	9.7 ⁵	Y
Mesoplodon beaked whale	Western North Atlantic	NEC	895 ⁴	0.04	0.5	8.9	9.7	9.7 ⁵	Y

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality	Annual Fish. Mortality	Strategic Status
Pilot whale, long-finned (<i>Globicephala</i> sp.)	Western North Atlantic	NEC	4,968 ⁶	0.04	~~0.5~~ 0.48	~~50~~ 48	~~32~~ 87	~~32~~ 87 ⁷	~~N~~ Y
Pilot whale, short-finned	Western North Atlantic	NEC	457	0.04	0.48	4.4	~~32~~ 87	~~32~~ 87 ⁷	Y
Sperm whale	Western North Atlantic	NEC	1,617	0.04	0.1	3.2	0.00	0.00	Y
North Atlantic right whale	Western North Atlantic	NEC	295	0.025	0.1	0.4	~~2.3~~ 1.8	1.0 ⁸	Y
Humpback whale	Western North Atlantic	NEC	10,019	0.065	0.1	32.6	~~5.7~~ 5.4	4.4 ⁹	Y
Fin whale	Western North Atlantic	NEC	~~1,803~~ 1,704	0.04	0.1	~~3.4~~ 3.6	0.5	0.20	Y
Sei whale	Western North Atlantic Nova Scotia	NEC	N/A	0.04	0.1	N/A	0.00	0.00	Y
Minke whale	Canadian east coast	NEC	2,145	0.04	0.5	21	~~0.8~~ 5.8	~~0.8~~ 4.8	N
Blue whale	Western North Atlantic	NEC	N/A	0.04	0.1	N/A	0.00	0.00	Y
Bottlenose dolphin	Gulf of Mexico bay, sound, and estuarine	SEC	3,933	0.04	0.5	39.7	N/A	N/A	Y
Dwarf sperm whale	Northern Gulf of Mexico	SEC	N/A	0.04	N/A	N/A	0.00	0.00	~~Y~~ N
Pygmy sperm whale	Northern Gulf of Mexico	SEC	N/A	0.04	N/A	N/A	0.00	0.00	~~Y~~ N

1. This value includes either or both of *Stenella frontalis* or *Stenella attenuata*.
2. Mortality data are not separated by species; therefore, species-specific estimates are not available. The mortality estimate represents both Atlantic and Pantropical spotted dolphins.
3. Estimates may include sightings of the coastal form.
4. This estimate includes Cuvier's beaked whales and *Mesoplodon* spp. beaked whales.
5. This is the average mortality of beaked whales (*Mesoplodon* spp.) based on 5 years of observer data. This annual mortality rate includes an unknown number of Cuvier's beaked whales.
6. This estimate may include both long-finned and short-finned pilot whales.
7. Mortality data are not separated by species; therefore, species-specific estimates are not available. This mortality estimate represents both long-finned and short-finned pilot whales.
8. This is the average mortality of right whales based on 5 years of observer data (0.0) and additional fishery impact records (1.0).
9. This is the average mortality of humpback whales based on 5 years of observer data (0.6) and additional fishery impact records (3.8).

Table 3--list of Pacific Marine Mammal Stocks Which Have Revised 1999 Stock Assessment Reports.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality	Annual Fish. Mortality	Strategic Status
Monk seal	Hawaii	SWC	~~1,366~~ 1,423	0.07	0.1	~~4.8~~ 5.0 ¹	N/A	N/A	Y
Harbor porpoise	Central California	SWC	~~3,431~~ 4,172	0.04	~~0.48~~ 0.50	~~33~~ 42	~~14~~ 24	~~14~~ 24	N
Harbor porpoise	Northern California	SWC	~~7,640~~ 8,061	0.04	0.5	~~76~~ 81	0.0	0.0	N
Harbor porpoise	Oregon/ Washington Coast	AKC	~~22,046~~ 32,769	0.04	0.5	~~220~~ 328	~~17~~ 12	~~17~~ 12	N
Harbor porpoise	Inland Washington	AKC	2,545	0.04	0.4	20	~~16~~ 15	~~16~~ 15	N
Killer whale	Eastern North Pacific Transient	AKC	~~198~~ 336	0.04	~~0.5~~ 0.45	~~2.0~~ 3.0	~~0.8~~ 2.0	~~0.8~~ 2.0	N
Killer whale	Eastern North Pacific Offshore	SWC	209	0.04	0.5	2.1	0.0	0.0	N
Killer whale	Eastern North Pacific Southern Resident	AKC	~~96~~ 89	0.04	~~1.0~~ 0.5	~~1.9~~ 0.9	0.0	0.0	N
Short-finned pilot whale	California/ Oregon/ Washington	SWC	~~741~~ 717	0.04	~~0.40~~ 0.48	~~5.9~~ 6.9	13	13	Y
Sperm whale	California/ Oregon/ Washington	SWC	~~896~~ 992	0.04	0.1	~~1.8~~ 2.0	~~4.5~~ 3.0	~~4.5~~ 3.0	Y
Humpback whale	California/ Oregon/ Washington - Mexico	SWC	~~563~~ 802	0.04	0.1	~~0.5~~ 0.8	~~1.8~~ 2.0	~~1.2~~ 1.4	Y

¹The Endangered Species Act takes precedence in the management of this species and, under the Act, allowable take is zero.

Dated: May 14, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 99-13433 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-22-C

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, William Ward, (202) 606-5000, extension 375. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565-2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C. 20503, (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Generic Customer Survey Clearance Request.

OMB Number: None.

Agency Number: None.

Affected Public: Current and future grantees and subgrantees of the

Corporation, members of the service programs operated by these grantees and subgrantees, and members of the communities receiving services from these service programs.

Total Respondents: 18,000.

Frequency: Annually.

Estimated Time Per Respondent: 30 minutes.

Estimated Annual Reporting or

Disclosure Burden: 9,000 hours.

Total Annualized Capital/startup costs: None.

Total Annualized Burden Costs: None.

Description: The Corporation's annual performance plans for fiscal year 1999 and 2000 set performance goals for AmeriCorps, Learn and Serve America, and the National Senior Service Corps. Included in the plans for each program are two types of customer surveys. One type is the customer satisfaction survey. Our Fiscal 2000 Performance Plan provides this description:

Customer Satisfaction Surveys. The Corporation's programs have many customers: program participants, grantees, community residents receiving services, local and state governments, and others. Gathering their perspectives on how well the Corporation is meeting their needs is an essential part of its commitment to continuous quality improvement. Targeted customer satisfaction surveys will be conducted annually, emphasizing how well the Corporation goes about its business of serving direct customers: the grantees and program participants.

The information from these surveys will be used to refine and improve the management of our programs so that we can better serve our grantees, subgrantees, and the participants in the service programs they operate. Moreover, we will be reporting each year to Congress, the results of these surveys as part of our annual performance report. The Corporation's annual performance plan includes specific measures derived from the proposed customer satisfaction surveys.

The second type of customer survey covered under this request for clearance is the *community impact rating survey*. The Fiscal 2000 Performance Plan provides this description:

Community Impact Ratings. This method assesses the impact of national service programs on the communities and organizations in which members serve. This assessment, or rating, consists of a survey of important community representatives. These informants should have first-hand knowledge of the quality and impact of the service work performed by members of national service programs. Each local

program nominates a small number of community representatives. These representatives are not employees of the grantee or the local program. They could be professionals working in the same setting as national service participants. The local program will have the option of referring to a list of typical community institutions suggested by the Corporation they should try to include in their roster of nominees. The Corporation would build a roster from the list of nominees.

The Corporation is seeking approval to conduct a series of customer surveys under an internal clearance process requiring no more than 10 days. These surveys are required to fulfill the above stated requirements. Over the course of the next several months, we will be designing and implementing customer satisfaction surveys and community impact rating surveys for each of our program activities. These include: AmeriCorps (State and National, VISTA, and the National Civilian Community Corps), Learn and Serve America (K-12, Higher Education, and Community-based programs) and the National Senior Service Corps (Retired and Senior Volunteer Program, Foster Grandparent Program, and the Senior Companion Program). The results of these surveys will be reported in our annual performance reports to Congress, beginning in March 2000.

Dated: May 24, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99-13633 Filed 5-27-99; 8:45 am]

BILLING CODE 6050-28-U

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.
ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between the Department of Education (ED) and the DoD that their records are being matched by computer. The record

subjects are ED delinquent debtors who may be current or former Federal employees receiving Federal Salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by the ED.

DATES: This proposed action will become effective June 28, 1999, and the matching may commence unless changes to the program are required due to public comment or by Congressional or by the Office of Management and budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202-4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. At (703) 607-2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and ED has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of debtors within the Federal Government so that ED can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between ED and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Education Federal Employee Salary Offset Coordinator, 400 Maryland Avenue, SW, ROB 3 Room 5114, Washington, DC 20202-5320.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was

submitted on May 11, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 21, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. Participating agencies:

Participants in this computer matching program are the Department of Education (ED) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The ED is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the match: The purpose of the match is to identify and locate any matched Federal personnel, employed, serving or retired, who owe delinquent debts to the Federal Government under certain programs administered by ED. ED will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by ED of the military service/employing agency in the case of military personnel (either active, reserve or retired) and current non-postal civilian employees, and to the Office of Personnel Management in the case of retired non-postal civilian employees, to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. Authority for conducting the match: The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 103-134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government); 31

U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); section 101(1) of Executive Order 12731; 4 CFR 101.1-105.5, Federal Claims Collection Standards; 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 34 CFR part 30 - Debt Collection and part 312 - Salary Offset for Federal Employees who are Indebted to the United States Under Programs Administered by the Secretary of Education. ED's authorization to collect through salary offset is covered by the Higher Education Act of 1965, as amended (Pub. L. 89-329).

D. Records to be matched: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

ED will use personal data from record system identified as 18-40-0024, entitled 'Title IV Program Files,' last published in the **Federal Register** at 59 FR 17351 on April 12, 1994.

DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 61 FR 32779 on June 25, 1996.

E. Description of Computer Matching Program: ED, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs ED administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the ED file against a DMDC computer database. The DMDC database, established under an interagency agreement between DoD, OPM, OMB, and the Department of the Treasury, consists of personnel records of non-postal Federal civilian employees and military members both active and retired. The 'hits' or matches will be furnished to ED. ED is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with ED's source file and for resolving any discrepancies or inconsistencies on an individual basis. ED will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by ED will contain data elements on approximately 3.7 million delinquent debtors.

The DMDC computer data base contains approximately 4.8 million records of active duty and retired military members including the Reserves and Guard and approximately 3.1 million records of active and retired non-postal Federal civilian employees.

F. Inclusive dates of the matching program: This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time on a six month basis. By agreement between ED and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for receipt of public comments or inquiries: Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202-4502. Telephone (703) 607-2943.

[FR Doc. 99-13443 Filed 5-27-99; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.
ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on June 28, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: May 19, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.09 DMDC

SYSTEM NAME:

Joint Duty Assignment Management Information System (*February 22, 1993, 58 FR 10854*).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Defense Manpower Data Center, DoD Center, Oracle/UNIX Computer Center, 400 Gigling Road, Seaside, CA 93955-6771.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'promotion board records' from entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 667, Joint Officer Management; Annual Report to Congress; and E.O. 9397 (SSN).'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information

is further restricted by the use of passwords which are changed periodically.'

* * * * *

S322.09 DMDC

SYSTEM NAME:

Joint Duty Assignment Management Information System.

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center, Oracle/UNIX Computer Center, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

All active duty officers who are serving or have served in billets designated as joint duty assignment positions; are attending or have completed joint professional military education schools; are joint specialty officers or nominees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information on billets includes service, unit identification code, normal tour length, rank, job title, skill and critical billet. Information on individuals includes social security number, joint duty qualification, departure reason, joint professional military education status, service, occupation, sex, date of rank and duty station.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 667, Joint Officer Management; Annual Report to Congress; and E.O. 9397 (SSN).

PURPOSE(s):

To allow the Department of Defense to monitor Joint Duty Assignment positions and personnel and to report to the Congress as required by Title IV, Chapter 38, Section 667 (Annual Report to Congress) of the DoD Reorganization Act of 1986; Pub. L. 99-433.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored on disk.

RETRIEVABILITY:

Records may be retrieved by individual identifier such as social security number or by demographic characteristic.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Individuals should provide information that contains the full name, social security number, current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD SOURCE CATEGORIES:

The military services and Office of the Joint Chiefs of Staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-13115 Filed 5-27-99; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF DEFENSE**Department of the Navy****Privacy Act of 1974; System of Records**

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend Record System.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on June 28, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350-2000. **FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685-6545 or DSN 325-6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: May 19, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05819-1

SYSTEM NAME:

Article 69 Petitions (*February 22, 1993, 58 FR 10779*).

CHANGES:**SYSTEM IDENTIFIER:**

Delete entry and replace with 'N05814-4'.

SYSTEM NAME:

Delete entry and replace with 'Article 69(b) Petitions'.

SYSTEM LOCATION:

Delete entry and replace with 'Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Navy and Marine Corps personnel who were tried by courts-martial which were not reviewed by the Navy-Marine Corps Court of Criminal Appeals and when such service member has petitioned the Judge Advocate General pursuant to Article 69(b), Uniform Code of Military Justice, for review.'

* * * * *

N05814-4

SYSTEM NAME:

Article 69(b) Petitions.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who were tried by courts-martial which were not reviewed by the Navy-Marine Corps Court of Criminal Appeals and when such service member has petitioned the Judge Advocate General pursuant to Article 69(b), Uniform Code of Military Justice, for review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual service member's petition together with all forwarding endorsements and copy of action taken by the Judge Advocate General with supporting memorandum.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 69, Uniform Code of Military Justice (10 U.S.C. 869).

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 869(b) and to

provide a central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are maintained in chronological calendar order with alphabetical cross-referencing system.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy-Marine Corps Appellate Review

Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records comprise of the following source materials: (1) Petitions for relief, (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of courts-martial (above information is omitted if petitioner is former service member), and (3) action of the Judge Advocate General on petition.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99-13114 Filed 5-27-99; 8:45 am]

BILLING CODE 5001-10-F

DEPARTMENT OF EDUCATION

[CFDA No. 84.184K and 84.184L]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools Program; Extending Application Deadline Dates for Fiscal Year 1999

AGENCY: Department of Education.

SUMMARY: The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General, extends the deadline date for the receipt of applications for grants under the Interagency Safe Schools/Health Students Initiative (CFDA No. 84.184L). The Secretary also extends the deadline date for receipt of applications for grants under the Middle School Drug Prevention and School Safety Program Coordinators Grant Program (CFDA No. 84.184K). These extensions apply to applicants located in areas for which the Federal government issued a disaster declaration from April 9 through May 17, 1999. The Secretary takes these actions because of severe weather conditions in certain counties in eight States.

DATES: The deadline dates for receipt of applications under these two competitions are extended to June 14, 1999, from June 1, 1999.

Eligibility: This extension applies to applicants in the following States and counties:

Louisiana: Bossier, Caddo, Claiborne, and DeSoto.

Missouri: Madison and Cole.

Georgia: Candler and Dooly.

Oklahoma: Caddo, Canadian, Cleveland, Craig, Creek, Grady, Kingfisher, LeFlore, Lincoln, Logan, McClain, Noble, Oklahoma, Ottawa, Pottowattamie, and Tulsa.

Kansas: Sedgwick, Reno and Sumner.

Texas: Bowie and Red River.

Tennessee: Cheatham, Chester,

Davidson, Decatur, Dickson, Hardeman, Hardin, Henderson, Hickman, Houston, Humphreys, Lawrence, McNairy, Perry, Stewart, White, Williamson, and Sumner.

Colorado: Bent, El Paso, Larimer, Otero, and Weld.

Electronic Access to This Document

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<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the pdf, you must have the Adobe Acrobat Reader Program, which

is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

FOR INFORMATION CONTACT: Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6123. Telephone: (202) 260-9044. FAX: (202) 260-7767. Internet: <http://www.ed.gov/offices/OESE/SDFS>.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) upon request to the contact office listed above.

Authority: 20 U.S.C. 7131; 1221e-3.

Dated: May 25, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99-13766 Filed 5-27-99; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 99-27-NG]

City of Duluth, MN; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 1484 (Order 1484) on May 20, 1999, granting the City of Duluth, Minnesota (Duluth) authorization to import up to 6,120 MMBtu (approximately 6,120 Mcf) of natural gas per day from Canada and gas required for pipeline transportation. The term of the authorization is from November 1, 1999, through October 31, 2009. Duluth is a municipal corporation that owns and operates natural gas distribution facilities. The natural gas will be imported near Noyes, Minnesota, under a supply arrangement between Duluth and ProGas Limited.

Order 1484 may be found on the FE web site at <http://www.fe.doe.gov>, or on our electronic bulletin board at (202) 586-7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3E-033, Forrestal Building, 1000 Independence

Avenue, SW., Washington, DC. 20585-0334, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 20, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99-13399 Filed 5-27-99; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-251-001, Docket No. RP99-253-001]

South Georgia Natural Gas Company, Southern Natural Gas Company; Notice of a Request for Limited Waiver of Order No. 587-G

May 24, 1999.

Take notice that on April 1, 1999, South Georgia Natural Gas Company (South Georgia) and Southern Natural Gas Company (Southern), filed a request for a limited waiver of the requirement of Order No. 587-G,¹ to execute an operational balancing agreement (OBA) at their sole point of interconnection in Lee County, Georgia. The pipelines seek to maintain their current allocation procedures at this point.

In Order No. 587-G, the Commission adopted Section 284.10(c)(2)(i)² of its regulations, which requires each interstate pipeline to enter into OBAs at all points of interconnection between its system and the system of another interstate or intrastate pipeline. In an order issued on December 17, 1998, in Docket No. RM96-1-012,³ the Commission established April 1, 1999 as the date by which pipelines are required to comply with this standard.

Petitioners note that during the restructuring process under Order No. 636, certain bundled sales customers on Southern that were ultimately served at delivery points by South Georgia became no-notice customers of Southern under Rate Schedules FT-NN and CSS. Under the provisions of Southern's tariff, no-notice service requires that storage transactions on Southern's system be directly related to deliveries at the specific market area delivery

points. As a result, while Southern has one physical interconnection point with South Georgia in Lee County, Georgia, this is not the point to which the South Georgia customers nominate. Instead, Southern shippers who wish to ship on South Georgia make nominations directly to their city-gate on the South Georgia system. Consequently, petitioners argue that breaking this link and allocating volumes under an OBA at the Lee County interconnect would, for all practical purposes, eviscerate no-notice service for the South Georgia shippers on Southern. Further, petitioners note that because of the configuration of South Georgia system, no imbalances are incurred by shippers on South Georgia, thus obviating the need for an OBA at the interconnection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests with respect to the waiver request must be filed on or before June 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims/htm> (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-13618 Filed 5-27-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-522-000]

Transwestern Pipeline Company; Notice of Application

May 24, 1999.

Take notice that on May 13, 1999, Transwestern Pipeline Company (Transwestern, 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP99-522-000 an application pursuant to Section 7 of the Natural Gas Act for authorization to construct and operate a new compressor station (Gallup) to be located off the San Juan lateral near Thoreau, New Mexico,

¹ Standards For Business Practices of Interstate Natural Gas Pipelines, 85 FERC ¶ 61,371 (1998).

² 18 CFR 284.10(c)(2)(i).

³ Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587-G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

and to install additional cooling equipment at the Bloomfield compressor station located in La Plata County, Colorado and at the LaPlata "A" compressor station located in San Juan County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance).

Transwestern states that the construction and operation of the proposed facilities will provide incremental firm service to shippers who requested service pursuant to its November 18, 1998, open season. Transwestern maintains that the proposed facilities will create 50,000 Mcf per day of incremental firm capacity on the San Juan lateral downstream of the Bloomfield compressor station and also provide the ability for Transwestern to operate its mainline from Thoreau to California at the certificated capacity of 1,090,000 Mcf per day, on a firm basis.

Transwestern estimates the cost of constructing the proposed facilities to be \$11.6 million, which will be financed from internally generated funds.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before June 14, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (28 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing

it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99-13614 Filed 5-27-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-525-000]

Trunkline LNG Company; Application

May 24, 1999.

Take notice that on May 19, 1999, Trunkline LNG Company (Applicant),

5400 Westheimer Court, Houston, Texas, 77056, filed in Docket No. CP99-525-000 an abbreviated application pursuant to Sections 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon a transportation service provided to Duke Energy LNG Sales, Inc. (DELS) under Applicant's Rate Schedule PLNG-2 of its FERC Gas Tariff, Original Volume No. 1, effective April 1, 1999, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This file may be viewed on the web at: <http://www.ferc.fed.us/online/rims.htm> (Call 202-208-222 for assistance).

Applicant states that in accordance with a Stipulation and Agreement in Docket No. RP87-15-000, *et al.*, between Applicant and Trunkline Gas Company Filed on July 15, 1992, by virtue of CMS Energy Corporation's acquisition of Applicant, the terms and provisions of Article VIII have been triggered; thus, Rate Schedule PLNG-2 is no longer necessary. Applicant further states that effective April 1, 1999, Applicant is providing the transportation service to DELS pursuant to Applicant's open-access Rate Schedule FTS.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 14, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the

matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99-13615 Filed 5-27-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99-33-000, et al.]

BEC Energy and Commonwealth Energy System, et al.; Electric Rate and Corporate Regulation Filings

May 19, 1999.

Take notice that the following filings have been made with the Commission:

1. BEC Energy and Commonwealth Energy System

[Docket No. EC99-33-000]

Take notice that on May 14, 1999, BEC Energy and Commonwealth Energy System supplemented its February 8, 1999 filing in the above-referenced docket. BEC Energy and Commonwealth Energy System tendered for filing an Amended and Restated Agreement and Plan of Merger.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation and Beebe Island Corporation, L.P.

[Docket No. EC99-72-000]

Take notice that on May 11, 1999 Niagara Mohawk Power Corporation (Niagara Mohawk) and Beebe Island Corporation (Beebe), tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the transfer from Beebe to Niagara Mohawk of certain hydroelectric generating station and related transmission facilities.

The Applicants have served copies of this filing on the New York Public Service Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Alcoa Inc., and Tapoco, Inc., Yadkin, Inc., Alcoa Generating Corporation, Long Sault, Inc., and Colocum Transmission Company, Inc.

[Docket Nos. EC99-74-000 and ER99-2932-000]

Take notice that on May 14, 1999, Alcoa Inc. (Alcoa), in conjunction with its wholly-owned power subsidiaries, Tapoco, Inc., Yadkin, Inc., Alcoa Generating Corporation, Long Sault, Inc., and Colocum Transmission Company, Inc., filed an application under Section 203 of the Federal Power Act (FPA) and Part 33 of the Commission's Regulations to request authorization and approval of a proposed corporate reorganization. The proposed corporate reorganization will consolidate Alcoa's five power subsidiaries into a single, wholly-owned Alcoa subsidiary, Alcoa Power Generating, Inc. (APG). Additionally, pursuant to Section 205 of the FPA, and Part 35 of the Commission's Regulations, the filing also requests market-based rate authority for APG and submits APG's market-based rate schedule for filing.

Comment date: June 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Energy Potrero, L.L.C.

[Docket No. EG99-111-000]

Take notice that on May 12, 1999, Southern Energy Potrero, L.L.C. (Southern Potrero), 50 California Street, Suite 3220, San Francisco, California 94111, filed with the Federal Energy Regulatory Commission an amendment to the Application of Southern Energy Potrero, L.L.C. for Determination of Exempt Wholesale Generator Status that was originally filed with the Commission on April 9, 1999, in the above-referenced docket.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Dearborn Generation Operating, L.L.C.

[Docket No. EG99-114-000]

Take notice that on May 11, 1999, Dearborn Generation Operating, L.L.C., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126-2712, filed with the Federal Energy Regulatory Commission, an amendment to their application for determination of exempt wholesale generator status pursuant to Part 365, Section 5 of the Commission's regulations, consisting of a rectification

of an inaccuracy in the name of the Facility.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Phelps Dodge Energy Services, LLC

[Docket No. EG99-146-000]

Take notice that on May 13, 1999, Phelps Dodge Energy Services, LLC (PDES), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

PDES, a Delaware limited liability company, will operate eight electric generation facilities owned by Phelps Dodge Corporation (Phelps Dodge) pursuant to a Lease Agreement with Phelps Dodge. The facilities are used as back-up generators by Phelps Dodge for its mines and other facilities in Arizona, New Mexico and Texas. PDES will operate the facilities and sell power exclusively at wholesale.

The Facilities are either wholly owned by Phelps Dodge or owned by a partnership in which Phelps Dodge has a majority interest.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Cleco Evangeline LLC

[Docket No. EG99-147-000]

Take notice that on May 13, 1999, Cleco Evangeline LLC (Evangeline), a Louisiana limited liability company, with its principal place of business located at 2030 Donahue Ferry Road, Pineville, Louisiana 71360-5226, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Evangeline states that it will be engaged exclusively in the business of owning and operating eligible facilities, which will consist of approximately 750MW of capacity, located in Evangeline Parish, Louisiana, and selling electric energy at wholesale. The Louisiana Public Service Commission has determined that allowing the facilities to be eligible facilities will benefit consumers, is in the public interest and does not violate Louisiana law. See Louisiana Public Service Commission Order No. U-23746 (March 25, 1999).

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Allegheny Power Service Corporation

[Docket Nos. ER99-1002-000 and ER99-1050-000]

Take notice that on May 10, 1999, Allegheny Power Service Corporation filed a notice of withdrawal of their Service Agreements filed in the above-mentioned dockets. The Service Agreement in ER99-1002-000 was filed on December 24, 1999 and the Service Agreement in ER99-1050-000 was filed on December 28, 1999.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket Nos. ER99-1142-005 and ER99-2892-000 (not consolidated)]

Take notice that on May 14, 1999, the New England Power Pool (NEPOOL) Executive Committee tendered for filing the Forty-Second Agreement Amending New England Power Pool Agreement (the Forty-Second Agreement), amending governance related provisions of the Restated NEPOOL Agreement and amending the NEPOOL Tariff to reflect the governance changes in compliance with the Commission's order in *New England Power Pool*, 86 FERC ¶ 61,262 (1999), and related amendments that were required to achieve final agreement on the Forty-Second Agreement. The NEPOOL Executive Committee supplemented that filing on May 14, 1999 to include additional signature pages to the Forty-Second Agreement.

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service lists in the captioned dockets, to the participants in NEPOOL, and to the six New England state governors and regulatory commissions.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket Nos. ER99-2202-000 ER99-2203-000 and ER99-2204-000]

Take notice that on May 13, 1999, Kansas City Power & Light Company (KCPL), tendered for filing amendments to its filings in these dockets for Service Agreements dated March 2, 1999 by KCPL. The amendments provide additional information regarding

ancillary services on the Specifications for Firm Point-To-Point Transmission Service.

KCPL proposes an effective date of June 1, 1999.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool Inc.

[Docket No. ER99-2353-000]

Take notice that on May 12, 1999, Southwest Power Pool, Inc., tendered for filing executed service agreements with Lafayette Utilities System and PanCanadian Energy Services.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER99-2409-000]

Take notice that on May 12, 1999, Western Resources, Inc., (Western Resources), tendered for filing an amendment to Page 4 of the Long-Term Firm Point-to-Point Transmission Service Agreement between Western Resources and Western Resources Generation Services filed on April 7, 1999, in the above-referenced docket.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Electric Company

[Docket No. ER99-2723-000]

Take notice that on May 13, 1999, Commonwealth Electric Company tendered for filing a corrected Distribution Service Agreement between Commonwealth Electric Company (Commonwealth) and the Massachusetts Bay Transportation Authority (MBTA). This Agreement was filed to replace the Distribution Service Agreement submitted to the Commission on April 30, 1999, which contained an incorrect wholesale distribution service rate.

Commonwealth states that the corrected Distribution Service Agreement has been served upon each person designated on the official service list compiled by the Secretary in the above-mentioned docket and with the MBTA and the Massachusetts Department of Telecommunication and Energy.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER99-2902-000]

Take notice that on May 11, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Yadkin, Inc.,

under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

CP&L is requesting an effective date of May 6, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER99-2903-000]

Take notice that on May 11, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Public Service Company of Colorado (PSCC).

Cinergy and PSCC are requesting an effective date of April 10, 1999.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER99-2904-000]

Take notice that on May 11, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Transmission Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Public Service Company of Colorado (PSCC).

Cinergy and PSCC are requesting an effective date of April 10, 1999.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER99-2905-000]

Take notice that on May 11, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. § 792 *et seq.*, an Agreement dated March 9, 1999, Entergy Services, Inc., as agent for Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; and Entergy New Orleans, Inc. (all six companies collectively referred to herein as ENTERGY) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to ENTERGY and to the Pennsylvania Public Utility Commission.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Wisvest-Connecticut, L.L.C.

[Docket No. ER99-2906-000]

Take notice that on May 11, 1999, Wisvest-Connecticut, L.L.C. (Wisvest-Connecticut), tendered to the Commission for filing copies of an umbrella agreement for short-term service with Griffin Energy Marketing, L.L.C., pursuant to the Commission's order dated February 10, 1999. Wisvest-Connecticut, L.L.C., 86 FERC ¶ 61,133 (1999).

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER99-2908-000]

Take notice that on May 11, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. § 792 *et seq.*, a Transaction Agreement dated June 2, 1997 with Kennebunk Light and Power District (Kennebunk) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Kennebunk and to the Pennsylvania Public Utility Commission.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER99-2909-000]

Take notice that on May 12, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Strategic Power Management, Inc. under Delmarva's market rate sales tariff. Delmarva requests an effective date of April 20, 1999.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company

[Docket No. ER99-2910-000]

Take notice that on May 12, 1999, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with PP&L EnergyPlus Co. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of May 3, 1999, for these Agreements.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER99-2911-000]

Take notice that on May 12, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98-4159-000) an executed Service Agreement at Market-Based Rates with Minnesota Power, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of May 10, 1999.

Copies of this filing were served upon Customer.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

[Docket No. ER99-2912-000]

Take notice that on May 12, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98-4159-000) executed Service Agreement at Market-Based Rates with American Energy Solutions, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of May 10, 1999.

Copies of this filing were served upon Customer.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Operating Companies

[Docket No. ER99-2913-000]

Take notice that on May 12, 1999, Cinergy Operating Companies (collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC)), tendered for filing a service agreement under COC's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between COC and Merchant Energy Group of the Americas, Inc., (MEGA).

COC and MEGA are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Indeck-Olean Limited Partnership

[Docket No. ER99-2915-000]

Take notice that on May 12, 1999, Indeck-Olean Limited Partnership tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an application for authorization to make sales of electrical capacity, energy, and certain ancillary services at market-based rates and for related waivers and blanket authorizations.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Consumers Energy Company

[Docket No. ER99-2916-000]

Take notice that on May 12, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service with CMS Marketing, Services and Trading (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of May 10, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. FPL Energy MH50, L.P.

[Docket No. ER99-2917-000]

Take notice that on May 12, 1999, FPL Energy MH50, L.P. (FPL Energy MH50), petitioned the Commission for acceptance of FPL Energy MH50 FERC Electric Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Jersey Central Power & Light Company, Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER99-2918-000]

Take notice that on May 12, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an

executed Service Agreement between GPU Energy and DTE Co-Energy (DTE), dated March 1, 1999. This Service Agreement specifies that DTE has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and DTE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 1, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Operating Companies

[Docket No. ER99-2919-000]

Take notice that on May 12, 1999, Cinergy Operating Companies (collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC)), tendered for filing a service agreement under COC's Cost-Based Power Sales Standard Tariff-CB (the Tariff) entered into between COC and Merchant Energy Group of the Americas, Inc., (MEGA).

COC and MEGA are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. South Carolina Electric & Gas Company

[Docket No. ER99-2920-000]

Take notice that on May 12, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing executed service agreements with the Town of Winnsboro, South Carolina (Winnsboro), providing for unbundled power supply, transmission, and ancillary services on a long-term basis pursuant to SCE&G's Negotiated Market Sales and Open Access Transmission Tariffs. SCE&G also simultaneously filed a notice of termination of the current service arrangements between Winnsboro and SCE&G.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER99-2921-000]

Take notice that on May 12, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as GPU Energy), tendered for filing two Procedure Manuals regarding the determination of hourly energy, capacity and transmission obligations of suppliers in Pennsylvania and New Jersey.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Phelps Dodge Energy Services, LLC

[Docket No. ER99-2923-000]

Take notice that on May 13, 1999, Phelps Dodge Energy Services, LLC (PDES), tendered for filing an Application for Approval of Market-Based Power Sales Tariff, For Waivers of Commission Regulations, and to Reassign Transmission Capacity.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. NGE Generation, Inc.

[Docket No. ER99-2924-000]

Take notice that on May 13, 1999, tendered NGE Generation, Inc. (NGE Gen) for filing pursuant to Section 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement (the Service Agreement) under which NGE Gen may provide capacity and/or energy to the New York Power Authority (NYPA) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreement with NYPA becomes effective as of May 14, 1999.

NGE Gen's filing of the Service Agreement is subject to the Commission's order issued on January 29, 1999 in Docket No. EC99-22-000.

NGE Gen has served copies of the filing upon the New York State Public Service Commission and NYPA.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Wisconsin Electric Power Company

[Docket No. ER99-2925-000]

Take notice that on May 13, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its Revised Power Sales Agreement (PSA) with Wisconsin Public

Power Inc. (WPPI), to reflect updated delivery points.

Wisconsin Electric respectfully requests an effective date of sixty days after filing.

Copies of the filing have been served on WPPI, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Premier Enterprises, LLC

[Docket No. ER99-2926-000]

Take notice that on May 12, 1999, Premier Enterprises, LLC, (Premier) 1543 Champa Street, Suite 310, Denver, Colorado 80202-2900, tendered for filing in Docket No. ER95-1123 pursuant to 18 CFR 35.13 and 131.53 of the Federal Energy Regulatory Commission's Rules and Regulations, a Notice of Cancellation of FERC Electric Rate Schedule No. 1, to become effective May 12, 1999.

Premier states that it has never entered into any wholesale electric power or energy transactions, and has never utilized its Electric Rate Schedule FERC No. 1.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Idaho Power Company

[Docket No. ER99-2927-000]

Take notice that on May 12, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and El Paso Power Services.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Cleco Evangeline LLC

[Docket No. ER99-2928-000]

Take notice that on May 13, 1999, Cleco Evangeline LLC (Cleco Evangeline), petitioned the Commission for acceptance of Cleco Evangeline LLC Rate Schedule FERC No. 1 (Market-Based Rate Schedule); the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Cleco Evangeline intends to engage exclusively in the business of owning and operating eligible facilities as an exempt wholesale generator and selling the power and energy output of such facilities at wholesale. Cleco Evangeline

is an affiliate of Cleco Corporation, a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a, *et seq.*

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. PJM Interconnection, L.L.C.

[Docket No. ER99-2929-000]

Take notice that on May 13, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 30 executed service agreements for point-to-point transmission service under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Duke Energy Trading & Marketing, L.L.C.

[Docket No. ER99-2930-000]

Take notice that on May 13, 1999, Duke Energy Trading & Marketing, L.L.C. (DETM), tendered for filing an amended rate schedule under various regulations of the Commission and for an order accepting DETM's amended FERC Electric Rate Schedule No. 1, to be effective on May 13, 1999.

Under its amended Rate Schedule No. 1, DETM intends to sell ancillary services that it purchases from others into the NEPOOL, PJM and NYISO ancillary services markets.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm>

(call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-13576 Filed 5-27-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-2016-001, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Regulation Filings

May 21, 1999.

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Company

[Docket No. ER99-2016-001]

Take notice that on May 17, 1999, South Carolina Electric & Gas Company (SCE&G), tendered for filing pursuant to the Commission's May 12, 1999, that South Carolina Electric & Gas Company will comply with the Commission's December 16, 1998, Order in Docket No. EL98-52-000, as modified by the May 12 Order, and that SCE&G's open access transmission tariff is considered modified in accordance with this compliance.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas and Electric Corporation

[Docket No. ER99-2615-000]

Take notice that on April 27, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Enserch Energy Services, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97-890-000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER99-2799-000]

Take notice that on May 4, 1999, Central Maine Power Company (CMP), tendered for filing a service agreement for Short-Term Firm Point-to-Point Transmission service entered into with HQ Energy Services (U.S.) Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER99-2941-000]

Take notice that on May 14, 1999, Montaup Electric Company tendered for filing an amendment to its Open Access Transmission Tariff that provides for the charges for Ancillary Services to reflect a pass-through of the costs that the Company incurs in obtaining the services from a third party.

Montaup requests that the amendment become effective on the date on which it was filed.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Energy Delta, L.L.C.

[Docket No. ER99-2943-000]

Take notice that on May 14, 1999, Southern Energy Delta, L.L.C. (Southern Delta), tendered for filing the following agreement as a service agreement under its Market Rate Tariff:

1. Master Energy Purchase and Sale Agreement by and between Southern Company Energy Marketing L.P., Southern Energy Potrero, L.L.C. and Southern Energy Delta, L.L.C.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Energy Potrero, L.L.C.

[Docket No. ER99-2944-000]

Take notice that on May 14, 1999, Southern Energy Potrero, L.L.C. (Southern Potrero), tendered for filing the following agreement as a service agreement under its Market Rate Tariff:

1. Master Energy Purchase and Sale Agreement by and between Southern Company Energy Marketing L.P., Southern Energy Potrero, L.L.C. and Southern Energy Delta, L.L.C.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service

[Docket No. ER99-2945-000]

Take notice on May 14, 1999, that Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Cinergy Capital & Trading, Inc. (Cinergy) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Cinergy.

NUSCO requests that the Service Agreement become effective May 13, 1999.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99-2946-000]

Take notice that on May 14, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to KeySpan Ravenswood (Ravenswood).

Con Edison states that a copy of this filing has been served by mail upon Ravenswood.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER99-2947-000]

Take notice that on May 14, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff. CP&L is requesting an effective date of October 1, 2000, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Baltimore Gas and Electric Company

[Docket No. ER99-2948-000]

Take notice that on May 14, 1999, Baltimore Gas and Electric Company (BGE), tendered for filing with the Federal Energy Regulatory Commission an application for authority to charge market-based rates.

BGE has requested waiver of notice to permit its proposed rate schedule to become effective on May 14, 1999, one day after the date of filing.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER99-2949-000]

Take notice that on May 14, 1999, Cinergy Services, Inc. (Cinergy Services), on behalf of The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI) (collectively Cinergy Operating Companies), tendered for filing Notices of Cancellations, dated April 16, 1999, with Narrative Statements to terminate sales of non-firm electric energy by CG&E and/or PSI under individual negotiated agreements.

Cinergy Services requests an effective date of June 1, 1999.

Copies of the filing were served upon all parties listed in Attachment B of the filing and to the parties to the respective service lists of each individual agreement.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Otter Tail Power Company

[Docket No. ER99-2950-000]

Take notice that on May 14, 1999, Otter Tail Power Company (OTP), tendered for filing a Service Agreement between OTP and Commonwealth Edison Company. The Service Agreement allows Commonwealth Edison to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99-2961-000]

Take notice that on May 17, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Coral Power, L.L.C. (Coral).

Con Edison states that a copy of this filing has been served by mail upon Coral.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER99-2962-000]

Take notice that on May 17, 1999, Niagara Mohawk (Niagara Mohawk),

tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Columbia Energy Power Marketing Corporation (Columbia). This Transmission Service Agreement specifies that Columbia has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Columbia to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for Columbia as the parties may mutually agree.

Niagara Mohawk requests an effective date of May 12, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Columbia.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99-2963-000]

Take notice that on May 17, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Statoil Energy Trading (SET).

Con Edison states that a copy of this filing has been served by mail upon SET.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Madison Gas and Electric Company

[Docket No. ER99-2964-000]

Take notice that on May 17, 1999, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Power Sales Tariff with Utilicorp United.

MGE requests an effective date of March 20, 1999, which is the date the agreement was signed.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Southwestern Public Service Company

[Docket No. ER99-2965-000]

Take notice that on May 17, 1999, Southwestern Public Service Company (Southwestern), tendered for filing a

proposed amendment to its delivery point listing with Central Valley Electric Cooperative, Inc., (Central Valley).

The proposed amendment reflects a new delivery point for service to Central Valley.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Boston Edison Company

[Docket No. ER99-2966-000]

Take notice that on May 17, 1999, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and The Boylston Municipal Light Department, City of Holyoke Gas & Electric Department, Hudson Light and Power Department, Littleton Electric Light & Water Departments, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, North Attleborough Electric Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, and Westfield Gas & Electric Light Department (Municipals). The Standstill Agreement extends through July 12, 1999 the time in which the Municipals may institute a legal challenge to the 1997 true-up bill under their respective contracts to purchase power from Boston Edison's Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective May 26, 1999.

The Standstill Agreement relates to the following Boston Edison FERC Rate Schedules:

- (1) Supplement to Rate Standstill Agreement with Boylston Schedule No. 77 Municipal Light Department
- (2) Supplement to Rate Standstill Agreement with Holyoke Schedule No. 79 Gas and Electric Department
- (3) Supplement to Rate Standstill Agreement with Westfield Schedule No. 81 Gas and Electric Light Department
- (4) Supplement to Rate Standstill Agreement with Hudson Schedule No. 83 Light and Power Department
- (5) Supplement to Rate Standstill Agreement with Littleton Schedule No. 85 Electric Light and Water Department
- (6) Supplement to Rate Standstill Agreement with Marblehead Schedule No. 87 Municipal Light Department
- (7) Supplement to Rate Standstill Agreement with North Schedule No. 89 Attleborough Electric Department
- (8) Supplement to Rate Standstill Agreement with Peabody Schedule No. 91 Municipal Light Plant

- (9) Supplement to Rate Standstill Agreement with Shrewsbury's Schedule No. 93 Electric Light Plant
- (10) Supplement to Rate Standstill Agreement with Templeton Schedule No. 95 Municipal Light Plant
- (11) Supplement to Rate Standstill Agreement with Wakefield Schedule No. 97 Municipal Light Department
- (12) Supplement to Rate Standstill Agreement with West Schedule No. 99 Boylston Municipal Lighting Plant
- (13) Supplement to Rate Standstill Agreement with Middle-Schedule No. 102 borough Gas and Electric Department

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. NRG Northeast Power Marketing LLC

[Docket No. ER99-2968-000]

Take notice that on May 17, 1999, NRG Northeast Power Marketing LLC (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect subsidiary of Northern States Power Company.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Wisvest-Connecticut, L.L.C.

[Docket No. ER99-2969-000]

Take notice that on May 17, 1999, Wisvest-Connecticut, L.L.C. (Wisvest-Connecticut), tendered for filing to the Commission for filing copies of an umbrella agreement for short-term service with The United Illuminating Company pursuant to the Commission's order dated February 10, 1999. Wisvest-Connecticut, L.L.C., 86 FERC 61,133 (1999).

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Delta Energy Group

[Docket No. ER99-2970-000]

Take notice that on May 17, 1999, Delta Energy Group (Delta), petitioned the Commission for acceptance of Delta Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Delta intends to engage in wholesale electric power and energy purchases

and sales as a marketer. Delta is not in the business of generating or transmitting electric power. Delta is not affiliated with any other businesses.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Madison Gas and Electric Company

[Docket No. ER99-2971-000]

Take notice that on May 17, 1999, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with:

- DukeSolutions, Inc.
- PG&E Energy Trading—Power, L.P.

MGE requests an effective date 60 days from the filing date.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Fibertek Energy, LLC

[Docket No. ER99-2973-000]

Take notice that on May 17, 1999, Fibertek Energy, LLC (Fibertek), tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting a rate schedule for power sales at market-based rates. Fibertek requests waiver of the 60-day filing requirements and requests that its FERC Electric Rate Schedule No. 1, be accepted as of June 1, 1999.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER99-2982-000]

Take notice that on May 17, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Florida Power & Light Energy Power Marketing, Inc. (FP&L Energy). This Transmission Service Agreement specifies that FP&L Energy has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and FP&L Energy to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for FP&L Energy as the parties may mutually agree.

Niagara Mohawk requests an effective date of May 12, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and FP&L Energy.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Niagara Mohawk Power Corporation

[Docket No. ER99-2983-000]

Take notice that on May 17, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Florida Power & Light Energy Power Marketing, Inc. (FPL Energy). This Transmission Service Agreement specifies that FP&L Energy has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96-194-000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and FP&L Energy to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for FP&L Energy as the parties may mutually agree.

Niagara Mohawk requests an effective date of May 12, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and FP&L Energy.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm>

www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 99-13574 Filed 5-27-99; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91-195-038, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

May 20, 1999.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91-195-038]

Take notice that on May 19, 1999, the Western Systems Power Pool (WSPP) filed certain information to update its April 30, 1999, quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order.

Copies of WSPP's informational filing are on file with the Commission. The non-privileged portions are available for public inspection in the Commission's Public Reference Room 2A or on the web at <http://www.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

2. Midwest Independent Transmission System Operator, Inc., The Cincinnati Gas & Electric Company, et al.

[Docket No. ER98-1438-004 and Docket No. EC98-24-004 (consolidated)]

Take notice that on May 17, 1999, the Midwest ISO Participants' tendered for filing revisions to the open access transmission tariff and related documents of the Midwest Independent Transmission System Operator, Inc., in compliance with the Commission's November 24, 1998 and April 16, 1999 orders in the proceedings captioned above.

The Midwest ISO Participants state that copies of this filing have been served on each person designated on the official service list.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Nautilus Energy Company

[Docket No. ER98-2618-000]

Take notice that on May 17, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202-208-2222 for assistance).

4. Public Service Electric and Gas Company

[Docket No. ER99-2957-000]

Take notice that on May 12, 1999, the above-mentioned public utility filed their quarterly report for the quarter ending March 31, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. El Dorado Energy, LLC—Central Maine Power Company

[Docket Nos. ER99-2958-000, ER99-2959-000]

Take notice that on May 14, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 1999.

Comment date: June 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PJM Interconnection, L.L.C.

[Docket No. ER99-2914-000]

Take notice that on May 12, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to Attachment K—Appendix to the PJM Open Access Transmission Tariff and Schedule 1 to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to implement dispatch for local reliability.

PJM requests the Commission to expedite its consideration of the amendments, if possible, and provide an early effective date in order to permit the amendments to be in effect for as much of the summer peak season as possible. At the latest, if the Commission does not expedite consideration, PJM requests an effective date of July 12, 1999.

Copies of this filing were served upon all PJM Members and the electric utility regulatory commissions in the PJM control area.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. New Century Services, Inc.

[Docket No. ER99-2907-000]

Take notice that on May 11, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Colorado River Storage Project (CSC of WAPA).

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER99-2933-000]

Take notice that on May 14, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated February 8, 1999, with The Energy Authority, Inc., entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of May 1, 1999, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on The Energy Authority, Inc., the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER99-2934-000]

Take notice that on May 14, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated November 30, 1998, with St. Joseph Light & Power Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of May 1, 1999, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on St. Joseph Light & Power Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER99-2935-000]

Take notice that on May 14, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing with the Commission a Service Agreement dated March 31, 1999, with The Dayton Power & Light Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of May 1, 1999, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on The Dayton Power & Light Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER99-2936-000]

Take notice that on May 14, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing with the Commission a Service Agreement dated December 10, 1998, with Minnesota Municipal Power Agency entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of May 1, 1999, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Minnesota Municipal Power Agency, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. MidAmerican Energy Company

[Docket No. ER99-2937-000]

Take notice that on May 14, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing with the Commission a Service Agreement dated February 1, 1999, with Central Minnesota Municipal Power Agency entered into pursuant to

MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of May 1, 1999 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Central Minnesota Municipal Power Agency, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation, Huntley Power LLC

[Docket No. ER99-2938-000]

Take notice that on May 14, 1999, Niagara Mohawk Power Corporation and Huntley Power LLC tendered for filing an Interconnection Agreement pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824 d, and Part 35 of the Commission's Regulations, 18 CFR Part 35.

A copy of this agreement has been served upon the New York State Public Service Commission, as well as the official service list in Docket No. EC99-51-000.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company

[Docket No. ER99-2939-000]

Take notice that on May 14, 1999, Jersey Central Power & Light Company (doing business as and referred to as GPU Energy) submitted for filing a Generation Facility Transmission Interconnection Agreement between GPU Energy and AES Red Oak, L.L.C. GPU Energy requests an effective date of May 15, 1999, for the agreement.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation Dunkirk Power LLC

[Docket No. ER99-2940-000]

Take notice that on May 14, 1999, Niagara Mohawk Power Corporation and Dunkirk Power LLC tendered for filing an Interconnection Agreement pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824 d, and Part 35 of the Commission's Regulations, 18 CFR Part 35.

A copy of this agreement has been served on the New York State Public Service Commission, as well as the official service list in Docket No. EC99-51-000.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. NGE Generation, Inc.

[Docket No. ER99-2942-000]

Take notice that on May 14, 1999, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of NGE Gen Rate Schedule Nos. 10.7 (Catex Vitrol Electric Inc.), 22.7 (Central Hudson Gas & Electric Corp.), 59.6 (Cinergy Operating Companies), 43.6 (Duke/Louis Dreyfus L.L.C.), 35.6 (Eastex Power Marketing Inc.), 16.7 (Electric Clearinghouse Inc.), 9.7 (Enron Power Marketing), 20.1 KN Marketing, 23.6 National Fuel Resources (formerly Gateway Energy, Inc.), 63.1 NP Energy, 67.1 PacifiCorp Power Marketing, 46.5 (Pennsylvania Power & Light Co.), and 28.6 (Public Service Electric & Gas Co.), and NGE Gen Power Sales Tariff Service Agreement Nos. 97.1 (Centerior Energy Corp.), 55.1 (CNG Power Services), and 77.1 (LG&E Energy Marketing, Inc.) between NGE Gen and the above enumerated entities.

NGE Gen requests that the Cancellation be deemed effective as of the date of closing of the sale of NGE Gen's fossil generating facilities located within New York State.

Notice of the proposed cancellation has been served upon each of the affected parties identified above.

Comment date: June 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Sanford L. Hartman

[Docket No. ID-3275-001]

Take notice that on May 17, 1999, Pittsfield Generating Company, L.P. filed a letter withdrawing the Application to Hold Interlocking Positions filed on behalf of Sanford L. Hartman on April 22, 1999.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Geraldine M. Zipser, James S. Robinson, Christopher E. Root, Masheed H. Rosenqvist, Nancy H. Sala, Cheryl A. LaFleur, Lawrence J. Reilly, Gregory A. Hale, Robert L. McCabe, Richard W. Frost

[Docket Nos. ID-3294-000, ID-3295-000, ID-3296-000, ID-3297-000, ID-3298-000, ID-3299-000, ID-3300-000, ID-3301-000, ID-3302-000, ID-3303-000]

Take notice that on May 17, 1999, applications for authority to hold positions pursuant to Section 305(b) of

the Federal Power Act, were filed in the above-mentioned proceedings.

Comment date: June 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99-13575 Filed 5-27-99; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

May 24, 1999.

- a. *Type of filing:* Notice of Intent to File Application for New License.
- b. *Project No.:* 2364.
- c. *Date filed:* April 26, 1999.
- d. *Submitted By:* Madison Paper Industries.
- e. *Name of Project:* Abenaki Project.
- f. *Location:* On the Kennebec River in Somerset County, Maine.
- g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
- h. *Effective date of original license:* May 1, 1954.
- i. *Expiration date of original license:* May 1, 2004.
- j. The project consists of (1) a 780-foot-long concrete spillway with a permanent crest elevation of 219.65 feet; (2) 3-foot-high wooden flashboards; (3) a 25-foot-wide log sluice in the center of the spillway; (4) a 600-foot-long concrete retaining wall (wingwall); (5) a 200-foot-long headworks structure; (6) a

830-foot-long forebay; (7) a 125-foot-long by 190-foot-wide concrete powerhouse containing seven turbine/generator units with a total rated capacity of 16.977 megawatts; (8) a 3,400-foot-long transmission line; and (9) other appurtenances.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Madison Paper Industries, P.O. Box 129, Main Street, Madison, ME 04950, (207) 696-1225.

l. *FERC contact:* Nan Allen, nan.allen@ferc.fed.us, (202) 219-2938.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 1, 2002.

David P. Boergers,

Secretary.

[FR Doc. 99-13616 Filed 5-27-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

May 24, 1999.

- a. *Type of filing:* Notice of Intent to File Application for New License.
- b. *Project No.:* 2365.
- c. *Date filed:* April 26, 1999.
- d. *Submitted By:* Madison Paper Industries.
- e. *Name of Project:* Anson Project.
- f. *Location:* On the Kennebec River in Somerset County, Maine.
- g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
- h. *Effective date of original license:* May 1, 1954.
- i. *Expiration date of original license:* May 1, 2004.
- j. The project consists of: (1) a 630-foot-long concrete gravity dam with a permanent spillway crest elevation of 242.62 feet, and a 5.6-foot-high inflatable flashboard system; (2) a 40-foot-wide by 13.5-foot-high inflatable waste gate system; (3) a 250-foot-long forebay; (4) a 190-foot-long by 54-foot-wide brick and concrete powerhouse containing five turbine/generator units with a total rated capacity of 9 megawatts; (5) a 5,860-acre-foot reservoir; and (8) other appurtenances.
- k. Pursuant to 18 CFR 16.7, information on the project is available at: Madison Paper Industries, P.O. Box

129, Main Street, Madison, ME 04950, (207) 696-1225.

l. *FERC contact:* Nan Allen, nan.allen@ferc.fed.us, (202) 219-2948.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 1, 2002.

David P. Boergers,

Secretary.

[FR Doc. 99-13617 Filed 5-27-99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Western Area Power Administration

[DOE/EIS-0297]

Record of Decision for the Interconnection of the Griffith Power Plant With the Western Area Power Administration's Parker-Davis and Pacific Northwest-Pacific Southwest Intertie Transmission Systems

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision.

SUMMARY: Griffith Energy Limited Liability Corporation (Griffith) applied for transmission service from the Western Area Power Administration (Western) for the Griffith Energy Project (Project). Based on the application, Western proposed to enter into an interconnection and construction agreement with Griffith to provide interconnections with Western's Pacific Northwest-Pacific Southwest Intertie and Parker-Davis transmission systems. Western has decided to enter into interconnection and construction agreements with Griffith to provide the interconnections with Western's Pacific Northwest-Pacific Southwest Intertie and Parker-Davis transmission systems, and to construct and operate transmission system additions to provide the interconnection with its transmission system. The interconnection to Western's transmission system will be provided via two new 230-kilovolt (kV) transmission lines, a new 230-/345-kV substation, and the upgrading of the existing Davis-Prescott 230-kV transmission line. Western's decision for its action took into consideration the environmental ramifications of the Project. The environmental ramifications of the Project were addressed in Western's Griffith Energy Project Draft and Final Environmental

Impact Statements (DOE/EIS-0297).

This Record of Decision (ROD) has been prepared in accordance with Council on Environmental Quality regulations for implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500-1508) and Department of Energy (DOE) Procedures for Implementing NEPA (10 CFR part 1021), and DOE's Floodplain/Wetland Review Requirements (10 CFR 1022). Western will reconsider this decision if Griffith does not obtain a Prevention of Significant Deterioration (PSD) air permit from the Arizona Department of Environmental Quality (ADEQ). Full implementation of this decision is contingent upon the Project obtaining all other required permits and approvals.

FOR FURTHER INFORMATION CONTACT: Mr. John Holt, Environmental Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 352-2592, email holt@wapa.gov. Copies of the Environmental Impact Statements (EIS) are available from Mr. Holt.

SUPPLEMENTARY INFORMATION: Western is the lead agency for the EIS and the U.S. Department of the Interior, Bureau of Land Management, Kingman Field Office (BLM) is a cooperating agency. Western decided to enter into interconnection and construction agreements with Griffith, and to construct and operate transmission system additions to provide the interconnection with its transmission system. The transmission system additions include:

1. A new 8-mile 230-kV transmission line from the Griffith Power Plant to Western's existing McConnico Substation along route segments A and D as defined in the EIS;
2. A new 230-/345-kV substation, named Peacock Substation, at the intersection of the existing Davis-Prescott and Mead-Phoenix transmission lines in the northeast corner of Section 36, Township 22 North, Range 14 West;
3. A new 30.2-mile 230-kV transmission line from the Griffith Power Plant to the new substation along route segments A, B and C as defined in the EIS (segments A and B will utilize a right-of-way previously acquired by Citizen's Utilities for its Kingman-Havas project);
4. The installation of new electrical equipment and structures within the boundaries of Western's existing McConnico and Mead substations; and
5. The tensioning of existing conductors and/or installation of new conductors on the existing Davis-Prescott 230-kV transmission line between Western's Davis Substation and the new Peacock Substation (segment Z as defined in the EIS), including the installation of new structures between some longer spans to support the conductor.

The transmission lines will be constructed along Western's preferred alternative as described in the EIS. In addition, Western decided to utilize single-pole steel structures for the portions of the new transmission lines that cross State- and privately-owned lands. Across BLM-administered public lands, Western will utilize the structure type stipulated by BLM in its rights-of-way grant.

Western based its decision on the information contained in the Griffith Energy Project EIS (DOE/EIS-0297; Draft EIS issued October 1998 and Final issued March 1999), subsequent comments received during the Final EIS waiting period, and consultations with the BLM.

Alternatives Considered

Western considered the transmission alternatives addressed in the EIS and the environmental ramifications of the Griffith Power Plant in reaching its decision. Transmission alternatives included system, routing, and structure alternatives, and the no action alternative. Transmission line routing alternatives considered in the EIS were limited by the proximity of the Project to an established utility corridor, and the presence of other Western facilities in the area. Western did not select a routing alternative directly north of the power plant (segments A and E as defined in the EIS) because of its proximity to Walnut Creek Estates. Another routing alternative for segment D was suggested, but it was not technically feasible. Steel lattice, H-frame, and single-pole structure alternatives were considered for the transmission lines. The environmental impacts for each structure type will be similar. Due to cost and engineering considerations, Western selected the single-pole structure for the new lines and the H-frame structures for installation between the longer spans on the existing line. Single pole structures will not be feasible for the Davis-Peacock upgrade due to the horizontal configuration of the existing line. System alternatives were also addressed, but dismissed from full analysis.

The no action alternative is the environmentally preferred alternative. It was not selected because it will not satisfy Western's need to provide access to its transmission system when requested by an eligible organization. Western implemented an Open Access Transmission Tariff to meet the intent of the Federal Energy Regulatory Commission (FERC) Order for Open Transmission Access (FERC Order Nos. 888 and 888-A). The no action

alternative also will not provide enhancements to the transmission system in northwestern Arizona, or extend the life of the existing Davis-Prescott transmission line.

Western believes that the selection of the no action alternative would not necessarily preclude development of the Griffith Power Plant, as Griffith could pursue other options or appeal a Western denial. Existing transmission constraints in the Kingman area have been well documented. If Griffith decides not to develop the Project under the no action alternative, it is believed that Citizen's Utilities would reinstate its Kingman-Havasut transmission line project and pursue development of its own power plant to meet future electrical loads in the Kingman area. With development of the Project, Citizen's Utilities is not expected to construct a new 230-kV transmission line north of the Griffith Power Plant.

In addition to the transmission system additions, the Project has other components that include the power plant, a brine disposal pond, gas pipelines, a power plant access road, an equipment off-loading area, a temporary haul route, water wells, and a water pipeline. Western does not have any jurisdiction over these components of the project. The BLM has jurisdiction over the eastern gas pipeline and will be issuing a separate ROD for the pipeline and the transmission lines that cross BLM-administered public lands. Western did consider the environmental ramifications of the entire Project in its decision making. Western has determined that the development of the gas pipelines, access road, temporary equipment off-loading, and haul road will not have significant environmental impacts based on the mitigation measures included in the EIS. The significance of the environmental impacts of the other Project components are discussed below.

Additional comments were received during the Final EIS waiting period that expressed concerns about water use and depletion, water use alternatives, Mohave County's authorization of the water supply for the Project, and cumulative impacts. Western's decision considered water resource impacts based on an average annual consumption rate of 3,300 gallons per minute over a 40-year life of the project. The water balance analysis in the Final EIS addressed water consumption rather than water supply. The water consumption analysis is a more accurate representation of the Project's impacts on the Sacramento water basin. Considering the water balance analysis and the highest possible estimates used

to address cumulative water withdrawal impacts, Western believes the Final EIS more than adequately represents potential cumulative water consumption impacts. Western determined that the water consumption impacts will be adverse, but not significant.

Western's decision also considered action taken by the Arizona Corporation Commission which issued a Certificate for Environmental Compatibility with conditions related to water use. The conditions will help the State monitor the Project's impact on groundwater resources. The power plant design incorporates equipment to recycle waste water and minimize water use. The EIS addressed alternatives to reduce water consumption by the power plant, but these alternatives were not economically feasible and were dismissed from full analysis. Two additional methods were suggested to reduce water depletion during the Final EIS waiting period that are consistent with the alternatives dismissed. Two more methods were suggested, but were outside the scope defined for the EIS during scoping.

Western's decision also took into consideration the potential impacts of the brine disposal pond. In response to comments received on the Draft EIS, Western worked with Griffith to add monitoring and reporting of any waterfowl use and problems with the brine disposal pond. With monitoring and reporting, Western will be able to address any impacts to waterfowl with State and Federal wildlife agencies. In addition, Western based its decision on Griffith's need to obtain an aquifer protection permit from ADEQ for the brine disposal pond. The permit will adequately address concerns expressed about the pond to Western during the Final EIS waiting period.

Western's decision also considered the Project's impacts on regional haze. Based on a review of the additional analysis on the Project's impacts on Grand Canyon visibility, Western concurs with the results that the Project will not have an adverse impact on Grand Canyon or Hualapai Tribe visibility. This ROD will be reconsidered if the ADEQ denies Griffith a PSD permit for the project.

Mitigation Measures

All practicable means to avoid or minimize environmental harm from Western's selected alternative have been adopted. The generic and selective mitigation measures adopted are given in Table 2.1-4 of the Final EIS. Specific mitigation that applies to the construction of the new transmission

lines, and the upgrading of the existing transmission line is identified in the EIS. This mitigation includes:

1. A desert tortoise mitigation plan which will include preconstruction surveys and compensation for unmitigated impacts;
2. Hualapai tribal participation in the intensive cultural resource surveys for the new transmission lines and the upgrade of the existing Davis-Peacock line;
3. In locations identified during cultural resource inventory as having the potential to contain sensitive cultural resources to the Hualapai Tribe, Hualapai representatives will be invited to monitor right-of-way blading and construction;
4. New conductors and groundwires will be nonspecular and when existing conductors are replaced, nonspecular conductors will be used to reduce visual impacts;
5. New transmission line structures will be dulled to reduce visual impacts;
6. Transmission line structures would be designed for the appropriate seismic zone;
7. Third-party construction monitoring in areas identified by the BLM;
8. Reseeding and plant salvaging per a BLM approved Reclamation Operation Maintenance Plan;
9. Preconstruction surveys for peregrine falcon and other raptor nesting activity;
10. Avoidance of construction during any discovered mountain plover breeding season; and
11. Coordination with interested property owners on structure siting to reduce land use and visual impacts.

The decision also is based on the implementation of specific mitigation measures identified in the EIS for the other components of the Project including:

1. Western's review and approval of dust control procedures for the construction of the Griffith Power Plant as required by the ADEQ air permit;
2. Power plant lighting compliance with Mohave County illumination ordinances and use of partially- or fully-shielded fixtures during darkness;
3. Painting plant with colors similar to the surrounding landscape; and
4. Monitoring and reporting of waterfowl use and impacts at the brine disposal pond.

A Mitigation Action Plan will be developed in accordance with 10 CFR 1021.331 that addresses mitigation commitments described above. The Mitigation Action Plan will explain how the mitigation will be planned and implemented and will be available upon request.

Dated: May 12, 1999.

Michael S. Hacskeylo,
Administrator.

[FR Doc. 99-13668 Filed 5-27-99; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6243-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 3, 1999 Through May 7, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7176. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (64 FR 17362).

Draft EISs

ERP No. D-AFS-L65321-00 Rating EC2, Douglas-fir Beetle Project, Harvest Tree, Regenerated Forest, Aquatic Restoration and Fuels Reduction, Idaho Panhandle National Forest, Coeur d'Alene River and Priest Lake Ranger District and Colville National Forest, Newport Ranger District, Kootenai, Shoshone and Bonner Counties, ID and Pend Orielle County, WA.

Summary: EPA expressed environmental concerns regarding the document's discussion of purpose and need, alternatives, monitoring and road management. EPA requested that these issues be clarified in the final document. In addition, EPA requested that the Forest Service developed a comprehensive plan for dealing with beetle damaged timber in an area that covers nearly 270,100 acres.

ERP No. D-COE-E39032-AL Rating EC2, Alabama-Coosa-Tallapoosa (ACT) River Basin Compact, Water Allocation, several counties, AL and GA.

Summary: EPA expressed environmental concerns that the Draft EIS may not adequately assess the impacts of the water allocation formulas. EPA recommended that comprehensive river basin water quality models be developed to predict impacts to indigenous fish and aquatic life, water quality, consumptive uses, groundwater and recreation for the affected reservoirs and rivers within each basin. EPA also recommended that a baseline be established that would define the water needs for the rivers basins to function in an acceptable manner and that would delineate the limit for maximum water withdrawals.

ERP No. D-DOE-G60007-NM Rating EC2, The Conveyance and Transfer of Certain Land Tracts Administered by the US DOE and Located at Los Alamos

National Laboratory, Los Alamos and Santa Fe Counties, NM.

Summary: EPA expressed environmental concerns since there is no assurance that the measures identified would be implemented by the transferee once transfer occurs. EPA suggests that DOE consider imposing deed restrictions and easements for those transfer lands having resources considered sensitive and having natural, cultural, historical and environmental importance. Further discussion on this matter should be incorporated in the FEIS.

ERP No. D-TVA-E05122-00 Rating EC2, Peaking Capacity Additions, Construction and Operation of Natural Gas-Fired Combustion Turbines, NPDES and COE Section 404 Permits; Three Sites Proposed: Colbert Fossil Plant, Colbert County, AL, Gallatin Fossil Plant, Sumner County, TN and Johnsonville Fossil Plant, Humphreys County, TN.

Summary: EPA expressed environmental concerns regarding coordination of air quality Prevention of Significant Deterioration permits. EPA also requested additional information on commitments for mitigation and the impact related to the natural gas pipeline alternative routes for the Colbert Plant.

ERP No. DS-NOA-B91005-00 Rating LO, Northeast Multispecies Fishery Management Plan, Updated Information concerning Overfishing of Red Hake and Silver Hake Fishiers, Northeast United States.

Summary: Review of this EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Final EISs

ERP No. F-DOE-E00007-SC Tritium Extraction Facility (TEF), Construction and Operation near the Center of Savannah River Site at H Area, (DOE/EIS-0271), Aiken and Barnwell Counties, SC.

Summary: EPA continues to have environmental concerns regarding response to accidental releases. These issues should be addressed in further detail during the design and permitting phases of the project.

ERP No. F-DOE-E09802-00 Commercial Light Water Reactor for the Production of Tritium at one or more Facilities: Watt Bar 1. Spring City, TN; Sequoyah 1 and 2 Soddy Daisy, TN; Bellefonte Unit 1 and 2, Holloywood, AL, Approval of Permits and Licenses, (DOE/EIS-0288) TN and AL.

Summary: EPA continues to have environmental concerns regarding potential air quality impacts. These issues should be addressed in further

detail during the design and permitting phases of the project.

ERP No. F-DOE-E09803-SC Accelerator for Production of Tritium at the Savannah River Site (DOE/EIS-0270), Site Specific, Construction and Operation, Aiken and Barnwell Counties, SC.

Summary: EPA continues to have environmental concerns regarding wetlands, groundwater, and surface water impacts.

ERP No. FA-NOA-B91017-00 Atlantic Sea Scallop, Placopecten Magellanicus, (Gmelin), Fishery Management Plan (FMP), Updated and Additional Information, Amendment No. 7.

Summary: Review of the EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: May 25, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99-13665 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6242-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153. Weekly receipt of Environmental Impact Statements. Filed May 17, 1999 Through May 21, 1999. Pursuant to 40 CFR 1506.9.

EIS No. 990167, Draft EIS, FHW, AK, C Street Corridor Project, Improvements from O'Malley Road to International Airport Road, NPDES and COE. Section 404 Permits, Municipality of Anchorage, AK, Due: July 12, 1999, Contact: Jim Bryson (907) 596-7428.

EIS No. 990168, Final EIS, AFS, AK, Sea Level Harvest Timber Sale, Implementation, Tongass National Forest, Ketchikan Ranger District, U.S. Coast Guard Permit, NPDES and COE. Section 10 and 404 Permits, Revillagigedo (Revilla) Island/Cleveland Peninsula, AK, Due: June 28, 1999, Contact: Craig Trulock (907) 228-4125.

EIS No. 990169, Final EIS, USA, Stratford Army Engine Plant (SAEP) Disposal and Reuse, Implementation, City of Stratford, Fairfield and New Haven Counties, CT, Due: June 28,

1999, Contact: Fred McLaren (703) 697-0115.

EIS No. 990170, Draft EIS, FTA, NY, Mid-Harlem Third Track Project, Construct a New 2.5 mile Third Track between Fleetwood and Crestwood Stations, Funding, Westchester County, NY, Due: July 12, 1999, Contact: Anthony Carr (212) 668-2170.

EIS No. 990171, Final EIS, DOA, MN, SD, Lincoln-Pipestone Rural Water (LPRW), Development and Expansion of Existing System North/Lyon County Phase and Northeast Phase Expansion Project, Yellow Medicine, Lincoln and Lyon Counties, MN and Deuel County, SD, Due: June 28, 1999, Contact: Mark S. Plank (202) 720-1649.

EIS No. 990172, Regulatory Final EIS, NOA, ME, VT, CT, NH, MA, RI, American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster and to Rebuild Lobster Stocks, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic, Due: June 28, 1999, Contact: Penelope D. Dalton (301) 713-2239.

Amended Notices

EIS No. 990100, Draft Supplement, COE, MO, St. Johns Bayou and New Madrid Floodway, Channel Enlargement and Improvement, Flood Control, National Economic Development (NED) Mississippi River & Tributaries, MO, Due: June 25, 1999, Contact: John Rumancik (901) 544-3975. Published FR-05-28-99—Review Period Extended.

EIS No. 990120, Draft EIS, AFS, MT, Tobacco Root Vegetation Management Plan, Restore and Maintain a Mix Vegetation, Beaverhead-Deer Lodge National Forest, Madison Ranger District, Madison County, MT, Due: June 15, 1999, Contact: Jan M. Bowey (406) 842-5432. Published FR 05-28-99. Review Period Extended.

EIS No. 990126, Draft EIS, AFS, MT, North Belts Travel Plan/Maypie Confederate Vegetation Restoration Project, Improvements, Helena National Forest, Townsend and Helena Ranger District, Broadwater, Lewis and Clark and Meagher Counties, MT, Due: July 21, 1999, Contact: Carol Nunn (406) 266-3425. Published FR 05-28-99—Review Period extended.

EIS No. 990161, Draft EIS, FHW, NY, Miller Highway Project (P.I.N. 103.27), Relocation of Miller Highway between West 59th Street to West 72nd Streets, on the Upper West Side of Manhattan, Funding and COE Section 404 Permit, New York

County, NY, Due: July 21, 1999, Contact: Arnold Hausler (518) 431-4125. Published FR-05-28-99—Correction to PIN No., Due Date, Agency Contact and Telephone.

Dated: May 25, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99-13666 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 21, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

Federal Communications Commission

OMB Control No.: 3060-0848.

Expiration Date: 11/30/99.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 99-48, First Report and Order and Further Notice of Proposed Rulemaking (FNPRM).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1400 respondents; 4.5 hours per response (avg.); 6300 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion; third party disclosures.

Description: In the First Report and Order and Further Notice of Proposed Rulemaking, issued in CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability, released March 31, 1999, the Commission seeks to implement Congress's goal of promoting innovation and investment by all participating in the telecommunications marketplace, in order to stimulate competition for all services, including advanced services.

In fulfillment of this goal, the Commission imposes certain collections of information on all incumbent local exchange carriers (incumbent LECs): (a) List of Equipment, Affidavit—Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. See 47 CFR 51.323(b). (No. of respondents: 1400; hours per response: 1 hour; total annual burden: 1400 hours). (b) Space Limitation Documentation—An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not just the room in which space was denied, without charge, within ten days of the receipt of the incumbent LEC's denial of space. Section 51.321(f) is currently approved by OMB under OMB control number 3060-0710. The Commission has amended the rule section to require that ILECs allow CLECs to tour their facility. However, no new or modified paperwork requirements are made. See 47 CFR 51.321(f). (c) Report of Available Collocation Space—Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. The incumbent LEC must maintain a publicly available document, posted for

viewing on the Internet, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space. See 47 CFR 51.321(h). (No. of respondents: 1400; hours per response: 1 hour; total annual burden: 1400 hours). (d) Information on Security Training—An incumbent LEC must provide information to competitive LECs on the specific type of security training a competitive LEC's employees must complete in order for the incumbent LEC to maintain reasonable security measures for its equipment and networks. See 47 CFR Section 51.323(i)(3). (No. of respondents: 1400; hours per response: 30 minutes; total annual burden: 700 hours). (e) Access to Spectrum Management Procedures and Policies—An incumbent LEC must provide competitive LECs with nondiscriminatory access to the incumbent LEC's spectrum management procedures and policies. See 1st Report and Order, para. 72. (No. of respondents: 1400; hours per response: 30 minutes; total annual burden: 700 hours). (f) Rejection and Loop Information—An incumbent LEC must disclose to requesting carriers information with respect to the rejection of the requesting carrier's provision of advanced services, together with the specific reason for the rejection. An incumbent LEC must also disclose to requesting carriers information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops. See 1st Report and Order, para. 73. (No. of respondents: 1400 hours; hours per response: 1 hour; total annual burden: 1400 hours). (g) Notification of Performance Degradation—If a carrier claims a service is significantly degrading the performance of other advanced services or traditional voice band services, then that carrier must notify the causing carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information. See 1st Report and Order, para. 75. (No. of respondents: 1400; hours per response: 1 hour; total annual burden: 1400 hours). All of the collections will be used by the Commission and by competitive carriers to facilitate the deployment of advanced data services and to implement section 706 of the Communications Act of 1934, as amended. Obligation to respond: Mandatory.

OMB Control No.: 3060-0804.

Expiration Date: 05/31/2002.

Title: Universal Service: Health Care providers Universal Service Program.

Form No.: FCC Forms 465, 466, 467 and 468.

Respondents: Not for profit institutions; business or other for-profit.

Estimated Annual Burden: 18,400 respondents; 6.6 hours per response (avg.); 121,500 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: The Commission has adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers pursuant to authority stemming from the Telecommunications Act of 1996. The Universal Service Administrative Company administers the telecommunications universal service programs. Health care providers who want to participate in the universal service program must file the following forms with USAC's Rural Health Care Division (RHCD). (a) FCC Form 465—Description of Services Requested and Certification. All health care providers requesting services eligible for universal service support must file a Description of Services and Certification form with the RHCD. By filing this form, health care providers certify that they meet the eligibility criteria and indicate the telecommunications services they would like to purchase at supported rates. The RHCD posts a description of the services sought on a website for all potential competing telecommunications carriers to see and respond to as if they were requests for proposals (RFPs). 47 C.F.R. 54.603(b)(2), 47 C.F.R. 54.615(c). (No. of respondents: 12,000; hours per response: 2.5 hours; total annual burden: 30,000). (b) FCC Form 466—Services Ordered and Certification. All health care providers ordering services that are eligible for universal service support must file a Services Ordered and Certification form with the RHCD. 47 C.F.R. 54.603(b)(4). FCC Form 466—Services Ordered and Certification is the means by which a health care provider informs the RHCD that it has entered an agreement with a telecommunications service provider to purchase supported services. FCC Form 466 will also be used to ensure health care providers have selected the most cost-effective method of providing the requested services as set forth in 47 C.F.R. 54.603(b)(4). The RHCD must receive this form before it can commit universal service monies to support the telecommunications services the health care provider has agreed to purchase.

(No. of respondents: 12,000; hours per response: 1.5 hours; total annual burden: 18,000 hours). (c) FCC Form 467—Confirmation of Service Commencement or Notification of Disconnection of Service. First, a health care provider that is receiving supported telecommunications service must file this form to inform the RHCD that it is receiving the services identified in FCC Form 466. The RHCD will not permit support to be disbursed to the telecommunications carrier pursuant to 47 C.F.R. 54.611 prior to receiving FCC Form 467. Second, a health care provider receiving supported telecommunications service must file FCC Form 467 when it stops receiving these services. This action is necessary to ensure that no universal service support is distributed after a telecommunications carrier stops providing the supported service. (No. of respondents: 15,000; hours per response: 1.5 hours; total annual burden: 22,500 hours). (d) FCC Form 468—Telecommunications Carriers Support. All telecommunications carriers seeking universal service support for providing telecommunications services to health care providers must file this form. The data in the report will be used to ensure that the appropriate amount of universal service support is allocated for each service purchased, as set forth in 47 C.F.R. 54.609(b). Telecommunications carriers must provide specific information on Form 468, such as the circuit distance for the services they are providing and the estimated amount of support that should be allocated to these services. Telecommunications carriers return the completed FCC Form 468 to the health care provider, which is responsible for filing both FCC Form 468 and FCC Form 466 with the RHCD at the same time. (No. of respondents: 3400; hours per response: 1.5 hours; total annual burden: 51,000. It is estimated a telecommunications carrier will submit FCC Form 468 about ten times a year).

Submission of FCC Form 465, Description of Services Requested and Certification, is the means by which a health care provider: (1) requests specific services from telecommunications carriers; and (2) certifies that it is eligible to receive telecommunications services that are supported by universal service mechanisms. Posting a health care provider's FCC Form 465 allows telecommunications carriers to identify which health care providers in their service area are asking for specific services. Health care providers use FCC

Form 466 to inform the RHCD that they have agreed to purchase supportable services from a telecommunications carrier. FCC Form 466 is also used to ensure health care providers have selected the most cost-effective method of providing the requested services as set forth in 47 C.F.R. 54.603(b)(4). The RHCD must receive this form before it can commit universal service funds to support the services the health care provider has agreed to purchase. FCC Form 467 also requires health care provider to inform the RHCD that it has stopped receiving supported service. FCC Form 468 is the means by which a telecommunications carrier that has agreed to provide supported services to a health care providers submits specific information to the RHCD about the amount of support that should be allocated for the telecommunications service. Obligation to respond: Required to obtain or retain benefits. Call RHCD at 800-229-5476 for questions concerning or copies of FCC Forms 465, 466, 467 and 468.

OMB Control No.: 3060-0856.

Expiration Date: 05/31/2002.

Title: Universal Service, Schools and Libraries Universal Service Program—Reimbursement Forms.

Form No.: FCC Forms 472, 473, and 474.

Respondents: Not-for-profit institutions; business or other for-profit.

Estimated Annual Burden: 61,800 respondents; 1.4 hours per response (avg.); 88,050 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: \$0.

Frequency of Response: On occasion.

Description: The Commission has adopted rules discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries pursuant to the Telecommunications Act of 1996. The Universal Service Administrative Company (USAC) administers the telecommunications universal service programs. The following forms are necessary to enable USAC's Schools and Libraries Division (SLD), to pay universal service support to service providers who provide discounted service to eligible schools, libraries, and consortia of those entities. FCC Form 472—Billed Entity Applicant Reimbursement Form—The information collected in the Billed Entity Applicant Reimbursement Form is necessary to enable the fund administrator, the SLD, to pay universal service support to service providers who provide discounted services to eligible schools, libraries, and consortia of those entities.

The information is to be collected from each Form 471 Billed Entity Applicant (Applicant) that received a funding Commitment Decisions Letter from the administrator and filed a Form 486 to indicate the applicant intended to prepare and submit to the SLD an invoice for reimbursement. The information collected on the Billed Entity Applicant Reimbursement Form should be completed by an applicant to seek reimbursement for payments on approved services and/or products delivered to the applicant from the actual service start date, as reported in the applicant's Form 486 Column (E). This information is necessary to identify the amount of the discounts due and owing from the service provider to the applicant, so that the service provider may reimburse this amount to the applicant. The fund administrator will notify the service provider of the amount of the approved reimbursement, and the service provider shall then reimburse the amount to the applicant. The fund administrator will then reimburse the service provider for the amount of approved discounts paid on a Billed Entity Reimbursement Form. The Telecommunications Act of 1996 contemplates that discounts on eligible services shall be provided by service providers, and the service providers shall seek reimbursement for the amount of the discounts. The fund administrator will disburse universal service support payments to service providers than directly to applicants. In preparing and submitting its Billed Entity Applicant Reimbursement Form, the applicant must provide a copy of the completed form to the service provider and obtain the written acknowledgement of the service provider to confirm that the service provider understands its obligation to provide the approved discount to the applicant, once the fund administrator processes the Billed Entity Reimbursement Form. The service provider must also acknowledge that under no circumstances may it make use of a reimbursement paid from the fund administrator to the service provider before the service provider issues the approved discount to the applicant. (No. of respondents: 50,000; hours per response: 1.5 hours; total annual burden: 75,000 hours). (b) FCC Form 473—Service Provider Annual Certification Form—The Service Provider Annual Certification Form is to be submitted by each service provider or vendor, hereinafter collectively referred to as service providers, that was assigned a service provider identification number (SPIN) by the

Universal Service Administrative Company (USAC) and that participates in the universal service support mechanism for schools and libraries. The service provider or vendor will participate in the universal service support mechanism by providing discounted eligible services to eligible entities pursuant to a Fund Commitment Decisions Letter issued by the SLD. The purpose of the Annual Certification Form is to confirm that, for each Invoice Form submitted by the service provider, the Invoice form is in compliance with the FCC's rules governing the schools and libraries universal service support mechanism, and the Invoice Form is true, accurate and complete. (No. of respondents: 9300; hours per response: 1 hour; total annual burden: 9300 hours). (c) FCC Form 474—Service Provider Invoice Form—The Service Provider Invoice Form is to be used by all service providers or vendors, hereinafter collectively referred to as service providers, who were assigned a SPIN by the USAC and participate in the universal service support mechanism for schools and libraries. The service provider or vendor will participate in the universal service support mechanism by providing discounted eligible services to eligible entities pursuant to a Fund Commitment Decisions Letter issued by the fund administrator, the Schools and Libraries Division (SLD). The purpose of the Invoice Form is for the service provider/vendor to seek reimbursement for the cost of discounts. The information to be collected on the Service Provider Invoice Form must be received by the SLD before a service provider participating the universal service program for schools and libraries can receive payment for the discounted portion of its bill for eligible services to eligible entities. Subsequent to receipt and review of the Service Provider Invoice, the SLD will authorize USAC to disburse payment on the invoice. (No. of respondents: 2500; hours per response: 1.5 hours; total annual burden: 3,750 hours).

The purpose of FCC Form 472, Billed Entity Applicant Reimbursement Form is to establish the process and procedure for an eligible entity to seek reimbursement from the service provider for the discounts on services paid in full since the actual service start date of the discounts as reported in the applicant's Form 486 Receipt of Services Confirmation Form, Column (E) of Block 2. Once the fund administrator processes the Billed Entity Applicant Reimbursement Form,

a notification will be sent to the service provider and applicant advising them of the approved amount of discounts. The service provider must then provide the discount amount to the applicant and the fund administrator will reimburse the service provider. The purpose of FCC Form 473, Service Provider Annual Certification Form is to establish the process and procedure for a service provider to confirm the accuracy of their Invoice Forms. This form is part of the procedure established to enable service providers to seek reimbursement for the costs of discounts they provided to eligible entities on eligible services as defined under the FCC's rules governing the schools and libraries universal service support mechanism pursuant to the Telecommunications Act of 1996. The purpose of FCC Form 474, is to establish the processing and procedure for a service provider to seek reimbursement for the costs of discounts it provided to eligible entities on eligible services as defined under the FCC's rules governing the schools and libraries universal service support mechanism pursuant to the Telecommunications Act of 1996. The Service Provider Invoice Form is also used by the fund administrator, the SLD, to assure that the dollars paid out by the fund administrator on a funding request number (FRN) do not exceed that FRN.

All of the requirements contained herein are necessary to implement the congressional mandate for universal service. Obligation to respond: Required to obtain or retain benefits. Call SLD at 888-203-8100 for questions concerning or copies of FCC Forms 472, 473, and 474.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554. Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99-13613 Filed 5-27-99; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, May 25, 1999,

the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's supervisory, corporate, and liquidation activities, and (2) matters relating to an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: May 26, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99-13799 Filed 5-26-99; 2:20 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 27988.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 27, 1999, 10:00 a.m., meeting open to the public.

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THE FOLLOWING ITEMS HAVE BEEN ADDED TO THE AGENDA:

Proposed Final Rules on Matching Credit Card and Debit Card Contributions in Presidential Campaigns.

Revised Advisory Opinion 1999-9: Bill Bradley for President, Inc., by Robert F. Bauer, counsel.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694-1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99-13732 Filed 5-26-99; 10:20 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 301-201037-003.

Title: Jacksonville—SSA Marine Terminal Lease Agreement.

Parties:

Jacksonville Port Authority
Stevedoring Services of America, Inc.

Synopsis: The proposed amendment concerns an increase in rental rates and other matters. The agreement continues to run through October 13, 2001.

Dated: May 24, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99-13570 Filed 5-27-99; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

JCW International Group, Inc. d/b/a, JCW Freight Systems Company, 380 Swift Avenue, South San Francisco, CA 94080, Officer: James C. Wu, President, Raymond Kai Fai Chan, (Qualifying Individual)
VIP International, Inc., 176-20 147 Avenue, Jamaica, NY 11434, Officer: Andrew P. Pujol, President, (Qualifying Individual)

AJ International Shipping/Logistics, Inc., 4548 Mundy Road, Jacksonville, FL 32207, Officers: Mark Andrew Nichols, President, (Qualifying Individual), Jerold B. Knoepfler, Vice President

Arnistics LLC, 171 Madison Avenue, Suite 1409, New York, NY 10016, Officers: Michael Brian Deitchman, Member, (Qualifying Individual), Jay Vallabh, Member

Allstar Freight International, Inc., 550 E. Carson Plaza Drive, #132, Carson, CA 90746, Officers: Bong Soo Hong, CEO, Changsub Shim, Secretary, (Qualifying Individual)

Bayanihan Cargo International, 925 Linden Avenue, Unit D, South San Francisco, CA 94080, Officers: Manuel A. Espinosa, President, (Qualifying Individual), Carmen P. Espinosa, Secretary

The Freight Company Inc., 10002 Pioneer Blvd., Unit 108, Santa Fe Springs, CA 90670, Officer: Syed Shirazi, President, (Qualifying Individual)

Bryant L. VanBrakle,
Secretary.

[FR Doc. 99-13571 Filed 5-27 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 25, 1999.

A. Federal Reserve Bank of Cleveland
(Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Tonti Financial Corporation*, Columbus, Ohio; to merge with Greater Ohio River Corp., Columbus, Ohio, and thereby indirectly acquire First Bank of Marietta, Marietta, Ohio.

B. Federal Reserve Bank of Chicago
(Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Associated Banc-Corp.*, Green Bay, Wisconsin; to merge with Riverside Acquisition Corp., Minneapolis, Minnesota, and thereby acquire Riverside Bancshares Corporation, Minneapolis, Minnesota, and Riverside Bank, Minneapolis, Minnesota.

2. *Peoples Bancorp, Inc.*, Arlington Heights, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank of Arlington Heights, Arlington, Heights, Illinois (in organization).

Board of Governors of the Federal Reserve System, May 25, 1999.

Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 99-13662 Filed 5-27-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 30, 1999.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 30, 1999.¹ The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the expansion in economic activity is still robust. Nonfarm payroll employment posted sizable further gains in January and

February, and the civilian unemployment rate remained below 4½ percent. Total industrial production edged higher over the first two months of the year. Total retail sales rose sharply further over the two months, and housing starts increased appreciably from an already elevated level. Available indicators suggest that business capital spending decelerated in early 1999 but growth was still relatively rapid. The nominal deficit on U.S. trade in goods and services widened substantially in January from its fourth-quarter average. Inflation has remained subdued despite very tight labor markets.

Short-term interest rates have changed little since the meeting on February 2-3, 1999, while longer-term rates have risen somewhat on balance. Key measures of share prices in equity markets have registered mixed changes over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has risen somewhat over the period in relation to the currencies of a broad group of important U.S. trading partners, and the appreciation has been a bit larger against a subset of major currencies.

M2 and M3 continued to record large increases in January and February, but available data pointed to substantial moderation in March. Both aggregates are estimated to have increased over the first quarter at rates somewhat above the Committee's annual ranges. Total domestic nonfinancial debt has continued to expand at a pace somewhat above the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 4¾ percent. In view of the evidence currently available, the Committee believes that prospective developments

¹ Copies of the Minutes of the Federal Open Market Committee meeting of March 30, 1999, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

are equally likely to warrant an increase or a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, May 24, 1999.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 99-13593 Filed 5-27-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, June 2, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C 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 matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-13731 Filed 5-26-99; 10:17 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 9823522]

Liberty Financial Companies, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received by July 23, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Toby Milgrom Levin or Sydney M. Knight, FTC/S-4002, 601 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3156 or (202) 326-2162.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 6, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an

agreement containing a consent order from Liberty Financial Companies, Inc. ("Liberty Financial"), the operator of a website on the World Wide Web located at <http://www.younginvestor.com> ("website").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Liberty Financial website features several different areas targeted to children and teens. One such area is the Measure Up Survey area. Participants in this area survey fill out a survey seeking financial information, including the individual's: weekly amount of allowance; types of financial gifts received such as stocks, bonds and mutual funds, and from whom; spending habits; part time work history; plans for college; and family finances. Later, the survey elicits the individual's name, address, age and email address.

The Commission's complaint alleges that Liberty Financial made three misrepresentations in connection with its collection of this information on its website. First, the complaint alleges that Liberty Financial represented that the information collected would be "totally anonymous." In fact, according to the complaint, all of the information collected in the survey area—the questionnaire responses and the participants' personal information—are maintained in one database in identifiable form. Thus, the financial information participants provide can be linked to them personally.

The complaint also alleges that Liberty Financial falsely represented that participants in the Measure Up Survey who submit the requested personal identifying information will receive the company's Young Investor e-mail newsletter. In fact, according to the complaint, Liberty Financial did not provide a newsletter to any of the participants in the Survey.

Finally, the complaint alleges that Liberty Financial falsely represented that every three months, a participant in the Measure Up Survey who submits the requested personal information is selected to win his or her choice of certain specified prizes. In fact, according to the complaint, Liberty Financial has not selected quarterly winners as represented.

The proposed consent order contains provisions designed to remedy the

violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits Liberty Financial from making any misrepresentation about its collection or use of personal information from children under the age of eighteen, the group from whom Liberty Financial had previously collected such information. The order defines "personal information" as "individually identifiable information about an individual collected online, including first and last name, home or other physical address including street name and name of a city or town, e-mail, address, telephone number, Social Security number, or any information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this definition."

Part II of the proposed order prohibits Liberty Financial from collecting personal identifying information from any child under age thirteen if Liberty Financial has actual knowledge that the child does not have a parent's permission to provide the information.

Part III of the proposed order requires Liberty Financial to post a clear and prominent privacy statement on its child-directed websites explaining Liberty Financial's practices with regard to its collection and use of personal identifying information. The notice must include the following:

- (a) What information is being collected;
- (b) How Liberty Financial uses such information;
- (c) Liberty Financial's disclosure practices for such information; and
- (d) How the consumer can obtain access to the information.

Liberty Financial may comply with this Part by posting a Privacy Notice on its home page along with a clear and prominent hyperlink to that notice at each location on the site at which personal identifying information is collected. The hyperlink would be accompanied by the following statement:

Notice: We collect personal information on this site. To learn more about how we use your information click here.

Part IV of the proposed order sets forth the principles of parental choice and control. This Part requires Liberty Financial to implement a procedure to obtain "verifiable parental consent" prior to collecting and using children's identifying information, a procedure commonly referred to as "opt-in." The order specifies ways in which Liberty

Financial can ensure that parents receive notice of the collection and authorize it.

Part V addresses the information that Liberty Financial previously collected from children. It requires Liberty Financial to delete all personal information collected from children prior to the effective date of the order.

Part VI of the order states that once the Children's Online Privacy Protection Act of 1998 and any regulations implementing the statute become effective, Liberty Financial's compliance with that Act and regulations will be considered compliance with Paragraphs II through IV of the order.

Part VII outlines Liberty Financial's recordkeeping requirements under the proposed order. Part VIII requires Liberty Financial to deliver a copy of the order to certain company officers and personnel. Parts IX and X require Liberty Financial to notify the Commission of any change in its corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Part XI is a "sunset" provision, dictating that the order will terminate in twenty years absent certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99-13612 Filed 5-27-99; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a proposed new system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) proposes to establish a new governmentwide system of records, Access Certificates for Electronic Services (ACES), GSA/GOVT-5. The system will allow on-line access to personal information in participating Federal agencies' automated systems by individuals who are the subjects of the information. Up to now, many Federal information

systems containing legally safeguarded personal information have been inaccessible to the public electronically because of an insufficient proof-of-identity capability. The new system will enable more timely and cost-effective communication between the public and the Federal Government while safeguarding personal information through state-of-the-art digital signature technologies.

DATES: Comments on the proposed system must be provided by June 28, 1999. The proposed system will go into effect after that date without further notice unless the comments dictate otherwise.

ADDRESSES: Address comments to Stanley Choffrey, General Services Administration, Federal Technology Service, Office of Information Security, Room 5060, 7th and D Streets, SW, Washington, DC 20407, or e-mail stanley.choffrey@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Stanley Choffrey on (202) 708-6099 or at the above address on the technical aspects of the ACES system; or Jinaita Kanarchuk concerning the GSA Privacy Program on (202) 501-1452, or e-mail jinaita.kanarchuk@gsa.gov.

GSA/GOVT-5

SYSTEM NAME:

Access Certificates for Electronic Services (ACES).

SYSTEM LOCATION:

System records are maintained for the General Services Administration (GSA) by contractors at various physical locations. A complete list of locations is available from: Administrative Contracting Officer, FEDCAC, Federal Technology Service, General Services Administration, 7th and D Streets, SW, Room 5060, Washington, DC 20407; telephone (202) 708-6099.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered are persons who have applied for the issuance of a digital signature certificate under the ACES program; have had their certificates amended, renewed, replaced, suspended, revoked, or denied; have used their certificates to electronically make contact with, retrieve information from, or submit information to an automated information system of a participating agency; have requested access to ACES records under the Freedom of Information Act (FOIA) or Privacy Act; and have corresponded with GSA or its ACES contractors concerning ACES services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish and verify the identity of ACES users, to maintain the system, and to establish accountability and audit controls. System records include:

- a. Applications for the issuance, amendment, renewal, replacement, or revocation of digital signature certificates under the ACES program, including evidence provided by applicants or proof of identity and authority, and sources used to verify an applicant's identity and authority.
- b. Certificates issued.
- c. Certificates denied, suspended, and revoked, including reasons for denial, suspension, and revocation.
- d. A list of currently valid certificates.
- 3. A list of currently invalid certificates.
- f. A file of individuals requesting access and those granted access to ACES information under FOIA or the Privacy Act.
- g. A file of individuals requesting access and those granted access for reasons other than FOIA or the Privacy Act.
- h. A record of validation transactions attempted on digital signature certificates issued by the system.
- i. A record of validation transactions completed on digital signature certificates issued by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5124(b) of the Clinger-Cohen Act of 1996, 40 U.S.C. 1424, which provides authority for GSA to develop and facilitate governmentwide electronic commerce resources and services, and the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., which provides authority for GSA to manage Federal information resources.

PURPOSE(S):

To establish and maintain an electronic system to facilitate secure, on-line communication between Federal automated information systems and the public, using digital signature technologies to authenticate and verify identity.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

Information from this system may be disclosed as a routine use:

- a. To GSA ACES program contractors to compile and maintain documentation on applicants for proofing applicants' identity and their authority to access information system applications of participating agencies.
- b. To GSA ACES program contractors to establish and maintain

documentation on information sources for verifying applicants' identities.

c. To Federal agencies participating in the ACES program to determine the validity of applicants' digital signature certificates in an on-line, near real time environment.

d. To GSA, participating Federal agencies, and ACES contractors, for ensuring proper management, ensuring data accuracy, and evaluation of the system.

e. To Federal, State, local or foreign agencies responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

f. To a member of Congress or to a congressional staff member in response to a request from the person who is the subject of the record.

g. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure of system records to consumer reporting systems is not permitted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:**STORAGE:**

All records are stored by GSA ACES contractors or by GSA as hard copy documents and/or on electronic media.

RETRIEVAL:

Records are retrievable by a personal identifier or by other appropriate type of designation approved by GSA and made available to ACES participants at the time of their application for ACES services.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act, the Computer Security Act, and OMB Circular A-130, Appendices I and III. Technical, administrative, and personnel security measures are implemented to ensure confidentiality and integrity of the system data stored, processed, and transmitted. The ACES System Security Plan, approved by GSA for each ACES contractor, provides for inspections, testing, continuity of operations, and technical certification of security safeguards. GSA accredits and annually re-accredits each contractor system prior to its operation.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Contracting Officer, FEDCAC, Federal Technology Service, General Services Administration, Room 5060, 7th and D Streets, SW, Washington, DC 20407.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the system manager. Applicants for digital signature certificates will be notified by the GSA ACES contractor which facilitates individual access to the relevant Federal agency database as follows:

a. Each applicant will be provided, on a Government-approved form that can be retained by the individual applicant, the principal purposes of the ACES program; the authority for collecting the information; the fact that participation is voluntary; the fact that identity and authority information must be provided and verified before a certificate will be issued; the fact that the information provided is covered by the Privacy Act and the Computer Security Act; the routine uses that will be made of the information being provided; the limitations on the uses of the information being provided; the procedures to be followed for requesting access to the individual's own records; and the possible consequences of failing to provide all or part of the required information or intentionally providing false information.

b. Written notification in response to an individual's request to be advised if the system contains a record pertaining to him/her.

c. Written notification to an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

d. Written notification of the right to appeal to GSA by any individual on any dispute concerning the accuracy of his/her record.

RECORD ACCESS PROCEDURE:

GSA ACES contractors will provide notification of, access to, review of, or copies of an individual's record upon his/her request as required by the Privacy Act.

CONTESTING RECORD PROCEDURE:

GSA ACES contractors will amend an individual's record upon his/her written

request, as required by the Privacy Act and GSA's implementing regulations, 41 CFR part 105-64. If the ACES contractor determines that an amendment is inappropriate, the contractor shall submit the request to the System Manager for a determination by GSA whether to grant or deny the request for amendment and direct response to the requester.

RECORD SOURCES CATEGORIES:

The sources for information in the system are the individuals who apply for digital signature certificates, GSA ACES contractors using independent sources to verify identities, and internal system transactions designed to gather and maintain data needed to manage and evaluate the ACES program.

PRIVACY ACT EXEMPTIONS CLAIMS FOR THE SYSTEM:

None.

Dated: May 21, 1999.

Daniel K. Cooper,

Director, Administrative Services Division.

[FR Doc. 99-13636 Filed 5-27-99; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO-99-20]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c) (2) (A) of the Paperwork reduction Act of 1995 the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and

instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received with 10 days of this notice.

Proposed Project

1. Application for Training for the CDC Distance Learning Program, Laboratory Training, and Other Training—(0920-0017)—Reinstatement—The Public Health Practice Program Office (PHPO) is requesting an emergency clearance to resume data collection for the training forms associated with this clearance. We also plan on modifying/revising segments of the application forms. PHPO in conjunction with the Public Health Training Network (PHTN) and the National Laboratory Training Network (NLTN) at CDC includes the Distance Learning Program which offers self-study, computer-based training, satellite broadcast, video courses, instructor-led field courses, and lab courses related to public health professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training in an effort to learn up-to-date public health procedures. The "Application for Training" forms are the official applications used for all

training activities conducted by the CDC.

The Continuing Education (CE) Program, which includes CDCs accreditation to provide Continuing Medical Education (CME), Continuing Nurse Education (CNE) and Continuing Education Unit (CEU) for almost all training activities, requires a unique identifying number, preferably the respondent's Social Security Number (SSN), to positively identify and track individuals who have been awarded CE credit. It is often necessary to identify individuals currently enrolled in courses, or to retrieve historical information as to when a particular individual completed a course or several courses over a time period. This information provides the basis for producing a requested transcript or determining if a person is enrolled in more than one course. The use of the SSN is the only positive way of assigning a unique number to a unique individual for this purpose. However, the use of the SSN is voluntary; if a student chooses not to submit a SSN, CDC assigns a unique identifier. The reason the SSN, rather than an arbitrary assigned number is preferred, is because students are not likely to remember an arbitrary number. A student's participation in the curriculum of self-study courses sometimes spans a number of years. The SSN is necessary for eliminating duplicate enrollments; for properly crediting students with completed course work who have similar names or have changed addresses; for generating transcripts of previous completed course work on a cumulative basis. Due to the volume of enrollments, CDC Form 36.5 has been previously approved and used for years as an optical mark scan form. Use of this form, along with the use of the Social Security Number, greatly enhances CDC's capability to process a much greater volume of enrollments in less time with much greater accuracy. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Application for Training—CDC 0.759A	6,300	1	0.0833	525
Application for Laboratory Training—CDC 32.1	10,000	1	0.0833	833
Application for Distance Learning Program—CDC 36.5	40,000	1	10/60	6,667
Total .....	.....	.....	.....	8,025

Dated: May 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-13601 Filed 5-27-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99151]

Notice of Availability of Funds; Innovative Technology Development Grant for the Detection and Monitoring of Diabetic Hypoglycemia by Non- or Minimally-Invasive Techniques

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for an innovative technology development grant program for the development of technology for the non-invasive or minimally-invasive detection and monitoring of diabetic hypoglycemia (low blood sugar) in children, adults, and the elderly. This program addresses the "Healthy People 2000" priority areas of Diabetes and Chronic Disabling Conditions; Maternal and Infant Health; Unintentional Injuries; and Heart Disease and Stroke. The purpose of the program is to stimulate the development, commercialization, and application of innovative technology for monitoring diabetics, especially insulin dependent diabetics, who are at risk of developing hypoglycemia, a condition which can result in reduced alertness, temporary inability to communicate, loss of consciousness, seizures, coma, injury, or death.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, businesses, small minority businesses, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award,

grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately \$700,000 is available in FY 1999 to fund up to three (3) awards. It is expected that the average award will be \$230,000, ranging from \$100,000 to \$700,000. It is expected that the awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Programmatic Interests

Programmatic interest is focused on:

1. Research and development leading to an appropriate technology for detecting and/or monitoring hypoglycemia, conditions related to hypoglycemia, or indicators of pre-hypoglycemia in diabetic patients during normal daily living. The objective of the technology should be aimed at detecting or monitoring the physiologic condition of hypoglycemia (e.g. Measurement of blood glucose concentration measurement, monitoring rates of change of blood glucose concentrations, measurement of metabolic products related to diabetes, monitoring changes in bodily radiant energy, or detection of deviations from typical individual patient characteristics using "smart" biosensor technology).

2. Development of the technology from research and development, through product testing, clinical evaluation, production, marketing, and technical support. Research which results ONLY in findings of academic interest with no practical application to the objectives of the grant will not be considered.

Proposals for research and development should address technology that is:

1. Non-intrusive to the patient's lifestyle.
2. Non- or minimally-invasive (i.e., totally external to the body or very minimal intrusion through the skin barrier).
3. Simple to operate, rugged, durable, and reliable.
4. Sensitive enough to detect or alarm a hypoglycemic condition in time for the patient or caregiver to take effective action, but not prone to excessive false alarms.
5. Capable of being attached to or placed near a sleeping infant, child, or elderly person in such a manner that

normal movements during sleep will not dislodge or deactivate the device or cause a false alarm.

6. Available at cost such that the typical diabetic patient or parent of a diabetic child can afford to purchase or lease the monitoring system.

The research and development proposed should demonstrate an understanding of the value of collaboration with other researchers, partnerships, contracts, venture capital relationships, etc., to accomplish the objectives of this project.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Application

Submit the original and five copies of PHS 398 (OMB Number 0925-0001). On or before July 22, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

- (a) Received on or before the deadline date; or
- (b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by a Special Emphasis Panel appointed by CDC.

1. Evidence of Technical Expertise and Research Capacity (30%)

The applicant's ability to plan, implement, and conduct a successful research and development program aimed at clinical measurement systems including the development and validation of analytical methods and/or instruments.

2. Technical Approach (30%)

a. The overall technical merit of the research plan and the soundness and scientific validity of the proposed hypoglycemia detection and monitoring system. The research plan must be thoroughly described and must include a detailed explanation of the operating principles of the technology to be developed.

b. The adequacy of the research plan includes the extent to which the applicant has adequately addressed all issues described under the Programmatic Interests section of this announcement and how well the evaluation plan can be used to effectively measure progress towards the stated objectives.

c. The background of the application, i.e., the basis for the present application, the critical evaluation of existing knowledge, and the specific identification of the knowledge gaps which the application intends to address.

3. Understanding the Problem (20%)

a. The applicant's understanding of the requirements, objectives, and interactions required for a successful research and development program.

b. The applicant must also present evidence of understanding of the difficult analytical problem presented by the complexity of individual variability in diabetes, and the unique challenges presented for non- or minimally-invasive detection or monitoring of hypoglycemia in different patient age groups.

c. The applicant must demonstrate an awareness and understanding of strengths and weaknesses of previous work related to the proposed technology.

4. Program Personnel (10%)

The extent to which the application has described:

a. The qualifications and commitment of the applicant including training and experience in chemistry, biochemistry, biomedical engineering, medicine, diabetology, or other relevant scientific disciplines

b. Detailed allocations of time and effort of staff devoted to the project

c. Information on how the applicant will develop, implement and administer the program

d. The qualifications of the support staff.

5. Collaboration (5%)

Collaboration is encouraged to accomplish the research objectives in a timely manner. The applicant should demonstrate the ability to collaborate

with other research centers, manufacturers, or commercial interests to conduct the described research and development plan.

6. Plans To Publicize the Research Effort (5%)

The applicants should provide an explanation of plans to encourage the publication of the research findings or otherwise make the information available to the public as soon as is feasible within the limits of protecting proprietary interests of the developer.

7. Human Subjects Protection (Not Scored)

Applications which do not adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects will be rejected.

8. Budget (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

- AR-1 Human Subjects Requirements
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR-3 Animal Subjects Requirements
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2000
- AR-12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317 of the Public Health Service Act, [42 U.S.C. section 241(a) and 247(b), as amended.] The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at <http://www.cdc.gov> (click on funding).

Please refer to Program Announcement Number 99151 when requesting information. To receive an application kit, call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: 770-488-2718, Email address: mij3@cdc.gov.

For program technical assistance, contact:

Dayton T. Miller, Ph.D., Centers for Disease Control and Prevention, 4770 Buford Highway (F-18), Atlanta, Georgia 30341, Telephone: (770) 488-4452, FAX: (770) 488-4541, EMAIL: dtm1@cdc.gov

or
Gary L. Myers, Ph.D., Centers for Disease Control and Prevention, 4770 Buford Highway (F-25), Atlanta, Georgia 30341, Telephone: (770) 488-4606, FAX: (770) 488-4192, EMAIL: glm1@cdc.gov

Dated: May 24, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-13602 Filed 5-27-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99106]

Social and Environmental Interventions To Reduce HIV Incidence; Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to identify social and environmental interventions to reduce HIV incidence. This program addresses

the "Healthy People 2000" priority areas of Educational and Community-Based Programs (Objective: Increase years of healthy life to at least 65 years) and HIV Infection (Objective: Confine annual incidence of diagnosed AIDS cases to no more than 43 per 100,000).

Prevention research has identified effective methods to help individuals change behavior to reduce their risk of acquiring or transmitting HIV. This research has contributed to significant decreases in risk and has saved many lives. However, an estimated 40,000 persons per year acquire HIV in the United States, so currently available methods are not sufficient and additional prevention approaches are needed. This announcement seeks research proposals to identify interventions in the social environment that could further reduce HIV incidence.

In 1988 the Institute of Medicine defined the mission of public health as "ensuring the conditions in which people can be healthy." Since then, many studies have identified societal characteristics that are associated with a variety of illnesses, but few studies have identified social or environmental interventions and evaluated their effectiveness. Early in the AIDS epidemic, members of affected communities reported that the social environment contributed to the incidence of disease. The contribution of the social environment can clearly be seen in countries where women's rights have not been protected, facilitating international trafficking in women for commercial sex. Stigma surrounding AIDS impedes many HIV prevention interventions. Environmental or structural conditions in the United States may also contribute to the incidence of HIV. Laws against carrying needles and syringes may encourage needle sharing by drug users. Laws that preclude recognition of same-sex partnerships may discourage long-term monogamous relationships among gay men or intimidate gay men so they cannot be reached with prevention interventions. A high concentration of liquor stores may foster environments where HIV and other sexually transmitted diseases flourish. Areas with low levels of community cohesion tend to have high rates of many different diseases.

This announcement seeks research applications to identify social and environmental interventions that could further reduce HIV incidence. Social and environmental factors that might be addressed include, but are not limited to: housing, legal issues, stigma, employment, physical environments of communities, and family and peer

support systems. The purpose of this research is not simply to add to the list of social and environmental conditions that may facilitate HIV transmission, but to also systematically examine the acceptability and feasibility of interventions to change the conditions, and to estimate the impact that the interventions might have on HIV incidence.

These research studies will: (1) Determine who is acquiring HIV in the community (use of relevant existing data is encouraged); (2) identify and document evidence of social and environmental factors that contribute to HIV incidence (using primary and secondary data analyses); (3) determine which social and environmental factors are amenable to specific interventions; and (4) assess the acceptability and feasibility of the identified interventions, and estimate the impact of the interventions on HIV incidence in a defined study population or geographic area. An important aspect of the study will be the participation of the affected community to identify their assessments of associations between social conditions and HIV infection, and of the acceptability and feasibility of proposed interventions. Study teams should be multi-disciplinary and include experts in sociology, epidemiology, human rights, and community organization and development. The goal of this announcement is to identify and develop social and environmental interventions to reduce HIV incidence and assess the acceptability, feasibility, and potential impact of those interventions. It is not anticipated that long-term interventions would be accomplished by this announcement. However, documenting the process of identifying and prioritizing interventions could facilitate implementation of interventions in the study community and other communities.

Jonathan Mann and others proposed a health and human rights framework for public health as a way to moving beyond the "paralyzing" effects of simply viewing poverty as the root cause of ill health. While not a requirement for these proposals, applicants might consider a human rights framework in their approach to identifying possible areas for intervention.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals,

other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Small and minority owned businesses are encouraged to apply.

Note: Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately \$500,000 is available in FY99 to fund approximately 2-3 awards. It is expected that the average award will be \$200,000, ranging from \$150,000 to \$250,000, for a 12 month budget period within a two year project period. It is expected that awards will be made September 1, 1999. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

In making awards, geographic and population risk group diversity will be considered.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under Recipient Activities. Because this is a cooperative agreement, there will be substantial federal involvement and CDC will be responsible for conducting activities listed under CDC Activities:

1. Recipient activities:

a. Develop a research protocol and plans for conducting this research in collaboration with CDC, and where appropriate, with the participation of State and local professional associations; community groups and organizations, especially those with a racial and ethnic minority membership and focus; HIV/AIDS service organizations; and organizations that serve persons at increased risk of HIV/AIDS.

b. Promote the development and evaluation of social and environmental interventions for HIV prevention by providing data and ongoing assistance to community planning groups; by disseminating data through publications and presentations by participating in project planning and implementation meetings; and by reporting ways in

which the data have been used to promote public health.

c. Establish procedures to maintain the rights and confidentiality of all study participants. Prior to implementation, this study must be submitted to the CDC Institutional Review Board (IRB) for review and approval or deferral.

d. Develop the review of existing information, research study protocol, and data collection forms.

e. In collaboration with the community, identify opportunities and needs for social and environmental interventions; assess the acceptability and feasibility of identified interventions; estimate the effectiveness of the interventions in preventing infection and disease.

f. Review existing information to evaluate the contribution of the social and environmental factors to the incidence of HIV, and potential opportunities for intervention.

g. Identify, recruit, obtain informed consent (when appropriate), enroll, and follow an adequate number of study participants as determined by study protocol and the program requirements.

h. Perform data analysis as determined in the study protocol.

(1) Share data with other collaborators to answer specific research questions.

(2) When appropriate, participate in multi-site data analysis and presentation and publication of research findings with collaborators.

(3) Prepare and submit for publication, a report of research findings describing the process of selecting and prioritizing interventions based on the acceptability, feasibility, and potential impact identified by this research.

2. CDC activities:

a. Provide technical assistance in the design and conduct of the research.

b. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project by an OPRR-approved IRB with either a single or multiple project assurance. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. As needed, assist in designing a data management system.

d. Coordinate research activities among the different sites, when appropriate.

e. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and

Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow the Evaluation Criteria in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unredacted font. Applications containing narratives that are longer than 25 pages will not be reviewed.

F. Submission and Application Deadline

Submit the original and five copies of PHS-398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 1, 1999, submit the application to: Sheryl Disler, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99106, Centers for Disease Control and Prevention (CDC), Brandywine Road, Mail Stop E15, Room 3000, Atlanta, Georgia 30341-4146.

Deadline: Applications shall be considered as meeting the deadline if they are either received on or before the deadline date; or sent on or before the deadline date and received in time for Peer Review. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications that do not meet these criteria are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent peer reviewer group appointed by CDC. Applications will be reviewed and evaluated only on the basis of the evidence submitted.

1. Background and Objectives (15 points): Demonstrated scientific significance of the proposed study in that it will publish data not otherwise available concerning social and environmental interventions to reduce HIV incidence.

The application should include a detailed review of the scientific literature pertinent to the study being proposed, with evidence for the relationship of social and environmental factors to the incidence of HIV. This literature review should suggest specific research questions that will guide the research. The goals and objectives for

the research should be clearly stated along with how findings from this study could be used to implement social and environmental interventions.

2. Site Selection (20 points):

Demonstration of a high prevalence of HIV or AIDS in the study area. Demonstrated capacity to access the relevant study community or communities.

The application should include a description of the size and characteristics of the communities proposed for study. Describe the prevalence and estimated incidence of HIV infection in the study community. Include the age, gender, race/ethnicity, and HIV-risks of persons with HIV in the community to be studied. Describe the potential for community participation to identify interventions and participate in the assessment of their acceptability, feasibility, and estimated impact. Describe the experience of the investigators in working with communities in a culturally and linguistically appropriate manner. Letters of support from cooperating organizations should be included which detail the nature and extent of such cooperation.

3. Methods (25 points):

Appropriateness of methods for identifying social and environmental interventions to reduce HIV incidence and measuring the acceptability, feasibility and potential impact of the interventions within a community or geographic area.

The application should describe the approach to gathering information on the potential contribution of social and environmental factors to HIV incidence in the study area, including anticipated primary and secondary data collection. It should specify quantitative and qualitative analytic techniques to be used to develop an intervention and evaluate its acceptability, feasibility, and potential impact. The application should also outline the methods and rationale that will be used in the study to assess acceptability, feasibility, and estimate impact of possible interventions, including the plan for involving members of the affected community. The percentage-time commitments, duties, and responsibilities of project personnel should be sufficient to operationalize the proposed methodology.

4. Research Capacity (20 points):

Experience in similar social interventions, human rights evaluations, and HIV prevention research; and availability of qualified and experienced personnel.

The application should describe the capacity and experience of the research

team and should include CVs and position descriptions for key staff and project participants. Letters of support from key collaborators and community groups should be included.

5. Evaluation Plan (15 points): Appropriateness and comprehensiveness of: (a) the schedule for accomplishing the activities of the research; (b) an evaluation plan that identifies methods and instruments for evaluating progress in implementing the research objectives; and (c) a proposal to complete and submit for publication, a report of research findings.

The application should include time-phased and measurable objectives. The proposed report of research findings should address a plan for documenting the process of identifying and prioritizing interventions based on acceptability, feasibility, and estimated impact within a defined community or population.

6. Confidentiality (5 points): Appropriateness of the plan to protect the rights and confidentiality of all participants, including the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

7. Budget (not scored): The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

The 12 month budget should anticipate the organizational and operational needs of the study. The budget should include staff, supplies, and travel (including two trips per year for up to four members of the study team to meet with CDC staff and other investigators).

8. Human Subjects: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports (semiannual);
2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Sheryl Disler, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mail Stop E15, Atlanta, GA 30341-4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR-1 Human Subjects Requirements

AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR-4 HIV/AIDS Confidentiality Provisions

AR-5 HIV Program Review Panel Requirements

AR-7 Executive Order 12372 Review

AR-8 Public Health System Reporting Requirements

AR-9 Paperwork Reduction Act Requirements

AR-10 Smoke-Free Workplace Requirements

AR-11 Healthy People 2000

AR-12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 301(a), 42 U.S.C. 241(a), as amended, and Section 317(a), 42 U.S.C. 247b(a), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

Please refer to Program Announcement 99106 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Sheryl Disler, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99106, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Mail Stop 15, Atlanta, GA 30341-4146, Telephone (404) 842-488-2756; Email: sjd9@cdc.gov.

See also the CDC home page on the Internet: [HTTP://WWW.CDC.GOV](http://WWW.CDC.GOV).

For program technical assistance, contact Catherine Avery, Mailstop E46, CDC, Atlanta, GA 30333. 404-639-6191, cla2@cdc.gov.

Dated: May 24, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-13605 Filed 5-27-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99136]

State-Based Core Injury Program Development; Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for State-Based Core Injury Program Development. This program addresses the "Healthy People 2000" priority area(s) of Unintentional Injuries, Violent and Abusive Behavior, and Surveillance and Data Systems. The purpose of the program is to allow State public health agencies with minimal injury prevention and control capability to develop or strengthen their organizational focus in the prevention and control of injuries. State public health agencies with a minimal injury prevention capacity are those which do not possess some combination of the following features and tools: a coordinator for injury activities; an up-to-date profile of injuries within the State from existing data sources; an advisory structure to utilize collaborative relationships with public and private sector groups; organizations, agencies and individuals with interest or expertise in injury prevention or control; a current priority-driven State plan for injury prevention and control.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

States funded previously under Program Announcement 780, Part II, Basic Injury Program Development, may not apply under this announcement.

C. Availability of Funds

Approximately \$225,000 is available in FY 1999, to fund approximately three awards. It is expected that the average award will be \$75,000, ranging from \$60,000 to \$80,000. It is expected that the awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Establish an advisory group to address issues relevant to injury prevention and control in the State.

b. Analyze existing data to define the magnitude of the injury problem in the State, the population(s) at risk, and the causes of injury.

c. Establish an injury focal point and coordinating process within the public health agency.

d. Prepare and disseminate injury prevention and control documents, such as an annotated inventory of data sources, the magnitude and causes of the injury problem in the State, and the populations affected.

e. Identify and catalog current and potential injury prevention and control resources within the State.

f. Develop a State injury plan which is based on data and which is prioritized for the prevention and control of injuries.

g. Participate in a process for establishing and reviewing minimum elements used to define Core Injury Programs and for establishing "lessons learned" about and through this process.

2. CDC Activities

a. Provide consultation on planning, implementation, evaluation, data analysis, and dissemination of results.

b. Provide coordination between and among the States, by assisting in the transfer of information and methods developed to other programs, and providing up-to-date information.

c. Develop and provide Behavioral Risk Factor Surveillance System and other specific injury surveillance modules.

d. Operate a process of evaluation and improvement in which lessons learned are shared with other States implementing the same type of program.

e. Coordinate compilation of "lessons learned" through this process.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application must include:

1. Abstract

Provide a one-page summary of the proposed program.

2. Need for Core Injury Program

Describe current and past injury control activities of the public health agency, if any. Justify the need to develop a basic injury prevention and control program, based on the minimal nature of current injury activities. Describe the benefit of creating or enhancing a State public health injury prevention and control focal point. Describe the type and nature of current and past advisory groups related to injury prevention and control. Demonstrate capacity to conduct the program.

3. Goals and Objectives

Provide specific goals which indicate what the applicant anticipates its Core Injury Prevention Program will have accomplished at the end of the five-year project period. Include specific time-framed, measurable and achievable objectives that can be accomplished during the first budget period. Objectives should relate directly to the project goals. Include objectives which address all activities necessary to accomplish the purpose of the proposal. Specifically, they should include, but not be limited to, creation of an advisory structure, producing a profile of injuries in the State, assessing public health agency capacity to prevent injuries, and developing a State plan to address injury prevention and control.

4. Methods and Staffing

Describe how the program will be implemented. Provide: (a) a detailed description of proposed activities designed to achieve each objective and overall program goals and which includes designation of responsibility

for each activity undertaken; (b) a complete frame indicating when each activity will occur; and (c) a description of the roles of each unit, organization, or agency and coordination, supervision, and degree of commitment (e.g., time, in-kind, financial) of staff, organizations, and agencies involved in activities. Show allocation of staff to the activities. Describe the roles and responsibilities of the project director and each staff member. Descriptions should include the position titles, education and experience required, and the percentage of time each will devote to the program. CVs for existing staff should be included. Document specific concurrence of plans by all other involved parties, including consultants, and provide a letter from each consultants or outside agency describing their willingness and capacity to fulfill proposed responsibilities.

5. Evaluation

Describe how the proposed evaluation system will document program progress, and how proposed evaluation measures will success in developing basic injury prevention programs. Evaluation should include progress in meeting program objectives. Document staff availability, expertise, experience, and capacity to perform the evaluation. Include a plan for reporting evaluation results and using evaluation information for programmatic decisions. Indicate willingness to participate in a process of continuous improvement which may require frequent review of progress and processes utilized, remediation of identified barriers, and adoption of modified methods and measures.

6. Coordination and Collaboration

Provide a description of the relationship between the program and other organizations, agencies, and health department units that will associate with the program. Composition and roles for the advisory structure and other partners should be included; specific commitments of support should be provided.

7. Budget and Accompanying Justification

Provide a detailed budget with accompanying narrative justifying all individual budget items which make up the total amount of funds requested. The budget should be consistent with stated objectives and planned activities. The budget should include funds for two trips to Atlanta by key Program staff for participation in continuous improvement activities and "grantee" meetings.

F. Submission and Deadline Application

Submit the original and two copies of CDC 0.1246. On or before July 20, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC (maximum 100 total points):

1. Need for Core Program Development (30 percent)

The extent to which the applicant presents information describing the minimal nature of their existing injury activities, and therefore the need for support of this nature. The extent to which the applicant presents data and information documenting the capacity to accomplish the program, positive progress in related past or current activities or programs, and, as appropriate, need for the program. The extent to which current resources demonstrate capability to conduct the program.

2. Goals and Objectives (10 percent)

The extent to which the applicant includes goals which are relevant to the purpose of the proposal and feasible to accomplish during the project period, and the extent to which these are specific and measurable. The extent to which the applicant has included objectives which are feasible to accomplish during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, time-framed, measurable, and realistic.

3. Methods and Staffing (30 percent)

The extent to which the applicant provides: (1) a detailed description of proposed activities which are likely to achieve each objective and overall program goals, and which includes designation of responsibility for each action undertaken; (2) a reasonable and complete schedule for implementing all activities; and (3) a description of the roles of each unit, organization, or agency, and evidence of coordination, supervision, and degree of commitment (e.g., time, in-kind, financial) of staff, organizations, and agencies involved in activities.

4. Evaluation (20 percent)

The extent to which the proposed evaluation system is detailed, addresses goals and objectives of the program, and will document program process, effectiveness, and impact. The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included. The extent to which an agreement to participate in continuous improvement activities is present.

5. Collaboration (10 percent)

The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary interactions. The extent to which advisory group membership and roles are clear and appropriate. The extent to which relationships with Injury Control Research Centers (ICRC's) (see Addendum 2 for listing) or local academic institutions are completely described and activity-specific.

6. Budget and Justification (Not weighted)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports (semiannual);

2. Financial status report no more than 90 days after the end of the budget period; and

3. Final financial and performance reports no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application kit:

- AR-7 Executive Order 12372 Review
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2000
- AR-12 Lobbying Restrictions
- AR-13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2), 391, 392, and 394 of the Public Health Service Act, [42 U.S.C. 241(a), 247b(k)(2), 280b, and 280b-1, and 280b-2] as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

To download this and other program announcements and forms please go to the CDC Home Page on Internet at: <http://www.cdc.gov> and click on the word "funding."

If you do not have Internet access to you, call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the Announcement, for business management assistance contact: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341-4146, Telephone number: (770) 488-2717, Internet address: jcw6@cdc.gov.

For program technical assistance, contact: James Belloni, MA, Associate Director, National Center for Injury Prevention and Control, Mailstop K-02, Centers for Disease Control and Prevention, 4770 Buford Highway, Chamblee, GA 30341, Telephone

number: (770) 488-4538, Internet address: jsb1@cdc.gov.

Dated: May 24, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-13606 Filed 5-27-99; 8:45 am]

BILLING CODE 4163-18-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Vaccine Safety of the National Vaccine Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Subcommittee on Vaccine Safety.
Time and Date: 9 a.m.-5 p.m., June 18, 1999.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building on June 18th either between 8:30 and 9 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matters To Be Discussed: This subcommittee will discuss the mission of the Vaccine Safety Subcommittee; focus on developing priorities for U.S. vaccine safety and communication activities; and develop draft integral to ensuring the optimal safety of vaccines.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S A11, Atlanta, Georgia 30333, telephone 404/639-4450.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: May 24, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-13603 Filed 5-27-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.-9 p.m., June 23, 1999; 8:30 a.m.-5 p.m., June 24, 1999.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367-5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations

to the Director, CDC and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health (NIOSH) and ATSDR on updates regarding progress of current studies. There will also be a presentation from the University of Cincinnati on findings of Fernald Residents Medical Monitoring Program.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE

INFORMATION: David Pedersen, Ph.D., Health-Related Energy Research Branch, Division of Surveillance, Hazard Evaluations and Field Studies, NIOSH, CDC, Robert A. Taft Laboratory, 4676 Columbia Parkway, M/S R-44, Cincinnati, Ohio 45226, telephone 513/841-4400, fax 513/841-4470.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 24, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99-13604 Filed 5-27-99; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: (1) TANF High Performance Bonus Report and (2) Emergency TANF Public Law Data Report.

OMB No.: 0970-0180.

Description: 104-193 (the personal Responsibility and Work Opportunity Reconciliation Act of 1996) established the Temporary Assistance for Needy Families (TANF) Program. It also included provisions for rewarding States that attain the highest levels of success in achieving the legislative goals

of that program. The purpose of this collection is to obtain data upon which to base the computations for measuring

State performance in meeting those goals and for allocating the bonus grant funds appropriated under the law.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF quarterly Data Report, fy 1999 High Performance Bonus Awards	54	4	40	8,640
Emergency TAF Data Report	8	4	1218.5	6,992

Estimated Total Annual Burden Hours: 15,632.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Ms. Lori Schack.

Dated: May 24, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99-13569 Filed 5-27-99; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97P-0354]

Orthopedic Devices; Reclassification of the Shoulder Joint Metal/Polymer/ Metal Nonconstrained or Semi-Constrained Porous-Coated Uncemented Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is announcing for public comment a recommendation of the Orthopedic and Rehabilitation Devices Panel (the Panel) to reclassify the shoulder joint metal/polymer/metal

nonconstrained or semi-constrained porous-coated uncemented prosthesis from class III into class II. The Panel made this recommendation after reviewing the reclassification petition submitted by the Orthopedic Surgical Manufacturers Association (OSMA) and other publicly available information. FDA is also announcing for public comment its tentative findings on the Panel's recommendations. After considering any public comments on the Panel's recommendations and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the reclassification petition will be announced in the **Federal Register**.

DATES: Written comments by August 26, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Theodore R. Stevens, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2036.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101-629), and the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of the Department of Health and Human

Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

The shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis intended to be implanted to replace the shoulder joint is a postamendment device classified into class III under section 513(f)(2) of the act. Therefore, the device cannot be placed in commercial distribution for implantation to replace the shoulder joint unless it is reclassified under section 513(f)(2), or subject to an approved premarket approval application (PMA) under section 515 of the act.

This action is taken in accordance with section 513(f)(2) of the act and § 860.134, based on information submitted in a petition for reclassification by OSMA received on July 23, 1997, requesting reclassification of the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis from class III into class II (Ref. 1). Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested changes in classification.

III. Device Description

The following device description is based on the Panel's recommendations and the agency's review.

A shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis is a device intended to be implanted to replace a shoulder joint. The device

limits, with less than normal anatomic constraints, translation in one or more planes. It has no linkage across-the-joint. This generic type of device includes prostheses that have a humeral component made of alloys such as cobalt-chromium-molybdenum (Co-Cr-Mo) and/or titanium-aluminum-vanadium (Ti-6Al-4V) alloys, and a glenoid resurfacing component made of ultrahigh molecular weight polyethylene, or a combination of an articulating ultra-high molecular weight bearing surface fixed in a metal shell made of alloys such as Co-Cr-Mo and/or Ti-6Al-4V. The humeral component and glenoid backing have a substrate porous coating made of, in Co-Cr-Mo components, beads of the same alloy or commercially pure titanium powder, and in Ti-6Al-4V components, beads or fibers of commercially pure titanium or Ti-6Al-4V alloy, or commercially pure titanium powder. The porous coating has a volume porosity between 30 to 70 percent, an average pore size between 100 to 1,000 microns, interconnecting porosity, and a porous coating thickness of 600 to 1,500 microns. This generic type of device is designed to achieve biological fixation to bone without the use of bone cement.

IV. Recommendation of the Panel

At a public meeting on January 12 and 13, 1998, the Panel unanimously recommended that the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis be reclassified from class III to class II. The Panel believed that class II with the proposed special controls (FDA Recognized Consensus Standards, Postmarket Surveillance, and FDA guidances) would reasonably ensure the safety and effectiveness of the device.

V. Risks to Health

After considering the information in the petition, the Panel's deliberations, the published literature, and the Medical Device Reports, FDA has evaluated the risks to health associated with the use of the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis. FDA now believes that the following are risks to health associated with use of the device: Infection, adverse tissue reaction, pain and/or loss of function, and revision. FDA notes that these risks to health are also associated with the use of the cemented versions of shoulder joint prostheses.

A. Infection

Infection is a potential risk to health associated with all surgical procedures

and implanted devices, and it occurs equally in patients implanted with cemented and uncemented shoulder joint prostheses (Ref. 1). The best defenses against infection are preventative measures, including selection of patients without known local and/or systematic infection, administration of perioperative antibiotics, implantation of a sterilized device, and strict adherence to sterile surgical technique.

B. Adverse Tissue Reaction

Adverse tissue reaction is a potential risk to health associated with all implanted devices (Ref. 1). If the materials used in the manufacture of shoulder prostheses are not biocompatible, the patient could have an adverse tissue reaction. The shoulder prosthesis identified in this notice are made of implant materials with an established, long history of safe use. In addition, the biocompatibility of porous-coated implant materials has been shown to be comparable to those of the "as cast" materials.

C. Pain and/or Loss of Function

Pain and loss of shoulder function can occur with any shoulder arthroplasty. Some of the same kinds of device-related complications causing pain and loss of function are associated with implantation of both cemented and uncemented shoulder prostheses. These complications include: Early loosening due to inappropriate patient and/or device selection; inappropriate surgical technique and/or poor bone quality; some forms of metal and/or polyethylene wear which may cause osteolysis (dissolution of bone); and component disassembly, fracture, and/or failure. Dislocation and instability of the shoulder prosthesis may be due to either inappropriate surgical technique and/or component design or failure. However, other device-related complications resulting in pain and/or loss of function are directly or uniquely related to the porous coating(s) of uncemented shoulder prosthesis components. These complications include incomplete and/or slow biological ingrowth into the porous coating resulting in pain and dislocation/instability of the joint and delamination of the porous coating from the prosthesis components. Also, inadequate design and/or testing of the metal-backing of the glenoid component of uncemented shoulder prostheses may cause dislocation and instability which can result in pain and/or loss of function.

D. Revision

The incidence of revision for uncemented shoulder prostheses is comparable to the revision rates of cemented total shoulder arthroplasty (Ref. 1). The major causes for revision of uncemented shoulder prostheses are failure of the metal-backed glenoid component or incomplete humeral fixation.

VI. Summary of the Reasons for the Recommendations

After considering the data and information contained in the petition and provided by FDA, the open discussions during the Panel meeting, and their personal knowledge of and clinical experience with the device, the Panel gave the following reasons in support of its recommendations to reclassify the generic device, the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis intended to replace a shoulder joint from class III into class II. The Panel believes that the device should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Panel Recommendation Is Based

In addition to the potential risks to health of the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis described in section V of this document, there is reasonable knowledge of the benefits of the device. Both cemented and uncemented shoulder prostheses provide decreased pain or cessation of pain and increased mobility and function, post-operatively resulting in an overall improved quality of patient life. A specific benefit of the uncemented shoulder prosthesis is the absence of risks associated with the use of bone cement (e.g., embolism and bone cement breakdown) and easier revision if revision should become indicated due to loosening.

VIII. Special Controls

FDA believes that the special controls identified below in this document, in addition to general controls, are adequate to control the identified risks to health for this device. FDA agrees with the Panel that consensus standards and the FDA guidances are appropriate special controls to reasonably ensure the safety and effectiveness of the device. However, FDA disagrees with the Panel

that postmarket surveillance is a necessary or appropriate special control for this device.

In their deliberations, the Panel stated that it was important that adverse device outcomes should be reported to FDA. The Panel thought that adverse device outcomes should be tracked through postmarket surveillance. FDA agrees with the Panel that adverse device outcomes should be reported to FDA. However, FDA believes that another postmarket mechanism better addresses the Panel's concern that adverse device outcomes should be reported to FDA. FDA believes that the existing mandatory Medical Device Reporting system is the appropriate mechanism to report such adverse events. Therefore, postmarket surveillance is unnecessary to address the Panel's concerns, and to reasonably ensure the safety and effectiveness of the device.

Based on the available information, FDA identified these 10 voluntary standards from the American Society for Testing and Materials (ASTM) and 5 FDA guidance documents as the specific special controls to reasonably ensure the safety and effectiveness of the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis as follows:

A. ASTM Standards:

1. ASTM F 67-95, "Standard Specifications for Unalloyed Titanium for Surgical Implant Applications;"
2. ASTM F 75-92, "Standard Specification for Cast Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implant Applications;"
3. ASTM F 136-96, "Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial Alloy (R56401)) for Surgical Implant Applications;"
4. ASTM F 648-98, "Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants;"
5. ASTM F 1044-95, "Standard Test Method for Shear Testing of Porous Metal Coatings;"
6. ASTM F 1147-95, "Standard Test Method for Tension Testing of Porous Metal Coatings;"
7. ASTM F 1160-91, "Standard Test Method for Constant Stress Amplitude Fatigue Testing of Porous Metal-Coated Metallic Materials;"
8. ASTM F 1377-92, "Standard Specification for Cobalt-28 Chromium-6 Molybdenum Powder for Coating of Orthopedic Implants;"

9. ASTM F 1378-97, "Standard Specification for Shoulder Prostheses;" and

10. ASTM F 1580-95, "Standard Specification for Titanium and Titanium-6% Aluminum-4% Vanadium Alloy Powders for Coatings of Surgical Implants."

The ASTM standards define implant material specifications and testing methods applicable to the shoulder joint metal/polymer/metal nonconstrained or unconstrained uncemented prosthesis. Adherence to these standards and comparison of the results from these standard test methods can control the risks to health of adverse tissue reaction, pain and/or loss of function, and revision by having the manufacturer use surgical implant quality materials and assuring that the device has acceptable performance through mechanical testing.

Nine of the ASTM standards are FDA recognized consensus standards. FDA is now reviewing ASTM F1378-97, "Standard Specification for Shoulder Prostheses" for inclusion in the list of FDA recognized consensus standards. By the time this proposal is finalized as a final rule, ASTM F1378 is expected to be an FDA recognized consensus standard.

ASTM standards may be obtained from ASTM Customer Services, 100 Barr Harbor Dr., West Conshohocken, PA 19428 (Telephone 610-832-9585). ASTM has a site on the world wide web at "<http://www.astm.org/>".

B. FDA Guidances:

1. "Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement" (Facts-on-Demand # 827);
 2. "Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components" (Facts-on-Demand # 916);
 3. "Draft Guidance Document for the Preparation of Premarket Notification (510(k)) Applications for Orthopedic Devices-The Basic Elements" (Facts-on-Demand # 832);
 4. "Use of International Standard ISO-10993, Biological Evaluation of Medical Devices Part I: Evaluation and Testing" (Facts-on-Demand # 164); and
 5. "510(k) Sterility Review Guidance—and Revision of 11/18/94 #K90-1" (Facts-on-Demand # 361).
- FDA guidance documents provide guidance on how to meet general orthopedic device premarket notification (510(k)) requirements, including biocompatibility testing, sterility testing, mechanical performance testing, and physician and

patient labeling for the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis. Use of the preclinical section of the FDA guidance documents can control the risks to health of adverse tissue reaction, infection, pain and/or loss of function, and revision by having manufacturers use surgical quality implant materials, adequately test and sterilize their devices, and provide adequate directions for use (and patient information).

To receive a guidance via fax machine, telephone Center for Devices and Radiological Health's (CDRH) CDRH Facts-on-Demand system at 800-399-0381, or 301-827-0111 from a touch-tone telephone. At the first voice prompt, press 1 to access the Division of Small Manufacturers Assistance Fax, at the second voice prompt, press 2, and then enter the document number followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. The guidances are also available from the CDRH world wide web address at "http://www.fda.gov/cdrh".

IX. FDA's Tentative Findings

FDA believes that the shoulder joint metal/polymer/metal nonconstrained or semi-constrained porous-coated uncemented prosthesis should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

X. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Petition for Reclassification of Orthopaedic Shoulder Prostheses submitted by the Orthopedic Surgical Manufacturers Association, Warsaw, IN, received July 23, 1997.
2. Transcript of the Orthopedic and Rehabilitation Devices Panel Meeting, January 12 and 13, 1998, vol. I, pp. 12 to 114.

XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Analysis of Impacts

FDA has examined the impacts of the notice under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104-121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts and equity). The agency believes that this reclassification action is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the reclassification action is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of \$100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIII. Request for Comments

Interested persons may, on or before (insert date 90 days after date of publication in the **Federal Register**), submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this

document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

Dated: May 17, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99-13470 Filed 5-27-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98E-0485 and 98E-0850]

Determination of Regulatory Review Period for Purposes of Patent Extension; Thermo Choice™ Uterine Ballon Therapy System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Thermo Choice™ Uterine Ballon Therapy System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices,

the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Therma Choice™ Uterine Ballon Therapy System. Therma Choice™ Uterine Ballon Therapy System is indicated for use as a thermal ablation device intended to ablate the endometrial lining of the uterus in premenopausal women with menorrhagia (excessive uterine bleeding) due to benign causes for whom childbearing is complete. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for Therma Choice™ Uterine Ballon Therapy System (U.S. Patent Nos. 5,105,808 and 4,949,718) from Gynelab Products, Inc., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated December 17, 1998, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Therma Choice™ Uterine Ballon Therapy System represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Therma Choice™ Uterine Ballon Therapy System is 1,031 days. Of this time, 852 days occurred during the testing phase of the regulatory review period, while 179 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* February 17, 1995. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C.

360j(g)) for human tests to begin became effective on November 30, 1994. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on February 17, 1995, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* June 17, 1997. The applicant claims June 16, 1997, as the date the premarket approval application (PMA) for Therma Choice™ Uterine Ballon Therapy System (PMA P970021) was initially submitted. However, FDA records indicate that PMA P970021 was submitted on June 17, 1997.

3. *The date the application was approved:* December 12, 1997. FDA has verified the applicant's claim that PMA P970021 was approved on December 12, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 446 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 27, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 24, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–13671 Filed 5–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Active Pharmaceutical Ingredient Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) in cooperation with the Association of Food and Drug Officials (AFDO) is announcing the following workshop: Active Pharmaceutical Ingredient Workshop. The workshop will address issues related to the manufacture and control of active pharmaceutical ingredients.

Date and Time: The workshop will be held on June 5, 1999, from 8 a.m. to 5 p.m. Send information regarding registration by May 27, 1999.

Location: The workshop will be held at the Adam's Mark—Riverwalk, 111 Pecan St. East, San Antonio, TX 78205, 210–354–280 or 800–444–2326. Send information regarding registration by June 1, 1999.

Contact: AFDO, P.O. Box 3425 York, PA 17402, 717–757–2888, FAX 717–755–8089, e-mail "afdo@blazenet.net" or see the internet address "http://www.foodsafety.org/afdo" for more information.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) along with registration fee payable to AFDO (address above). The registration fee will be \$199 for an AFDO member, \$249 for a nonmember, and \$449 for both workshop and AFDO conference. AFDO is charging these fees to cover its cost associated with the workshop and conference.

If you need special accommodations due to a disability, please contact AFDO at least 7 days in advance.

Dated: May 24, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–13559 Filed 5–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 99D-1269]

Medical Devices; Draft Guidance on Quality Systems Inspections Technique; Availability**AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Draft Guidance on Quality Systems Inspections Technique." This draft guidance is intended to provide FDA's field staff with a new inspectional method to assess medical device manufacturer's compliance with the quality system regulation (QSR), which became effective June 1, 1997. This draft guidance is also intended to represent the agency's current thinking on using a new inspectional technique, and it is neither final nor is it in effect at this time.

DATES: Written comments concerning this draft guidance must be submitted by August 26, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Draft Guidance on Quality Systems Inspections Technique" to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301-443-8818.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tim R. Wells, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301-594-4616.

SUPPLEMENTARY INFORMATION:**I. Background**

FDA is announcing the availability of a draft guidance entitled "Draft Guidance on Quality Systems Inspections Technique." This draft guidance is intended to provide

guidance to the FDA field staff for the use of a new inspectional method to assess medical device manufacturer's compliance with the QSR (21 CFR part 820). This draft guidance is also intended to provide information about an inspectional method that uses the seven subsystems of the QSR, which include: (1) Corrective and preventive actions, (2) design controls, (3) production and process controls, (4) management controls, (5) records/document/change controls, (6) material controls, and (7) facility/equipment controls. The Quality Systems Inspections Technique focuses on the first four subsystems as primary indicators of compliance with the QSR.

This draft guidance represents the agency's current thinking on a new method of inspecting medical device manufacturers to assess their compliance with QSR. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a Level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive the "Draft Guidance on Quality Systems Inspections Technique" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800-899-0381 or 301-827-0111 from a touch tone telephone. At the first voice prompt press 1 to access DMSA Facts, at the second voice prompt press 2, and then enter the document number (1196) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the "Draft Guidance on Quality Systems Inspections Technique," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic

submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". The "Draft Guidance on Quality Systems Inspections Technique" will be available at "http://www.fda.gov/cdrh/gmp/qsitbook.html".

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99-13558 Filed 5-27-99; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration**

[Document Identifier: HCFA-0029/0030, R-0106, and R-0284]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection

Request: Extension of a currently approved collection; **Title of Information Collection:** Request for Certification as Rural Health Clinic and Rural Health Clinic Survey Report Form and Supporting Regulations in 42 CFR 491.1–491.11; **Form No.:** HCFA–0029/0030 (OMB# 0938–0074); **Use:** The Form HCFA–29 is utilized as an application to be completed by suppliers of RHC services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Online Survey and Certification and Reporting System (OSCAR) by the HCFA Regional Offices (RO). The Form HCFA–30 is an instrument used by the State survey agency to record data collected in order to determine RHC compliance with individual conditions of participation and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction (keypunching) and retrieval into OSCAR at the HCFA ROs. The form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself; **Frequency:** Annually; **Affected Public:** State, Local, or Tribal Government; **Number of Respondents:** 390; **Total Annual Responses:** 390; **Total Annual Hours:** 822.

Type of Information Collection

Request: Reinstatement, without change, of a previously approved collection for which approval has expired; **Title of Information Collection:** Criteria for Medicare Coverage of Heart Transplants; **Form No.:** HCFA–R–0106 (OMB# 0938–0490); **Use:** Medicare participating hospitals must file an application to be approved for coverage and payment of heart transplants performed on Medicare beneficiaries. Heart transplants performed in facilities that have not been approved will not be covered by Medicare; **Frequency:** Annually; **Affected Public:** Business or other for-profit; **Number of Respondents:** 5; **Total Annual Responses:** 5; **Total Annual Hours:** 500.

Type of Information Collection

Request: Revision of a currently approved collection; **Title of Information Collection:** Medicaid Statistical Information System (MSIS); **Form No.:** HCFA–R–0284 (OMB# 0938–0345); **Use:** State data are reported by a Federally mandated process known as MSIS. These data are the basis for:

Medicaid actuarial forecasts for service utilization and costs; Medicaid legislative analysis and cost savings estimates; and responding to requests for information from HCFA components, the Department, Congress, and other customers. The national MSIS database will contain details that will allow constructive or predictive analysis of today's Medicaid issues (e.g., pregnant women, and infants); **Frequency:** Quarterly and Annually; **Affected Public:** State, Local, or Tribal Government; **Number of Respondents:** 53; **Total Annual Responses:** 212; **Total Annual Hours:** 2,210.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–13649 Filed 5–27–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–838]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection

Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Credit Balance Reporting Requirements and Supporting Regulations in 42 CFR 413.20, 405.371 and 405.378;

Form No.: HCFA–838 (OMB# 0938–0600);

Use: Section 1866(a)(1)(C) of the Social Security Act requires health care providers participating in the Medicare program, to make adequate provisions to refund any monies incorrectly paid by Medicare. This collection of credit balance information is needed to ensure that the millions of dollars in improper program payments are collected. Approximately 47,600 health care providers will be required to submit a quarterly credit balance report that identifies the amount of improper payments they receive that are due to Medicare. The intermediaries will monitor the reports to ensure these funds are collected;

Frequency: Quarterly;

Affected Public: Not-for-profit institutions, and Business or other for-profit;

Number of Respondents: 47,600;

Total Annual Responses: 190,400;

Total Annual Hours: 1,142,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division

of HCFA Enterprise Standards,
Attention: Dawn Willingham, Room N2-
14-26, 7500 Security Boulevard,
Baltimore, Maryland 21244-1850.

Dated: May 19, 1999.

John P. Burke III,

*HCFA Reports Clearance Officer, HCFA Office
of Information Services, Security and
Standards Group, Division of HCFA
Enterprise Standards.*

[FR Doc. 99-13650 Filed 5-27-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-0273]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing
Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure that HCFA can determine as soon as possible

that Community Mental Health Centers (CMHCs) participating or wishing to participate in the Medicare program meet all applicable Federal and State requirements. We cannot reasonably comply with the normal clearance procedures because potential public harm could occur because ineligible CMHCs may fraudulently or abusively provide care to Medicare beneficiaries and subsequently bill the Medicare program diverting Medicare Trust Fund resources from legitimate Medicare claims.

The CMHC Site Visit Assessment Tool will allow HCFA to systematically and promptly collect information from CMHCs to verify that the CMHCs meet all applicable Federal and State requirements rendering them eligible as Medicare providers. This tool is critical in determining which CMHCs are operating as specified by section 1861(ff) of the Social Security Act and taking action to ensure that all others comply or are no longer serving Medicare beneficiaries and billing the Medicare program.

HCFA is requesting OMB review and approval of this collection by June 8, 1999, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by June 7, 1999. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Community Mental Health Center Site Visit Assessment Tool and Supporting Regulations in 42 CFR 410.2

HCFA Form Number: HCFA-R-273 (OMB approval #: 0938-NEW).

Use: This information collection tool is essential for the Health Care Financing Administration (HCFA) to ensure that existing Community Mental Health Centers (CMHC), as well as CMHC applicants to the Medicare program are in compliance with Medicare provider requirements, as well as all applicable Federal and State requirements. The collection tool will be completed and used by HCFA and or its contractors to collect patient records, other CMHC operational information, and to verify CMHC compliance as determined by the HCFA regional office. CMHCs will be required to sign the completed form, provide medical

records, and other operational information to be copied by the HCFA contractor representative on-site at the CMHC during the site visit.

Frequency: Upon initial application or reenrollment into the Medicare program.

Affected Public: Business or other for-profit, as well as not-for-profit institution and State, Local or Tribal Governments.

Number of Respondents: 850.

Total Annual Responses: 850.

Total Annual Burden Hours: 3400.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by June 7, 1999:

Health Care Financing Administration,
Office of Information Services,
Security and Standards Group,
Division of HCFA Enterprise
Standards, Room N2-14-26, 7500
Security Boulevard, Baltimore, MD
21244-1850. Fax Number: (410) 786-
1415, Attn: Louis Blank HCFA-R-273

and,

Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Fax Number: (202) 395-6974
or (202) 395-5167 Attn: Allison
Herron Eydt, HCFA Desk Officer

Dated: May 19, 1999.

John P. Burke III,

*HCFA Reports Clearance Officer, HCFA,
Office of Information Services, Security and
Standards Group, Division of HCFA
Enterprise Standards.*

[FR Doc. 99-13651 Filed 5-27-99; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Recombinant DNA Advisory Committee; Notice of Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on June 14, 1999, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will be open to the public. Agenda items will include: (1) Discussion of novel phase 1 gene transfer protocol for pediatric retinoblastoma, (2) Food and Drug Administration presentation on vector gonadal distribution and inadvertent germ line gene transfer, (3) data management activities related to human gene transfer clinical trials, and (4) other matters to be considered by the Committee. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892-7010, Phone (301) 496-9838, FAX (301) 496-9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting. The Office of Recombinant DNA Activities (ORDA) web site is located at <http://www.nih.gov/od/orda> for further information about the office.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of

affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99-13592 Filed 5-27-99; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Substance Abuse and Mental Health Services Administration****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Phase II of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program—(OMB No. 0930-0192, Revision)—SAMHSA's Center for Mental Health Services (CMHS) is

conducting Phase II of this national evaluation project. To address the research questions in the national evaluation, a longitudinal quasi-experimental design is being used that includes data collection in all grantee sites and comparison sites over a five year period. Data collection methods include interviews with caregivers and youth, site visits, case record reviews, service diaries, and provider surveys. Phase II collects data on child mental health outcomes, family life, and service system development and performance. Child and family outcomes of interest include the following: child symptomatology and functioning, family functioning and material resources, and caregiver strain. The length of time that families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Service system variables of interest include the following: maturity of system of care development, adherence to system of care principles, coordination and linkages among agencies, and congruence between family services planned versus those received.

This revision to the currently approved information collection activities involves: (1) Two additional grantee sites added to Phase II after the original OMB package was approved, and (2) the addition of a strengths-based measure of child behaviors. This measure is closely aligned with the strengths-based focus of the grant program and will assess the effects of the initiative on child strengths and resiliency; no additional burden is imposed by addition of the strengths-based measurement in the previously approved sites because it has been determined that the burden associated with the new instrument is offset for shorted times of administration by two of the currently approved instruments. Automated collection techniques are not cost-effective for this study. The average annual respondent burden is estimated below.

Respondents	No. of respondents	Responses/ respondent	Burden/ response (Hours)	Total burden Hours (annualized)
Currently approved .....	.....	.....	.....	18,458
New Sites:				
Caregivers	506	1.20	2.00	1,214
Youth	304	1.12	.90	307
Providers	56	.80	.75	34
Sub-Total .....	.....	.....	.....	1,555
New Total .....	.....	.....	.....	20,013

The addition of the strengths-based instrument does not add to response burden because testing of two of the previously approved instruments, which occurred after the previous OMB approval was received, has shown that they take less time to administer than had been thought; this decrease in burden offsets the new instrument.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 20, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99-13607 Filed 5-27-99; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

documents, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Substance Abuse Prevention and Treatment Block Grant Application Format—FY 2000–2002 (OMB No. 0930-0080, Revision)—The Public Health Service Act (42 U.S.C. 300x 21–35 & 51–64) authorizes block grants to States for the purpose of providing substance abuse prevention and treatment services. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the FY 2000 Substance Abuse Prevention and Treatment (SAPT) Block Grant cycle, SAMHSA will provide States with modified application forms and instructions. These changes affect several areas of the application and add new sections to accommodate voluntary State reporting of treatment and prevention outcome measures. The portion of the application that asks for information related to section 1926 (sales of tobacco to minors) combines questions related to enforcement of laws related to youth access to tobacco and provides clarifying information and additional instructions related to other existing required information.

Additionally, with respect to the treatment portion of the SAPT block grant, the revised application will: replace information requested for Intravenous Drug Users that has not been required since 1995 with reporting of expenditures for HIV Early Intervention Services required of designated States; provide an appropriate format for reporting of

funds authorized under Pub. L. 104–121, the Supplementary Security Income special authorization for fiscal years 1997 and 1998; and, add additional instructions and questions related to the States' use of data generated by the State Needs Assessment Program in the application.

A new Section IV is being added to accommodate *voluntary* reporting of prevention and treatment performance and outcome measures. Treatment information to be reported includes: an unduplicated count of primary persons (excludes family members or other persons collaterally involved in the client's treatment) who received services (excluding those who received detoxification, outreach, early intervention or assessment/Central Intake services but who did not enter treatment) from treatment programs that received some or all of their funding from the SAPT Block Grant; and changes in client Alcohol and Drug use, Illegal Activity, Employment Status and Homelessness. Prevention information to be reported for prevention programs funded through the SAPT BG includes: use of substances in the past 30 days; age of first substance use; perceived risk/harm of substance use; attitudes about substance use; and, intention/expectation to use substances. States are asked to report this voluntary information for the most recent State Fiscal Year for which the data are available at the time the application is submitted.

The annual burden estimate for the SAPT Block Grant Application Format is shown below:

ANNUAL REPORTING BURDEN—FY 2000–FY 2002

	Number of respondents	Responses/ respondent	Hours per response	Total burden hours
Sections I–III—Red Lake Indians	*1	1	530	530
Sections I–III—States and Territories	59	1	563	33,217
Section IV–A—States and Territories	40	1	50	2,000
Section IV–B—States and Territories	20	1	42	840
Total .....	.....	.....	.....	36,587

*Red Lake Indian Tribe is exempt from Tobacco Regulation requirements and will not participate in voluntary reporting of performance measures.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 20, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99-13608 Filed 5-27-99; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration

(SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program—(OMB No. 0930-0171, Revision). The Center for Mental Health Services (CMHS) is seeking OMB approval for a 1-year extension of this

evaluation of integrated child mental health service systems. The core and comparison studies of the evaluation collect information on child and family demographics, child mental health status, and service system development. In the core study, data are collected from children and families at intake into services, six months later, and every 12 months thereafter while the children remain in services. In the comparison study component, information is collected at intake, 6 months, 12

months, 24 months, and annually thereafter. In both studies, data were collected annually from grantees' administrators and providers.

This request is to extend OMB clearance to allow: (1) Continued data collection in two core study sites for two months (data collection is complete in eight sites), and (2) completion, by the end of the year, of data collection in the comparison study component sites. The response burden for this extension is as follows:

Respondent	Number of respondents	Average number of responses	Average burden/response (Hrs.)	Total burden
Currently approved .....	.....	.....	.....	26,604
Case managers	50	7.0	.25	88
Caregivers (Descriptive Study)	2,580	.33	.12	102
Caregivers (Outcome Study)	2,008	.40	1.09	875
Youth	1,205	.40	.84	405
Administrators/providers	45	1.0	.5	23
Total .....	.....	.....	.....	1,493

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 20, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99-13609 Filed 5-27-99; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meetings and Workshops

Pursuant to Public Law 92-463, notice is hereby given of the meetings and workshops of five Substance Abuse and Mental Health Services Administration (SAMHSA) advisory committees (SAMHSA National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, and the Advisory Committee for Women's Services) in June 1999.

The Workshops on June 9 will be open and focus on substance abuse and mental health issues related to

legislation, systems linkages of services, and consumer involvement.

The meeting on June 10 will be an open combined session of the committees and will include discussions of SAMHSA's policy and program issues, and SAMHSA's Fiscal Year 2000 budget, and reports from the June 9 workshops. There will also be updates on the Councils' workgroup activities, on SAMHSA's National Household Survey and Drug Abuse, a presentation on the national tracking of welfare reform, and a presentation from the Health Care Financing Administration.

Attendance by the public will be limited to space available. Public comments are welcome, and interested persons may present information or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should contact Ms. Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Office of Policy and Program Coordination, SAMHSA, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857, prior to June 4, 1999, and submit a brief statement of the general nature of the information or arguments they wish to present, the names, addresses, and telephone number of proposed participants, identification of organizational affiliation, and an indication of the approximate time required to make their comments. Time for presentations may be limited by the number of requests. Photocopies, up to five pages of material, may be

distributed at the meeting through the SAMHSA National Advisory Council Executive Secretary, if provided by June 4. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

Substantive program information, a summary of the meeting, and a roster of committee members may be obtained from Toian Vaughn, Executive Secretary, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857, Telephone (301) 443-4266, e-mail: tvaughn@samhsa.gov.

Committee Names: Substance Abuse and Mental Health Services Administration, National Advisory Council, Center for Mental Health Services National Advisory Council, Center for Substance Abuse Prevention National Advisory Council, Center for Substance Abuse Treatment National Advisory Council, Advisory Committee for Women's Services.

Meeting Date(s): June 9-10, 1999.

Place: Hyatt Regency Bethesda Hotel, Haverford and Baccarat Suites, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 9, 1999, 1:30 p.m.-5:30 p.m., June 10, 1999, 8:30 a.m.-5:30 p.m.

Contact: Toian Vaughn, Executive Secretary, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857, Telephone (301) 443-4266 and FAX: (301) 443-1587, and e-mail: tvaughn@samhsa.gov.

In addition, the Center for Mental Health Services (CMHS) National Advisory Council will hold an individual meeting. A portion of the meeting will be open and will include

a roll call, the CMHS Director's Report, a discussion of the biennial publication, Mental Health, United States, 1998 (MHUS98), a report from the National Institute of Mental Health, an update on consumer affairs policy issues, and an update on the School Violence Initiative. Attendance by the public will be limited to space available. Please notify the Contact listed below to make arrangements to comment or to request special accommodations for persons with disabilities.

The meeting will also include the review, discussion, and evaluation of individual grant applications. Therefore a portion, of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), and (6) and 5 U.S.C. App. 2, section 10(d).

Substance program information, a summary of the meeting, and a roster of Council members may be obtained from: Anne Mathews-Younes, Ed.D., Executive Secretary, CMHS National Advisory Council, 5600 Fishers Lane, Room 18 C-07, Rockville, Maryland 20857, Telephone: (301) 443-0554.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: June 8, 1999.

Place: Center for Mental Health Services, Parklawn Building, 5600 Fishers Lane, Conference Room D, Rockville, Maryland 20857.

Closed: June 8, 1999, 9:00 a.m.-10:15 a.m.,

Open: June 8, 1999, 10:15 a.m.-5:00 p.m.

Contact: Anne Mathews-Younes, Ed.D., Executive Secretary, Room 18-07, Parklawn Building, Rockville, Maryland, Telephone: (301) 443-0554 and FAX: (301) 443-7912.

In addition, the Center for Substance Abuse Prevention (CSAP) National Advisory Council will hold an individual meeting. The meeting will be open and will include presentations of CSAP programs, an update on CSAP's budget, and discussions of administrative matters and announcements. Attendance by the public will be limited to space available. Please notify the Contact listed below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and roster of committee members may be obtained from the contact whose name and telephone number is listed above.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Dates: June 9, 1999.

Place: Hyatt Regency Bethesda Hotel, Cabinet/Judiciary Suite, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II Building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443-8455 and FAX: (301) 443-6394.

In addition, the Center for Substance Abuse Treatment (CSAT) National Advisory Council will hold an individual meeting. A portion of the meeting will be open and include discussions of the Center's National Treatment Plan, policy issues and current administrative, legislative, and program developments. Reports to the Council will include NPRM on Opioid Treatment Accreditation, SAMHSA/CSAT Communication Strategies, Buprenorphine, Co-occurring and HIV/AIDS Subcommittees, the Alliance Project, ONDCP Media Campaign, and the ACF Report on Child Welfare. Attendance by the public will be limited to space available. Please notify the Contact listed below to make arrangements to comment or to request special accommodations for persons with disabilities.

The meeting will also include the review, discussion, and evaluation of a single source grant application. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Substantive program information, a summary of the meeting, and roster of committee members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Meeting Date: June 11, 1999.

Place: Hyatt Regency Bethesda.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Closed: June 11, 1999, 8:30 a.m.-9:00 a.m.,

Open: June 11, 1999, 9:00 a.m.-5:00 p.m.

Contact: Marjorie M. Cashion, Executive Secretary, Rockwall II Building, Suite 619, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-8923 and FAX: (301) 480-6077.

In addition, the SAMHSA National Advisory Council will hold an individual meeting. The meeting will be open and will include follow up to the January 26 SAMHSA National Advisory Council meeting and the June 9-10 Joint Council workshops and meeting, and an update on the Council's workgroup activities. There will be discussions on the Office of National Drug Control Policy's (ONDCP) National Media Campaign, on CSAP's involvement with

ONDCP's National Media Campaign, and CMHS' transitioning youth issues.

Attendance by the public will be limited to space available. Public comments are welcome. Please notify the Contact listed below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date: June 11, 1999.

Place: Hyatt Regency Bethesda Hotel, Diplomat-Ambassador Room, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 11, 1999, 9:00 a.m.-3:45 p.m.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Room 17-89, Rockville, MD 20857, Telephone: (301) 443-4266 and FAX: (301) 443-1587, and e-mail: tvaughn@samhsa.gov.

In addition, the Advisory Committee for Women's Services will hold its individual meeting. The meeting will be open and will include discussions of policy and program issues; the Fiscal Year 1999 Budget; and FY 1999 Knowledge Development and Application Grants.

Attendance by the public will be limited to space available. Public comments are welcome. Please notify the Contact listed below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of committee members may be obtained from the Contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Date: June 11, 1999.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 11, 1999, 9:00 a.m.-5:00 p.m.

Contact: Duiona R. Baker, Executive Secretary, Parklawn Building, Rm. 13-99, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443-5184 and Fax: (301) 443-8964 and, e-mail: dbaker@samhsa.gov.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet time limitations imposed by the review and funding cycle.

Dated: May 25, 1999.

Sandra Stephens,

*Acting Committee Management Officer,
Substance Abuse and Mental Health Services
Administration.*

[FR Doc. 99-13672 Filed 5-27-99; 8:45 am]

BILLING CODE 4162-20-U

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4432-N-21]

**Federal Property Suitable as Facilities
To Assist the Homeless**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies
unutilized, underutilized, excess, and
surplus Federal property reviewed by
HUD for suitability for possible use to
assist the homeless.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT:
Mark Johnston, Department of Housing
and Urban Development, Room 7256,
451 Seventh Street SW, Washington, DC
20410; telephone (202) 708-1226; TTY
number for hearing- and speech-
impaired (202) 708-2565, (these
telephone numbers are not toll-free), or
call the toll-free Title V information line
at 1-800-7588.

SUPPLEMENTARY INFORMATION: In
accordance with the December 12, 1988
court order in *National Coalition for the
Homeless v. Veterans Administration*,
No. 88-2503-OG (D.D.C.), HUD
publishes a Notice, on a weekly basis,
identifying unutilized, underutilized,
excess and surplus Federal buildings
and real property that HUD has
reviewed for suitability for use to assist
the homeless.

Today's Notice is for the purpose of
announcing that no additional
properties have been determined
suitable or unsuitable this week.

Dated: May 20, 1999.

Fred Karnas, Jr.,

*Deputy Assistant Secretary for Economic
Development.*

[FR Doc. 99-13210 Filed 5-27-99; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**Privacy Act of 1974; as Amended;
Amendment to a Systems of Records**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed minor revisions to
existing systems of records.

SUMMARY: The U.S. Fish and Wildlife
Service conducted a review of its
Privacy Act systems pursuant to the
provisions of the Privacy Act of 1974, as
amended (5 U.S.C. 552a), and the
President's May 14, 1998, memorandum
concerning Personal Information in
Federal Records. As a result of their
own review, they found nine of the U.S.
Fish and Wildlife Service's Privacy Act
system of records required minor
revisions.

DATES: These actions will be effective on
May 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr.
Johnny R. Hunt, Service Privacy Act
Officer, U.S. Fish and Wildlife Service,
Phone: 703/358-1730, email
(Johnny_Hunt@fws.gov) or by writing
to the following address: U.S. Fish and
Wildlife Service, Privacy Act Officer,
Mail Stop 222 Arlington Square
Building, Arlington, Virginia 22203

SUPPLEMENTARY INFORMATION: We list the
eight systems of records below which
the U.S. Fish and Wildlife Service
revised and a brief explanation of the
minor revisions which they made.
Following that information, we attached
the eight revised Privacy Act system
notices.

"Tort Claims Records—Interior, FWS-4"
previously published in the **Federal
Register** on December 6, 1983 (48 FR
54715):

(1) We added the regional contracting
offices to the list of system managers.

(2) We converted the notice to plain
language to implement the President's
memorandum of June 1, 1998, requiring
the use of plain language in Government
writing.

*"National Wildlife Refuge Special Use
Permits—Interior, FWS-5"* previously
published in the **Federal Register** on
December 6, 1983 (48 FR 54716):

(1) We changed the name of the
system manager to reflect that office's
current title.

(2) We converted the notice to plain
language to implement the President's
memorandum of June 1, 1998, requiring
the use of plain language in Government
writing.

*"National Fish Hatchery Special Use
Permits—Interior, FWS-10"* previously
published in the **Federal Register** on
December 6, 1983 (48 FR 54717):

(1) We changed the system location.
The records are no longer maintained in
the regional offices. They are
maintained at the National Fish
Hatcheries.

(2) We changed the name of the
system manager to reflect the current
title of that office.

(3) We converted the notice to plain
language to implement the President's
memorandum of June 1, 1998, requiring
the use of plain language in Government
writing.

*"Real Property Records—Interior,
FWS-11"* previously published in the
Federal Register on December 6, 1983
(48 FR 54717):

(1) We updated the system location to
include the Washington Office, Division
of Realty as another system location.

(2) We updated the section entitled
"Authority for maintenance of the
system."

(3) We updated the section entitled
"Routine uses of records maintained in
the system" to include the required
summary reports which we produce
(stripped of personal identifiers).

(4) We updated the system managers
to reflect a more current address for the
Washington Office, Division of Realty;
and to include the U.S. Fish and
Wildlife Services regional offices.

(5) We added the mandatory section
entitled "Disclosure to consumer
reporting agencies".

(6) We included electronic storage as
another medium we use to store records.

(7) We converted the notice to plain
language in order to implement the
President's memorandum of June 1,
1998, requiring the use of plain
language in Government writing.

*"Endangered Species Licensee
System—Interior, FWS-19"* previously
published in the **Federal Register** on
December 6, 1983 (48 FR 54718):

(1) We updated the system location to
reflect the current address of the system.

(2) We dropped several categories of
records which were part of the old
system as we no longer collect the
information.

(3) We updated the system manager
and address to reflect the current
address.

(4) We converted the notice to plain
language to implement the President's
memorandum of June 1, 1998, requiring
the use of plain language in Government
writing.

*"Investigative Case File System—
Interior, FWS-20"* previously published
in the **Federal Register** on December 6,
1983 (48 FR 54719):

(1) We included more specific
information about the computerized
system being a local area network (LAN)
system and password protected.

(2) We provided the current address
in the "System Location" and "System
Manager(s) and Address" sections.

(3) We modified the "Retention and
Disposal" section to include a reference
to our records schedule.

(4) We converted the notice to plain
language to implement the President's

memorandum of June 1, 1998, requiring the use of plain language in Government writing.

"U.S. Deputy Game Warden—Interior, FWS-22" previously published in the **Federal Register** on March 24, 1981 (46 FR 18375):

(1) We changed the system manager because the program was decentralized and records are now maintained at participating regions. Additionally requests for access and amendments to one's record go to the participating regional offices instead of the Washington Office, Division of Personnel Management.

(2) We added the mandatory section entitled "Disclosure to consumer reporting agencies".

(3) We converted the notice to plain language to implement the President's memorandum of June 1, 1998, requiring the use of plain language in Government writing.

"Migratory Bird Population and Harvest Systems—Interior, FWS-26" previously published in the **Federal Register** on March 24, 1981 (46 FR 18378):

(1) We eliminated 3 categories of individuals covered by the system. Many of the U.S. Fish and Wildlife Service research functions are now part of the U.S. Geological Survey's Biological Resources Division. They now have responsibility for the following categories of individuals previously collected by the U.S. Fish and Wildlife Service under this Privacy Act system: persons applying for bird banding permits; persons issued bird banding permits; and persons reporting upon banded birds encountered in the wild.

Additionally, we eliminated another category of individuals covered by the system because the program indicated it never needed or collected the information. We previously identified this category as "unidentified persons observed in the field hunting migratory game birds."

(2) Because we eliminated the above categories of individuals covered by the system, we needed to make corresponding minor changes in the sections of this notice which deal with categories of records we collect, the routine uses of the records, retention and disposal of the records, notification procedure, and the record source categories. Therefore, we updated those sections.

(3) We added the mandatory section entitled "Disclosure to consumer reporting agencies".

(4) We updated the address for the system manager.

(5) We converted the notice to plain language to implement the President's memorandum of June 1, 1998, requiring the use of plain language in Government writing.

"Correspondence Control System—Interior, FWS-27" previously published in the **Federal Register** on April 11, 1977 (42 FR 19092):

(1) We updated the system location to more accurately reflect where the records are maintained.

(2) We updated the name of the system manager to reflect the current title of that office.

(3) We added the mandatory section entitled "Disclosure to consumer reporting agencies".

(4) We converted the notice to plain language to implement the President's memorandum of June 1, 1998, requiring the use of plain language in Government writing.

Dated: May 17, 1999.

Roy M. Francis,

Departmental Privacy Act Officer.

INTERIOR/FWS-4

SYSTEM NAME:

Tort Claims Records—Interior, FWS-4.

SYSTEM LOCATION:

(1) Division of Contracting and General Services, U.S. Department of the Interior, Fish and Wildlife Service, Washington, DC 20240; (2) regional offices of U.S. Fish and Wildlife Service. (See 50 CFR part 2 for regional addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants for damages to personal property or personal injury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains information regarding the evaluation of individual claims for damage to or loss of personal property or personal injury, i.e., name, address, insurance company, estimates of repair costs, accident reports by Government officials, law enforcement officials, attorneys, hospital and doctors reports and bills for service, statements from witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act (28 U.S.C. 2671-2680).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary users of the records are by tort claims officers and attorneys in the Office of the Solicitor. They use the information to evaluate tort claims. The

information may also be disclosed outside of the Department to the following parties and under the following circumstances.

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information;

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license;

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertain;

(5) To other Federal agencies to effect salary and administrative offsets;

(6) To debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor;

(7) To a consumer reporting agency to prepare a commercial credit report for use by the Department.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained in paper form in "Tort Claim files."

RETRIEVABILITY:

Maintained by name of claimant.

SAFEGUARDS:

Maintained in compliance with provisions of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Disposed of four years after settlement of the claim. Record copies are held by the Office of the Solicitor, U.S. Department of the Interior.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief, Division of Contracting and General Services, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

(2) Regional Contracting Offices of the U.S. Fish and Wildlife Service (See 50 CFR 2 for Regional Addresses).

NOTIFICATION PROCEDURE:

Send inquiries regarding those records held in the Washington Office to the Chief, Division of Contracting and General Services. Send inquiries regarding those records held in the regional offices to the Regional Director. The requestor should send in a written signed request for the records.

RECORDS ACCESS PROCEDURES:

Address the request to the Chief, Division of Contracting and General Services for records located in the Washington Office. Address the request to the Regional Director for records located in the regional offices. The request must be in writing, signed by the individual, and must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To amend your record, address your request to the Chief, Division of Contracting and General Services. You must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Records come from the following sources: individuals submitting a claim, investigative reports, statements from witnesses, and medical reports.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Privacy Act does not entitle an individual to access information in reasonable anticipation of a civil action or proceeding.

INTERIOR/FWS-5**SYSTEM NAME:**

National Wildlife Refuge Special Use Permits—Interior, FWS-5.

SYSTEM LOCATION:

U.S. Fish and Wildlife Service regional offices and individual National Wildlife Refuges.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants who apply for special use permits and cooperative farm agreements on National Wildlife Refuges.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name and address of permittees/cooperators, types of special uses, and any special conditions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 688dd-ee). See 50 CFR parts 29 and 32 for additional information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to identify those having special use permits and cooperative farming agreements on National Wildlife Refuges and the terms of those permits and cooperative agreements.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained in paper form.

RETRIEVABILITY:

Maintained by name of claimant.

SAFEGUARDS:

Maintained in compliance with provisions of the Code of Federal Regulations (43 CFR 2.51).

RETENTION AND DISPOSAL:

The records are usually not maintained more than one year following the period of use.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Refuges, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Send inquiries regarding the existence of such records to either the Washington Office, Division of Refuges or the regional offices (see 50 CFR part 2 for regional addresses). The requestor should send in a written signed request for the records (see 43 CFR 2.60 of the Code of Federal Regulations) for additional information.

RECORDS ACCESS PROCEDURES:

Address requests for access to your records to either the Washington Office, Division of Refuges or the appropriate Regional Director (see 50 CFR part 2 for regional addresses). The request must be in writing, signed by the individual, and must meet the content requirements of the Code of Federal Regulations (43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

To amend your record, address your request to the Chief, Division of Refuges, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. You must meet the content requirements indicated in the Code of Federal Regulations (43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Records come from the individuals on whom the records are maintained.

INTERIOR/FWS-10**SYSTEM NAME:**

National Fish Hatchery Special Use Permits—Interior, FWS-10.

SYSTEM LOCATION:

The records are kept at the National Fish Hatcheries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are on individuals who applied for special use permits on National Fish Hatcheries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the names and addresses of permittees, types of special uses, period of use, and any special conditions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The United State Code (16 U.S.C. 640K-3; 16 U.S.C. 664).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to identify those having special use permits at the National Fish Hatcheries and to. The records may be disclosed outside of the Department of the Interior under the following circumstances.

(1) Another Federal agency to enable that agency to respond to an inquiry by

the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

(5) To debt collection agencies to locate a debtor or to collect or compromise a Federal claim against the debtor; and

(6) To a consumer reporting agency to prepare commercial credit reports for use by the Department.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in compliance with provisions of the Code of Federal Regulations (43 CFR 2.51).

RETENTION AND DISPOSAL:

We destroy the records one year after the permit expires.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Fish Hatcheries, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Send inquiries regarding the existence of such records to either the Washington Office, Division of Fish Hatcheries or the appropriate regional office (see 50 CFR part 2 for regional addresses). The requestor should send in a written signed request for the records (see 43 CFR 2.60 of the Code of Federal Regulations) for additional information.

RECORDS ACCESS PROCEDURES:

Address requests for access to your records to either the Washington Office, Division of Fish Hatcheries or the appropriate Regional Director (see 50 CFR part 2 for regional addresses). The request must be in writing, signed by the individual, and must meet the content requirements of the Code of Federal Regulations (43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

To amend your record, address your request to the Chief, Division of Fish Hatcheries, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 or the appropriate Regional Director (see 50 CFR part 2 for regional addresses). You must meet the content requirements indicated in the Code of Federal Regulations (43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Records come from the individuals on whom the records are maintained.

INTERIOR/FWS-11

SYSTEM NAME:

Real Property Records—Interior, FWS-11.

SYSTEM LOCATION:

We maintain the records at (1) the Division of Realty, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203 (2) all regional and field offices of the Ecological Services program (See 50 CFR part 2 for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are on landowners, tenants and permittees from whom the U.S. Fish and Wildlife Service has acquired land, water, or interests therein.

CATEGORIES OF RECORDS IN THE SYSTEM:

We keep the following categories of records in the system:

(1) The title file (contains title evidence, the instrument of conveyance, the acquisition contract, title curative and closing data, title opinions, the survey description and plat, payment vouchers, and the appraisal summary)

(2) The case file (contains the acquisition contract, the instrument of conveyance, closing data, the survey description and plat, payment vouchers, and the appraisal summary)

(3) The correspondence file (contains all general correspondence associated with the acquisition, the negotiator's contacts, and all material used for relocation assistance permits or outgrants)

(4) The appraisal report (contains the property description, local market data, comparable sales information, location maps, and an analysis of property value)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

We collect the information in this system under the following authorities.

(1) Federal Property and Administrative Services Act of 1949 (63 Stat. 377)

(2) Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222)

(3) Migratory Bird Hunting Stamp Act, as amended (16 U.S.C. 718 et seq.)

(4) Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.)

(5) Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-666c)

(6) Recreational Use of Conservation Areas Act, as amended (16 U.S.C. 460k-460k4)

(7) Colorado River Storage Project Act, as amended (43 U.S.C. 602g)

(8) Endangered Species Act of 1973 (16 U.S.C. 1531-1543)

(9) National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd-668ee)

(10) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (40 U.S.C. 4601 et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We primarily use the records for the following reasons.

(1) To obtain title evidence for closings from title companies or abstractors;

(2) To obtain title opinions and judgments on condemnation from our Solicitor's offices and the Department of Justice;

(3) To use in negotiations regarding property appraisal;

(4) To obtain relocation assistance permits or outgrants;

(5) To report excess lands to the General Services Administration for transfer or disposal; and

(6) To produce required agency annual reports which are stripped of personal identifiers.

Additional disclosures may be made outside of the U.S. Department of the Interior under the following circumstances.

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

(5) To debt collection agencies in order to collect or compromise a claim against a debtor; and

(6) To a consumer reporting agency in order to prepare a commercial credit report for the U.S. Department of Interior.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records both in paper and electronic files.

RETRIEVABILITY:

We store the records by individual name, project name, project number, and location.

SAFEGUARDS:

We maintain the records in accordance with safeguards specified in the Code of Federal Regulations (43 CFR 2.51) which includes password protected computers and on-site locked storage rooms.

RETENTION AND DISPOSAL:

We retain the records in accordance with the U.S. Fish and Wildlife Service Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers are the Chief, Division of Realty, U.S. Fish and Wildlife Service, Mail Stop 622, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203 and (2) U.S. Fish and Wildlife Service Regional Offices (See 50 CFR 2.2 for addresses).

NOTIFICATION PROCEDURE:

Send a written, signed request for your records to the system manager identified above. See the Code of Federal Regulations (43 CFR 2.60) for additional information.

RECORDS ACCESS PROCEDURES:

Address requests for access to your records to the system manager identified above. Your request should be in writing, signed, and should meet any necessary content requirements specified in the Code of Federal Regulations (43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

To amend your record, address your request to the system manager identified above. You must meet the content requirements indicated in the Code of Federal Regulations (43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Records come from the individuals whom the records are about; and public records from State or local governments.

INTERIOR/FWS-19

SYSTEM NAME:

Endangered Species Licensee System—Interior, FWS—19.

SYSTEM LOCATION:

(1) Washington Office, Division of Law Enforcement, Room 520 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203

(2) Regional Offices of the U.S. Fish and Wildlife Service (See 50 CFR part 2 for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are on individuals who request a license to import or export fish and/or wildlife products. The system also has records on corporations and other business entities. Only the records reflecting personal information are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, address, date of birth, business phone number, occupation and social security number of individuals who request a license to import or export fish and/or wildlife products. We identify businesses by type, name, title, phone number of principal officer, and State of incorporation, if applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Endangered Species Act of 1976 (16 U.S.C. 1538(d); 87 Stat. 884).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We primarily use the records to identify licensees authorized to import or export fish, wildlife and/or products thereof. Disclosures may be made outside of the Department of the Interior under the following circumstances.

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

(5) To the **Federal Register** to publish notice of the permit—as required by law;

(6) To debt collection agencies to locate a debtor; and

(7) To a consumer reporting agency to prepare a commercial credit report for the Department.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain the records in paper files and in electronic form.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

We maintain the files in a segregated area secured by a locking device in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

We maintain the records in accordance with the U.S. Fish and Wildlife Service's records schedule.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Chief, Division of Law Enforcement, U.S. Fish

and Wildlife Service, Mail Stop 520 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The United States Code (5 U.S.C. 552a(j)(2)) provides general exemption authority for some Privacy Act systems. In accordance with that authority, the U.S. Fish and Wildlife Service adopted regulations (43 CFR 2.79(a) and 43 CFR 2.79(b)). Under 43 CFR 2.79(b), the system is exempt from the following subsections of the Privacy Act (as found in 5 U.S.C. 552a): subsections (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f). For more information, see **Federal Register** publication 40 FR 50432 published on October 29, 1975.

INTERIOR/FWS-20

SYSTEM NAME:

Investigative Case File System—Interior, FWS 20.

SYSTEM LOCATION:

(1) Washington Office, Division of Law Enforcement, Room 520 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203

(2) Regional Offices of the U.S. Fish and Wildlife Service (See 50 CFR part 2 for addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are on individuals who are the subjects of U.S. Fish and Wildlife Service law enforcement investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain name, address, place and date of birth, and any other records which are necessary to complete an investigation of individuals suspected of violations of fish and wildlife laws.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Assault Act (18 U.S.C. 111), Bald Eagle Act (16 U.S.C. 668–668d), Black Bass Act (16 U.S.C. 851–856), Lacey Act (18 U.S.C. 42–44), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), Migratory Bird Hunting Stamp Act (16 U.S.C. 718–718h), Migratory Bird Treaty Act (16 U.S.C. 703–711), Endangered Species Act (16 U.S.C. 1531–1543), Marine Mammal Act (16 U.S.C. 1361–1407), Upper Mississippi Refuge Act (16 U.S.C. 721–731), Bear River Refuge Act (16 U.S.C. 690), Fish and Wildlife Recreation Act (16 U.S.C. 460k–460k–4), Airborne Hunting Act (16 U.S.C. 742j), and Tariff Classification Act (19 U.S.C. 1527).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The U.S. Fish and Wildlife Service uses the records primarily in its investigations of individuals suspected of violating fish and wildlife laws; and also uses the records for any criminal proceedings resulting from those investigations. The records may be disclosed outside of the Department of Interior under the following circumstances.

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

(5) To debt collection agencies to locate a debtor or to collect or compromise a Federal claim against the debtor; and

(6) To a consumer reporting agency to prepare commercial credit reports for use by the Department.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in

the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer media or printouts. The records are part of a Local Area Network (LAN) shared by the Washington Office, Division of Law Enforcement and U.S. Fish and Wildlife Service regional law enforcement offices.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in a segregated area secured by a locking device in accordance with 43 CFR 2.51. The system is password secured.

RETENTION AND DISPOSAL:

Maintained in accordance with the U.S. Fish and Wildlife Service Records Schedule which addresses record retention requirements for investigative case files.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, Mail Stop 520 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The United States Code (5 U.S.C. 552a(j)(2)) provides general exemption authority for some Privacy Act systems. In accordance with that authority, the U.S. Fish and Wildlife Service adopted regulations (43 CFR 2.79(a) and 43 CFR 2.79(b)).

Under 43 CFR 2.79(a), the system is not exempt from the following subsections of the Privacy Act (as found in 5 U.S.C. 552a): subsections (b), (c)(1) and (c)(2), (e)(4)(A) through (e)(4)(F), (e)(6) and (e)(7), (e)(9) through (e)(11), and (i). For more information, see **Federal Register** publication 40 FR 37217 published on August 26, 1975.

Under 43 CFR 2.79(b), the system is exempt from the following subsections of the Privacy Act (as found in 5 U.S.C. 552a): subsections (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f). For more information, see **Federal Register** publication 40 FR 50432 published on October 29, 1975.

INTERIOR/FWS-22

SYSTEM NAME:

U.S. Deputy Game Warden—Interior, FWS—22.

SYSTEM LOCATION:

The U.S. Fish and Wildlife Service maintains the records at its participating regional offices (See 50 CFR part 2 for regional addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are on individuals who apply for U.S. Deputy Game commissions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the name, address date and place of birth, social security number, height, weight, color of hair and eyes of applicants for U.S. Deputy Game Warden Commissions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742l; 70 Stat. 1119).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The U.S. Fish and Wildlife Service uses the records to identify those who hold U.S. Deputy Game Warden commissions. The records may be disclosed outside of the Department of Interior under the following circumstances.

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in a segregated area and secured by a lock in accordance with the Code of Federal Regulations (43 CFR 2.51).

RETENTION AND DISPOSAL:

We destroy the records when the commission expires.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Offices of the U.S. Fish and Wildlife Service. (See 50 CFR part 2 for addresses).

NOTIFICATION PROCEDURE:

Send inquiries regarding the existence of such records to the appropriate U.S. Fish and Wildlife Service Regional Office (see 50 CFR part 2 for addresses). Send in a written, signed request for the records. See the Code of Federal Regulations (43 CFR 2.60) for additional information.

RECORDS ACCESS PROCEDURES:

Address requests for access to your records to the appropriate Fish and Wildlife Regional Office (See 50 CFR part 2 for addresses). Your request should be in writing, signed, and should meet any necessary content requirements specified in the Code of Federal Regulations (43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

To amend your record, address your request to the appropriate regional

director(s) (See 50 CFR part 2 for addresses). You must meet the content requirements indicated in the Code of Federal Regulations (43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Records come from the individuals on whom the records are maintained.

INTERIOR/FWS-26

SYSTEM NAME:

Migratory Bird Population and Harvest Systems—Interior, FWS-26.

SYSTEM LOCATION:

The U.S. Fish and Wildlife Service maintains the records at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Patuxent Wildlife Research Center, Laurel, Maryland 20811. The minor portions of the files comprising the system may be collected by the Washington Office of Migratory Bird Management, Fish and Wildlife regional and field offices, State offices, conservation organizations, universities, and individuals participating in population and harvest surveys. The Office of Migratory Bird Management, Laurel, Maryland receives and stores the information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The U.S. Fish and Wildlife Service records are on (1) individuals who participate in migratory bird population surveys; and (2) individuals who submit their harvest data for migratory game birds.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain name and address of the participant as well as relevant population survey and harvest data on migratory birds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. 703-711; 40 Stat. 755).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Fish and Wildlife biologists and law enforcement officers, the Canadian Wildlife Service, the Mexican Department Fauna Silvestre, and State and Provincial conservation agencies use the information to further understanding, protection, management and use of migratory birds. They also use the data to guide, plan and coordinate research on migratory birds. The U.S. Fish and Wildlife Service and cooperating agencies analyze and publish survey data in technical publications. The records may be disclosed outside of the Department of

the Interior under the following circumstances:

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

(5) To the Canadian Wildlife Service, Environmental Management Service, Department of the Environment, Ottawa, Ontario, Canada K1A 0H3 and Mexican Direccion General Fauna Silvestre, Aquiles Serdan 28-70, Pisa, Mexico 3, DF, Mexico, as part of cooperative agreements and;

(6) To cooperators and researchers in other Federal, State, local agencies, conservation organizations, universities, and private individuals who participate in population and harvest surveys, survey analysis, or publications about migratory bird population and harvest studies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C.

1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain the records in a variety of media including paper, punched cards, microfiche, microfilm, computer tape, and computer disk. We also have published and unpublished reports which present summary information.

RETRIEVABILITY:

We index the information in a variety of ways including by name. The identity of the individual is usually deleted shortly after analysis of data.

SAFEGUARDS:

We store the records within the fenced and locked premises of the Patuxent Wildlife Research Center, Laurel Maryland. The records are within a locked building and the master computer files are in a locked vault. Those wanting to use the records must first be authorized.

RETENTION AND DISPOSAL:

We retain those records that contain personal information (1) until the data can be recorded and stored on other media such as computer tapes, computer disks, or microfilm; and (2) until we can verify the accuracy of the data which was transferred to a different media. Information which we transfer to another media does not contain personal identifiers.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Migratory Bird Management, Mail Stop 634 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203

NOTIFICATION PROCEDURE:

Send a written, signed request for your records to the system manager identified above. See the Code of Federal Regulations (43 CFR 2.60) for additional information.

RECORDS ACCESS PROCEDURES:

Address requests for access to your records to the system manager identified above. Your request should be in writing, signed, and should meet any necessary content requirements specified in the Code of Federal Regulations (43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

To amend your record, address your request to the system manager identified above. You must meet the content requirements indicated in the Code of Federal Regulations (43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Records come from those supervising or participating in various population surveys of migratory birds, and those who purchase migratory bird hunting stamps.

INTERIOR/FWS-27**SYSTEM NAME:**

Correspondence Control System—Interior, FWS—27.

SYSTEM LOCATION:

We maintain the records at the U. S. Fish and Wildlife Service, Correspondence Control Unit, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are on U.S. Senators and Representatives, Governors of States, and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain name and address and any other information necessary to process the incoming correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 43 U.S.C. 1467, 44 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to provide control for prompt handling of priority correspondence by the U.S. Fish and Wildlife Service. Disclosures may be made outside of the Department of the Interior under the following circumstances.

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

We maintain the records in manual form in file folders and in a computerized tracking system.

RETRIEVABILITY:

Indexed by name and date of response.

SAFEGUARDS:

We maintain the records in accordance with safeguards in specified in the Code of Federal Regulations (43 CFR 2.51).

RETENTION AND DISPOSAL:

We destroy the records after two years after receipt.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Chief, Correspondence Control Unit, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Send a written, signed request for your records to the system manager identified above. See the Code of Federal Regulations (43 CFR 2.60) for additional information.

RECORDS ACCESS PROCEDURES:

Address requests for access to your records to the system manager identified above. Your request should be in

writing, signed, and should meet any necessary content requirements specified in the Code of Federal Regulations (43 CFR 2.63).

CONTESTING RECORDS PROCEDURES:

To amend your record, address your request to the system manager identified above. You must meet the content requirements indicated in the Code of Federal Regulations (43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Records come from incoming correspondence to the U.S. Fish and Wildlife Service.

[FR Doc. 99-13327 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

(AZ-020-034-1230-00)

Closure of Public Land to Camping and Off-Road Vehicle Use in Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands to camping and off-road vehicle use.

SUMMARY: Notice is hereby given that the following described lands are temporarily closed until further notice for camping and off-road vehicle use for the protection of public health and safety under the provisions of 43 CFR 8364.1. The closure will remain in effect until rescinded or modified by the Phoenix Field Manager.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 3 E.,

Sec. 21, all unpatented lands;

Sec. 22, all unpatented lands.

EFFECTIVE DATE: This order is effective upon signature of the authorized officer.

SUPPLEMENTARY INFORMATION: The public lands involved (approximately 545 acres) are adjacent to areas of expanding urban development. Unregulated and extended overnight camping and off-road vehicle use is not consistent with the orderly growth of the communities and presents health and safety problems.

Because of prior existing rights, the following parties (and their representatives) will be allowed access to the above described lands:

Lloyd Pruitt (AMC62332, AMC62333)

Arizona Public Service (AZA-6135,

AZA-9065, AZAR-032089)

City of Phoenix (AZA-6390, AZA-9077,

AZA-12164, AZA-21769, AZA-

21955, AZA-23387, AZA-24478,

AZA-24831, AZA-25093, AZA-25094, AZA-29038, AZA-30621.)
 Sun State Rock (AZA-24522)
 Arizona DOT (AZA-22687)
 Southwest Gas (AZA-28807)
 US West (AZAR-031668)
 Electric Lightwave (AZA-30617)

ORDER: Notice is hereby given that effective the date of signature by the authorized officer of this notice, the above described lands are closed to camping and off-road vehicle use until further notice. Any person who fails to comply with a closure or restriction order issued under 43 CFR part 8364 is subject to the penalties provided in 43 CFR 8360.0-7

FOR FURTHER INFORMATION CONTACT: Michael A. Taylor, Field Manager, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, (602) 580-5500.

Dated: May 19, 1999.

Michael A. Taylor,
Field Manager.

[FR Doc. 99-13648 Filed 5-27-99; 8:45 am]

BILLING CODE 8364-31-U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-990-1020-00]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater District, Idaho.

ACTION: Notice of resource advisory council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater District Resource Advisory Council (RAC) on Tuesday, June 29, 1999 and Wednesday, June 30, 1999 in Missoula, Montana.

Agenda items include: election of officers; update and briefing on the weed issue from the weed subgroup; an update from the recreation subgroup and other matters as time permits. The meeting will begin at 1 p.m. (MDT), June 29, 1999 at the Grant Creek Inn, 5280 Grant Creek Road, Missoula, Montana. The public may address the Council during the public comment from 2 p.m.-2:30 p.m. on June 29, 1999.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the

Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The Council's responsibilities include providing recommendations concerning long-range planning and establishing resource management priorities.

FOR FURTHER INFORMATION CONTACT: Ted Graf (208) 769-5004.

Dated: May 21, 1999.

Ted Graf,
Acting District Manager.

[FR Doc. 99-13578 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-922-99-1310-00-241A-P; MTM 82798]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of P.L. 97-451, a petition for reinstatement of oil and gas lease MTM 82798, Richland County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$10 per acre and 16 $\frac{2}{3}$ percent respectively. Payment of a \$500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as contained in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: May 18, 1999.

Karen L. Johnson,
Chief, Fluids Adjudication Section.

[FR Doc. 99-13267 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA-030-1610-00-25-2Z; AZA-29861]

Arizona: Opening Orders in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Upon initiation of the Hualapai Land Exchange, in accordance with the Federal Land Policy and Management Act of 1976, as amended, certain public lands were segregated from appropriation under the public land and mineral laws. A decision has been made to remove some of them from the exchange.

ADDRESSES: Kingman Field Office, 2475 Beverly Ave, Kingman, Arizona 86401.

FOR FURTHER INFORMATION CONTACT: Donald McClure, Project Manager (520) 692-4400.

SUPPLEMENTARY INFORMATION: At 9 a.m. on March 29, 1999, the following described lands will be opened to entry.

Gila and Salt River Meridian, Arizona

T. 24 N., R. 15 W.,
 Sec. 8, All.

T. 25 N., R. 15 W.,
 Sec. 6, lots 1-7, inclusive,
 $S\frac{1}{2}NE\frac{1}{4}, SE\frac{1}{4}NW\frac{1}{4}, W\frac{1}{2}SW\frac{1}{4}, SE\frac{1}{4};$
 Sec. 8, All;
 Sec. 18, lots 1-4, inclusive, $E\frac{1}{2}, E\frac{1}{2}W\frac{1}{2}.$

T. 16 N., R. 16 W.,
 Sec. 16, All.

T. 25 N., R. 16 W.,
 Sec. 2, lots 1-4, inclusive, $S\frac{1}{2}N\frac{1}{2}, S\frac{1}{2};$
 Sec. 12, All.

T. 26 N., R. 16 W.,
 Sec. 36, All.

T. 17 N., R. 17 W.,
 Sec. 30, lots 1-20, inclusive, $E\frac{1}{2}.$

T. 18 N., R. 17 W.,
 Sec. 20, All;
 Sec. 30, lots 1-20, inclusive, $E\frac{1}{2}.$

T. 16 N., R. 18 W.,
 Sec. 16, $N\frac{1}{2}.$

T. 18 N., R. 18 W.,
 Sec. 36, All.

Containing 6,720 acres more or less.

John Christensen,
Field Manager.

[FR Doc. 99-12719 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-1430-01; AA-80005]

Public Land Order No. 7393; Withdrawal of National Forest Land for Spencer Glacier Material Site, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 600 acres of National Forest System land from location and entry under the United States mining laws for a period of 15 years for the Spencer Glacier Material Site. The land will remain open to all uses which can

be made of National Forest System lands, including disposition of materials under the Act of July 31, 1947, as amended.

EFFECTIVE DATE: May 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Robbie J. Havens, Bureau of Land Management Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), for the Spencer Glacier Material Site, to aid in making high quality rock and gravel available to nearby communities for private and public works projects:

Seward Meridian, Alaska

Chugach National Forest

T. 7 N., R. 2 E., unsurveyed,

Sec. 11, S½SE¼;

Sec. 12, SW¼SW¼;

Sec. 13, NW¼;

Sec. 14, NE¼, E½NW¼, and N½SE¼.

The area described contains approximately 600 acres.

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

3. This withdrawal will expire 15 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 14, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99-13619 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-JA-P

Cape Cod National Seashore Advisory Commission will be held on Friday, June 18, 1999.

The Commission was reestablished pursuant to Pub. L. 87-126 as amended by Pub. L. 105-280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—April 30, 1999
3. Report of Officers
4. Report of Nickerson Subcommittee
5. Superintendent's Report: Highlands Center
Hatches Harbor
Provincelands bicycle trail
Water EIS
AmeriCorps
6. Old Business: Head of Meadow gas station
Personal Watercraft Subcommittee
Off Road Vehicle Subcommittee
7. New Business
8. Agenda for the next meeting
9. Date for the next meeting
10. Public comment
11. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: May 20, 1999.

Michael B. Murray,

Deputy Superintendent.

[FR Doc. 99-13591 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-70-P

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the American Museum of Natural History which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The cultural item is a San Carlos Apache cap made of hide (buckskin), feathers, beads (glass), sinew, pigment, and thread.

In 1910, Pliny E. Goddard collected this cultural item on the San Carlos Apache Reservation on behalf of the American Museum of Natural History. The Museum accessioned the cap into its collection the same year (AMNH Accession Number 1910-22).

The cultural affiliation of this item is San Carlos Apache as indicated through Museum records and consultation with representatives of the San Carlos Apache Tribe of the San Carlos Reservation. Consultation evidence presented by representatives of the San Carlos Apache Tribe of the San Carlos Reservation indicates that this item has ongoing historical, traditional, and cultural importance central to the tribe itself, and no individual had the right to alienate it at the time of acquisition.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the San Carlos Apache Tribe of the San Carlos Reservation.

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of the Migratory Bird Treaty Act, the Bald Eagle Act, the Golden Eagle Act, and the Endangered Species Act to this transfer and have concurred in the conclusion that the object is not covered due to its age.

This notice has been sent to officials of the San Carlos Apache Tribe of the San Carlos Reservation, the White Mountain Apache Tribe of the Fort Apache Reservation, the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, the Tonto Apache Tribe of Arizona, the Yavapai-Apache Indian Community of

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 77 U.S.C. App 1, section 10), that a meeting of the

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the American Museum of Natural History of New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice

the Camp Verde Reservation, the Apache Tribe of Oklahoma, the Fort Sill Apache Tribe of Oklahoma, the Jicarilla Apache Tribe of the Jicarilla Indian Reservation, and the Mescalero Apache Tribe of the Mescalero Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Martha Graham, Registrar for Cultural Resources, American Museum of Natural History, Department of Anthropology, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before June 28, 1999. Repatriation of this object to the San Carlos Apache Tribe of the San Carlos Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the contents of or determinations within this notice. Dated: May 3, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99-13599 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Colorado Historical Society, Denver, CO.

A detailed assessment of the human remains was made by Colorado Historical Society professional staff in consultation with representatives of the Southern Ute Indian Tribe of the Southern Ute Reservation, Ute Mountain Tribe of the Ute Mountain Reservation, and the Ute Indian Tribe of the Uintah and Ouray Reservation.

In 1897, human remains representing one individual from western Colorado were donated by Mrs. M.E. Crowley to the Colorado Historical Society. No known individuals were identified. No associated funerary objects are present.

Extant documentation indicates that this young Ute woman was slain in

1885; and it is probable that this happened during the Beaver Creek Massacre in June, 1885. According to historical documents and Ute oral tradition, two Weeminuche Ute families were camped on Beaver Creek north of Dolores, CO when they were attacked by white American settlers; resulting in the deaths of six or seven persons, including two women. Based on this information, this individual has been identified as Native American of Ute tribal affiliation.

During the 1940s, human remains representing one individual came into the possession of Arthur Sutton, the sheriff of Montrose County, CO. The circumstances surrounding the recovery of these human remains are not known. In 1956, Arthur Sutton donated these human remains to the Colorado Historical Society. No known individual was identified. The 14 associated funerary objects include fragments of a "Kentucky" or "Indian" rifle; textile fragments from a Navajo blanket and possible "uniform"; and a metal button.

Based on physical examinations conducted by the Federal Bureau of Investigation in 1946 and associated funerary objects, these human remains have been identified as Native American from the historic period. The associated funerary objects are similar to items which have been excavated with other known Ute graves in Colorado. Montrose County, CO is part of the pre-1900 homeland of the present-day Ute Indian Tribe of the Uintah and Ouray Reservation, specifically the Uncompahgre Band (Taveewach).

Based on the above mentioned information, officials of the Colorado Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Colorado Historical Society have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 14 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Colorado Historical Society have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Southern Ute Indian Tribe of the Southern Ute Reservation, Ute Mountain Tribe of the Ute Mountain Reservation, and the Ute Indian Tribe of the Uintah and Ouray Reservation.

This notice has been sent to officials of the Southern Ute Indian Tribe of the Southern Ute Reservation, Ute

Mountain Tribe of the Ute Mountain Reservation, and the Ute Indian Tribe of the Uintah and Ouray Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Anne Wainstein Bond, Curator of Material Culture, Colorado Historical Society, 1300 Broadway, Denver, CO, 80203; telephone: (303) 866-4691, before June 28, 1999. Repatriation of the human remains and associated funerary objects to the Southern Ute Indian Tribe of the Southern Ute Reservation, Ute Mountain Tribe of the Ute Mountain Reservation, and the Ute Indian Tribe of the Uintah and Ouray Reservation may begin after that date if no additional claimants come forward.

Dated: May 18, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99-13596 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Delta County Historical Society Museum, Delta, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Delta County Historical Society Museum, Delta, CO.

A detailed assessment of the human remains was made by Delta County Historical Society professional staff in consultation with representatives of the Ute Indian Tribe of the Uintah and Ouray Reservation.

In 1965, human remains representing one individual were removed from a site near Robidoux Creek, Uncompahgre Valley, Delta County, CO by William Davis. In 1965, these human remains were donated to the Delta County Historical Society. No known individuals were identified. The two associated funerary objects include a cradleboard of willow construction and a woven grass mat.

Based on the manner of interment, the associated funerary objects, and the condition of the remains, this individual has been identified as Native American from the historic period. Prior to 1881, the site from which the human remains were recovered was a known grave area of the Uncompahgre Band of the Ute Nation. After 1881, all Ute Bands relocated to their present reservations. No other Indian tribes are known to have inhabited the Uncompahgre Valley during the historic period.

Based on the above mentioned information, officials of the Delta County Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Delta County Historical Society have also determined that, pursuant to 43 CFR 10.2 (d)(2), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Delta County Historical Society have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Ute Indian Tribe of the Unitah and Ouray Reservation.

This notice has been sent to officials of the Ute Indian Tribe of the Unitah and Ouray Reservation, and the Ute Mountain Tribe of the Ute Mountain Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James K. Wetzel, Curator, Delta County Historical Society Museum, 251 Meeker Street, Delta, CO; telephone: (970) 874-8721, before June 28, 1999. Repatriation of the human remains and associated funerary objects to the Ute Indian Tribe of the Unitah and Ouray Reservation may begin after that date if no additional claimants come forward.

Dated: May 13, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 99-13598 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM which meet the definition of "object of cultural patrimony" under Section 2 of the Act.

The 13 cultural items consist of ten *Dilzini Gaan* masks, two dance wands, and one Medicine Man's feathered cap. These objects are constructed of wood, cloth, hide, string, thread, beads, and feathers.

In 1961, a set of five *Dilzini Gaan* masks (61.3.70-61.3.74) was donated to the Maxwell Museum by Mr. and Mrs. Joseph A. Imhof. In 1968 and 1969, another set of five *Dilzini Gaan* masks (75.1.1-75.1.4 and 76.1.32) were purchased for the Maxwell Museum by J.J. Brody. In 1970, the two dance wands were donated to the museum by Florence Hawley Ellis. In 1960, the Medicine Man's feathered cap was donated to the Maxwell Museum by Tom Bahti.

The cultural affiliation of these cultural items is San Carlos Apache as indicated through donor information, museum records, and consultation with representatives of the San Carlos Apache Tribe of the San Carlos Reservation, White Mountain Apache Tribe of the Fort Apache Reservation, and the Yavapai-Apache Nation of the Camp Verde Indian Reservation. Representatives of the San Carlos Apache Tribe of the San Carlos Reservation have further stated these items have ongoing historical, traditional, and cultural importance central to the tribe itself, and no individual had or has the right to alienate them. Information regarding the status of these cultural items is being withheld from this notice by the Maxwell Museum of Anthropology at the request of the representatives of the San Carlos Apache Tribe of the San Carlos Reservation in order not to compromise the San Carlos Apache Tribe of the San Carlos Reservation's code of religious practice.

Based on the above mentioned information, officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that,

pursuant to 43 CFR 10.2 (d)(4), these 13 cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Maxwell Museum of Anthropology, University of New Mexico have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the San Carlos Apache Tribe of the San Carlos Reservation.

This notice has been sent to officials of the San Carlos Apache Tribe of the San Carlos Reservation, White Mountain Apache Tribe of the Fort Apache Reservation, the Yavapai-Apache Nation of the Camp Verde Indian Reservation, the Tonto Apache Tribe, and the Mescalero Apache Tribe of the Mescalero Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Brenda A. Dorr, NAGPRA Project Director, Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM 87131-1201; telephone: (505) 277-0195 before June 28, 1999. Repatriation of these objects to the San Carlos Apache Tribe of the San Carlos Reservation may begin after that date if no additional claimants come forward.

Dated: May 18, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 99-13597 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, Bemidji, MN.

A detailed assessment of the human remains was made by University of

Minnesota professional staff in consultation with representatives of the Bois Forte Band of the Minnesota Indian Tribe.

In 1984, human remains representing one individual from a site located on private land within the exterior boundaries of the Bois Forte Reservation near Lake Vermillion by Bois Forte Tribal Police. These human remains were turned over to the Minnesota State Archeologist and the Minnesota Indian Affairs Council. No known individual was identified. The 16 associated funerary objects include three beaver mandibles, one lynx mandible, one elk naviculocuboid, one beaver innominate, one fragement of beaver incisor, six bone awls, one harpoon awl, one hide flesher (moose or elk metatarsal), and one iron tranche (ice chisel).

Based on the associated funerary objects, this individual has been determined to be Native American from the historic period. These human remains and funerary objects were recovered within the exterior boundaries of the Bois Forte Reservation.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 16 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Bois Forte Band of the Minnesota Chippewa Tribe.

This notice has been sent to officials of the Bois Forte Band of the Minnesota Chippewa Tribe and the Minnesota Chippewa Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before June 28, 1999. Repatriation of the human remains and associated funerary objects to the Bois Forte Band of the Minnesota Chippewa Tribe may begin after that

date if no additional claimants come forward.

Dated: April 22, 1999.

Francis P. McManamon,

*Departmental Consulting Archeologist,
DeManager, Archeology and Ethnography
Program.*

[FR Doc. 99-13600 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Public Meetings on the Development of Surplus Criteria for Management of the Colorado River and To Initiate National Environmental Policy Act (NEPA) Process

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Department of the Interior, Bureau of Reclamation ("Reclamation"), is considering development of specific criteria that will identify those circumstances under which the Secretary of the Interior ("Secretary") may make Colorado River water available for delivery to the States of Arizona, California, and Nevada (Lower Division States or Lower Basin) in excess of the 7,500,000 acre-foot Lower Basin apportionment.

Reclamation published a **Federal Register** notice on Tuesday, May 18, 1999, regarding a Notice of Intent to solicit comments on the development of surplus criteria.

Reclamation invites all interested parties to present oral or written comments concerning the following: (1) The need for the development of surplus criteria, (2) the format for the criteria (either by revising the Long-Range Operating Criteria set forth in Article III(3) or by developing interim criteria pursuant to Article III(3) of the Long-Range Operating Criteria), and (3) the specific issues and alternatives to be analyzed in the National Environment Policy Act (NEPA) process.

DATES AND LOCATIONS: Written comments are requested by June 30, 1999, and should be sent to Regional Director, Lower Colorado Region, Attention: Jayne Harkins, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470. Oral and written comments will be accepted at the public meetings to be held at the following locations:

Tuesday, June 15, Meeting Room 1 on Level 3, Terminal 4, Phoenix Sky Harbor Airport, Phoenix, Arizona, 6:30 p.m.-9 p.m.

Wednesday, June 16, Keller Peak Room, Doubletree Hotel, 222 N. Vineyard Ave., Ontario, California, 6:30 p.m.-9 p.m.

Tuesday, June 22, Zeus C Room, Alexis Park Resort, 375 East Harmon, Las Vegas, Nevada, 6:30 p.m.-9 p.m.

Wednesday, June 23, Hawk's Nest Conference Room, Terminal 1, Salt Lake International Airport, Salt Lake City, Utah, 6:30 p.m.-9 p.m.

FOR FURTHER INFORMATION CONTACT:

Jayne Harkins, telephone (702) 293-8190; faxogram (702) 293-8042; E-mail at: jharkins@lc.usbr.gov or Randall Peterson, telephone (801) 524-3758, faxogram (801) 524-3858; E-mail at: rpeterson@uc.usbr.gov.

Dated: May 25, 1999.

Eluid L. Martinez,
Commissioner.

[FR Doc. 99-13667 Filed 5-27-99; 8:45 am]

BILLING CODE 4310-94-U

DEPARTMENT OF JUSTICE

[AAG/A Order No. 167-99]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Procurement Policy and Review Group, Management and Planning Staff, Justice Management Division (JMD) is removing a published Privacy Act system of records entitled "Delegations of Procurement Authority (DPA), JUSTICE/JMD-018." JUSTICE/JMD-018 was last published in the **Federal Register** on October 10, 1995, (60 FR 52704).

The DPA is no longer being used or maintained. The system was originally used, as part of a pre-award review of contract actions above a certain threshold, to ensure contracting officers in the Department's bureaus were exercising their procurement authority in accordance with the terms of their delegations. The system was also used to track training and career progression of bureau contracting officers. On May 31, 1995, the Procurement Executive discontinued the practice of performing pre-award reviews of all contract actions, including checks of contracting officers' delegations. In addition, consistent with the Justice Acquisition Regulations (63 FR 16118-16136), which delegate the responsibility of developing and managing career development programs to the bureaus, the DPA is no longer used for career development purposes.

Dated: May 17, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99-13269 Filed 5-27-99; 8:45 am]

BILLING CODE 4410-CJ-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 166-99]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provision of the Privacy Act of 1974 (5 U.S.C. 552a), the Library Staff (JMD), Department of Justice, is removing a published Privacy Act system of records entitled "Bookstream, JUSTICE/JMD-004." JUSTICE/JMD-004 was last published in the **Federal Register** on December 11, 1987 (52 FR 47182).

Bookstream no longer exists as a system of records. It was tested but never implemented as a functional library circulation system. The circulation function was never automated and is still being performed manually in all Library Staff locations. Therefore, Bookstream, is removed from the Department's compilation of Privacy Act systems.

Dated: May 17, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99-13270 Filed 5-27-99; 8:45 am]

BILLING CODE 4410-CJ-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 164-99]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Security and Emergency Planning Staff, Justice Management Division, Department of Justice, is removing a published Privacy Act system of records entitled, "Document Information System (DIS), Justice/JMD 010." Justice/JMD 010 was last published in the **Federal Register** on December 11, 1987 (52 FR 47270).

The DIS no longer exists as a system of records. The system was eliminated prior to 1990. The system was no longer required because classification authority designations are now made by position rather than individuals. All records associated with this system have been destroyed. Therefore, the DIS is removed from the Department's compilation of Privacy Act systems.

Dated: May 5, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99-13400 Filed 5-27-99; 8:45 am]

BILLING CODE 4410-CJ-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 165-99]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to establish a new Department-wide system of records entitled "Accounting Systems for the Department of Justice (DOJ), DOJ-001." The Department-wide system will replace those which now exist for separate Department components, and will include new disclosure provisions—in particular those which are necessary to implement the requirements of the Debt Collection Improvement Act of 1996 (DCIA). Certain disclosures necessary to implement the DCIA involve disclosure to consumer and commercial reporting agencies. An agency is required by the DCIA to disclose certain information about delinquent debtors to consumer reporting agencies, if the system of records notice indicates that such disclosure will be made and the debtor has been provided the due process rights set out in the DCIA. An agency also may disclose information concerning non-delinquent debts to consumer reporting or commercial reporting agencies in accordance with the DCIA, where notice that such disclosures may be made is indicated in the published system of records.

By separate notice, the Department will remove the systems of records now published for individual Department components after the required 30-day public comment period for the new Department-wide system of records has expired.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the new routine uses; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by June 28, 1999. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of

Justice, Washington, D.C., 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: May 10, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Department of Justice—001

SYSTEM NAME:

Accounting Systems for the Department of Justice (DOJ)

SYSTEM LOCATION:

Justice Management Division, 10th St. and Constitution Ave., NW., Washington, DC 20530; Central Offices of the Bureau of Prisons (BOP) and Federal Prison Industries (FPI) at 320 1st St., NW., Washington, DC 20534; and at any BOP/FPI Regional Offices and/or any of the BOP/FPI facilities at addresses provided in 28 CFR part 503; Headquarters of the Drug Enforcement Administration (DEA), Office of Finance, 700 Army Navy Drive, Arlington, VA, 22202; and at DEA field offices as detailed in Justice/DEA-999; Federal Bureau of Investigation (FBI) Headquarters at 935 Pennsylvania Ave., NW, Washington, DC 20535; and at FBI field offices as detailed in Justice/FBI-999; Headquarters of the Immigration and Naturalization Service (INS) at 425 I Street, NW., Washington, DC 20536; and at INS Regional and District Offices, Administrative Centers, Service Centers, and other INS file control offices as detailed in Justice/INS-999; Office of Justice Programs (OJP), 810 7th Street, NW, Washington, DC 20531; U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202; and at 94 district offices of the U.S. Marshals Service (USMS) as detailed in Justice/USM-999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals/persons (including DOJ employees; and including current and former inmates under the custody of the Attorney General) who are in a relationship, or who seek a relationship, with the DOJ or component thereof—a relationship that may give rise to an accounts receivable, an accounts payable, or to similar accounts such as those resulting from a grantee/grantor relationship. Included may be:

(a) Those for whom vouchers (except payroll vouchers for DOJ employees) are submitted to DOJ requesting payment for goods or services rendered including vendors, contractors, experts, witnesses, court reporters, travelers, and employees;

(b) Those to whom the DOJ is indebted or who may have a claim against the DOJ, including those named in (a) above;

(c) Those who are indebted to DOJ, e.g., those receiving goods, services, or benefits from DOJ; those who are liable for damage to Government property; those indebted for travel/transfer advances and overpayments; and those owing administrative fees and/or assessments; and

(d) Those who apply for DOJ benefits, funds, and grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents used to reserve, obligate, process, and effect collection or payment of funds, e.g., vouchers (excluding payroll vouchers), invoices; purchase orders; travel advances, travel/transfer vouchers and other such documentation reflecting information about payments due to or made to; claims made by, or debts owed by the individuals covered by this system, including fees, fines, penalties, overpayments, and/or other assessments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512; 44 U.S.C. 3101.

PURPOSE(S):

This system of records is used by DOJ officials to maintain information adequate to ensure the financial accountability of the individuals covered by this system; provide an accounting and reporting of DOJ financial activities; meet both internal and external audit and reporting requirements; maintain an accounts receivable and accounts payable; and otherwise administer these and any other related financial and accounting responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DOJ may disclose relevant information as follows:

(1) To the Secretary of the Treasury to effect disbursement of authorized payments;

(2) To any Federal agency or to any individual or organization for the purpose of performing audit or oversight operations of the DOJ and to meet related reporting requirements;

(3) To a Federal, State, or local agency, or tribal authority, in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, permit, grant or other benefit by the requesting agency, to the extent that

the information relates to the requesting agency's decision on the matter;

(4) To the appropriate agency (whether Federal, State, local, foreign, or tribal authority) charged with the responsibility of investigating or prosecuting violations or potential violations of law, or charged with enforcing or implementing the related statute, rule, regulation or order issued pursuant thereto, but only where the record, either on its face or in conjunction with other information, indicates such a violation or potential violation of law (whether civil, criminal or regulatory in nature);

(5) To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of a case or matter, or informal discovery proceedings involving records in this system;

(6) In a proceeding before a court or adjudicative body before which the DOJ, or any DOJ component or subdivision thereof, is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by DOJ, or any DOJ component or subdivision thereof, to be arguably relevant to the litigation: the DOJ, or any DOJ components or subdivision thereof; any DOJ employee in his/her official capacity; any DOJ employee in his/her individual capacity where the DOJ has agreed to represent the employee; or the United States where DOJ, or any DOJ component or subdivision thereof, determines that the litigation is likely to affect it or any of its subdivisions;

(7) To the news media and the public to the extent permitted by 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(8) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(9) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(10) To any Federal, State, or local agency, of tribal authority, which has a financial or other legitimate need for the information to perform official duties; or, similarly, to obtain information which would enable the Department to perform its official duties. Examples include: to permit such agency to perform accounting functions or to

report to the Department of the Treasury regarding status of a Federal employee/contractor debt owed to such Federal, State, or local agency, or tribal authority; to report on the status of Department efforts to collect such debt; to obtain information necessary to identify a Federal Employee/contractor indebted to such agency; to provide information regarding the location of such debtor; or to obtain information which would permit the Department to confirm a debt and/or offset a payment otherwise due a Federal employee/contractor after any appropriate due process steps have been taken.

(11) To any Federal, State, local, or foreign agency, or tribal authority, or to any individual or organization, if there is reason to believe that such agency, authority, individual, or organization possesses information relating to a debt, the identity or location of the debtor, the debtor's ability to pay; or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforce collection of a debt; or relating to the civil action, trial or hearing concerning the collection of such debt; and if the disclosure is reasonably necessary to elicit such information and/or obtain cooperation of a witness or agency;

(12) To the U.S. Department of the Treasury, the U.S. Department of Defense, the U.S. Postal Service, or the disbursing agencies, in order the effect administrative, salary, or tax refund offset against Federal payments to collect a delinquent claim or debt owed the United States, or a State; to satisfy a delinquent child support debt; or to effect the actions required or permitted by law to collect such debt;

(13) To the U.S. Department of the Treasury any information regarding adjustments to delinquent debts, such as voluntary payments which decrease the debt, changes in the debt status resulting from bankruptcy, any increase in the debt, or any decrease in the debt resulting from changing in agency statutory requirements;

(14) To employers to effect salary or administrative offset to satisfy a debt owed the United States by the debtor or, when other collection efforts have failed, to the IRS to effect an offset against Federal income tax refund due;

(15) To employers to institute administrative wage garnishments to recover debts owed the United States;

(16) To debt collection centers designated by the U.S. Department of the Treasury (or to a person with whom the DOJ has entered into a contract) to locate or recover assets of the DOJ; or for sale of a debt; or to otherwise recover indebtedness owed;

(17) In accordance with regulations issued by the Secretary of the Treasury to implement the Debt Collection Improvement Act of 1996, to publish or otherwise publicly disseminate information regarding the identity of the person and the existence of a non-tax debt in order to direct actions under the law toward delinquent debtors that have assets or income sufficient to pay their delinquent non-tax debts, but only upon taking reasonable steps to ensure the accuracy of the identity of a debtor; upon ensuring that such debtor has had an opportunity to verify, contest, and compromise a non-tax debt; and with the review of the Secretary of Treasury;

(18) To the Internal Revenue Service (IRS) for reporting a discharged debt as potential taxable income;

(19) To the IRS to obtain taxpayer mailing addresses for debt collection use. These taxpayer mailing addresses may be disclosed (a) to private collection contractors to locate a taxpayer and to collect or compromise a claim against, or debt of, the taxpayer, and (b) to consumer or commercial reporting agencies to obtain a credit report;

(20) To the Department of Health and Human Services, and the Department of Labor for computer matching in order to obtain names (including names of employees), name controls, names of employers, Taxpayer Identification Numbers, addresses (including addresses of employers) and dates of birth for the purpose of verifying identities in order to pursue the collection of debts;

(21) To other Federal or State agencies as required by law;

(22) To a consumer or commercial reporting agency in accordance with the Debt Collection Improvement Act of 1996;

(23) To contractors, grantees, experts, consultants, volunteers, detailees, and other non-DOJ employees performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government when necessary to accomplish an agency function related to this system of records.

(24) To a person or to an entity (e.g., the U.S. Department of the Treasury and/or a consumer or commercial reporting agency), Taxpayer Identification Numbers (TIN's), to report on delinquent debt and/or to pursue the collection of debt, or where otherwise necessary or required, e.g., U.S. Department of the Treasury for disbursement of payments authorized—provided such disclosure is not otherwise prohibited by section 6103 of the Internal Revenue Code of 1986, or other law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disks, magnetic tapes, microfiche, microfilm, and file folders.

RETRIEVABILITY:

Document number, name, taxpayer identification number, digital identifiers, batch, or other identifiers.

SAFEGUARDS:

Access is limited to DOJ personnel with a need to know. Access to computerized information is generally controlled by passwords, or similar safeguard, which are issued only to authorized personnel. Paper records, and some computerized media, are kept in locked files of locked offices during off duty hours. In addition, offices are located in controlled-access buildings.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedules 6 and 7.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance Staff, Justice Management Division (JMD), U.S. Department of Justice, 10th St. and Constitution Ave., NW, Washington, DC, 20530.

Director, Federal Bureau of Prisons (BOP), 320 First St., NW, Washington, DC, 20534. (The Director, BOP, is also system manager for Federal Prison Industries (FPI).)

Chief Financial Officer, Financial Management Division, Drug Enforcement Administration (DEA), 700 Army Navy Drive, Arlington, VA, 22202.

Director, Federal Bureau of Investigation (FBI), 935 Pennsylvania Ave., NW, Washington, DC 20535.

Assistant Commissioner for Financial Management, Immigration and Naturalization Service (INS), 425 I St., NW, Washington DC 20536

Director, Accounting Division, Office of Justice Programs (OJP), 810 7th Street, NW, Washington, DC 20531.

Chief, Finance Staff, Management and Budget Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, VA., 22202.

NOTIFICATION PROCEDURES:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

Request for access to records in this system must be in writing and should be addressed as follows:

JMD: For records of the Offices, Boards and Divisions, address requests to the system manager named above for JMD.

OJP: Address request to the system manager named above.

INS: Address requests to the System Manager or to the Freedom of Information Act (FOIA)/Privacy Act (PA) Officer at the INS office where the record is maintained or (if unknown) to the FOIA/PA officer at 425 I Street, NW, Washington, DC 20536.

BOP: Address requests to the Assistant Director, Administration Division, 320 First Street, NW, Washington, DC 20534.

FPI: Address requests to Assistant Director, Federal Prison Industries, 320 First Street, NW, Washington, DC 20534.

USMS: Address requests to the system manager named above, attention: FOIA/PA Officer.

DEA: Address requests to the system manager named above.

FBI: Address requests to the system manager named above.

The envelope and letter should be clearly marked "Privacy Act Access Request." Inquires should include requester's name, date and place of birth, address, and verification of identity in accordance with 28 CFR 16.41(d). If known, the requester should also identify the date or year in which a debt was incurred, e.g., date of invoice or purchase order.

CONTESTING RECORD PROCEDURES:

Same as Record Access Procedures

RECORD SOURCE CATEGORIES:

Operating personnel, individuals covered by the system, and Federal agencies

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99-13401 Filed 5-27-99; 8:45 am]

BILLING CODE 4410-C5-M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare A Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility in Lassen County, California

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has

determined that, in order to meet increasing demands for additional inmate capacity, a new Federal correctional facility is needed in its system.

The Bureau of Prisons proposes to construct and operate either a high security United States Penitentiary or a medium security Federal Correctional Institution, both with an adjacent minimum security satellite camp, in Lassen County, California. The high security facility would have a rated capacity of approximately 1,000 inmates. The medium security facility would be designed to have a rated capacity of approximately 1,200 inmates, and the minimum security component would house approximately 150–300. The potential site also would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating several potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives

In developing the DEIS, the options of “no action” and “alternative sites” for the proposed facility will be fully and thoroughly examined.

Scoping Process

Informal discussions and meetings with local economic development staff have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:00 p.m. on Wednesday June 16, 1999 at the Sierra Army Depot Theater, Building No. 2071 on Cascade Avenue and Columbia Street in Herlong, California. The meeting has been well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Administration Division, Federal Bureau of Prisons 320 First Street, N.W., Washington, DC 20534, Telephone: (202) 504–6470, Telefacsimile: (202) 616–6024, E-mail: siteselection@bop.gov.

Dated: May 14, 1999.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 99–13626 Filed 5–27–99; 8:45 am]

BILLING CODE 4410–05–U

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

May 24, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Application for Authority to Employ Full-Time Students at

Subminimum Wages in Retail or Service Establishments or Agriculture.

OMB Number: 1215–0032.

Frequency: Annually.

Affected Public: Individuals or household; Business or other for-profit; Not-for-profit institutions; Farms.

Number of Respondents: 2,000.

Estimated Time Per Respondent: 10 to 30 minutes.

Total Burden Hours: 400 hours.

Total Annualized capital/startup costs: \$1.

Total annual costs (operating/maintaining systems or purchasing services): \$1.

Description: This information is used to determine whether a retail or service or agricultural employer should be authorized to pay subminimum wages to full-time students pursuant to the provisions of section 14(b) of the Fair Labor Standards Act

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–13624 Filed 5–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits

determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable of Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination

Nos. MO990017, MO990019, MO990054, MO990055, MO990059 and MO990063 dated March 12, 1999. These Counties are now covered by MO990016.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless agency finds that there is insufficient time to notify bidders of the change and the finding is documented in contract file.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume II

Virginia

VA990104 (May 28, 1999)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

Virginia

VA990003 (Mar. 12, 1999)
VA990004 (Mar. 12, 1999)
VA990006 (Mar. 12, 1999)
VA990009 (Mar. 12, 1999)
VA990015 (Mar. 12, 1999)
VA990017 (Mar. 12, 1999)
VA990018 (Mar. 12, 1999)
VA990022 (Mar. 12, 1999)
VA990023 (Mar. 12, 1999)
VA990031 (Mar. 12, 1999)
VA990033 (Mar. 12, 1999)
VA990034 (Mar. 12, 1999)
VA990035 (Mar. 12, 1999)
VA990036 (Mar. 12, 1999)
VA990044 (Mar. 12, 1999)
VA990046 (Mar. 12, 1999)
VA990051 (Mar. 12, 1999)
VA990054 (Mar. 12, 1999)
VA990055 (Mar. 12, 1999)
VA990080 (Mar. 12, 1999)
VA990081 (Mar. 12, 1999)
VA990084 (Mar. 12, 1999)
VA990085 (Mar. 12, 1999)
VA990087 (Mar. 12, 1999)
VA990088 (Mar. 12, 1999)

Volume III

None.

Volume IV

Michigan

MI990001 (Mar. 12, 1999)
MI990002 (Mar. 12, 1999)
MI990003 (Mar. 12, 1999)
MI990004 (Mar. 12, 1999)
MI990005 (Mar. 12, 1999)
MI990007 (Mar. 12, 1999)
MI990012 (Mar. 12, 1999)
MI990030 (Mar. 12, 1999)
MI990031 (Mar. 12, 1999)
MI990046 (Mar. 12, 1999)
MI990047 (Mar. 12, 1999)
MI990049 (Mar. 12, 1999)
MI990060 (Mar. 12, 1999)
MI990062 (Mar. 12, 1999)
MI990063 (Mar. 12, 1999)
MI990066 (Mar. 12, 1999)
MI990067 (Mar. 12, 1999)
MI990068 (Mar. 12, 1999)
MI990069 (Mar. 12, 1999)
MI990070 (Mar. 12, 1999)
MI990071 (Mar. 12, 1999)
MI990072 (Mar. 12, 1999)
MI990073 (Mar. 12, 1999)
MI990074 (Mar. 12, 1999)
MI990075 (Mar. 12, 1999)
MI990076 (Mar. 12, 1999)
MI990077 (Mar. 12, 1999)
MI990078 (Mar. 12, 1999)
MI990079 (Mar. 12, 1999)
MI990080 (Mar. 12, 1999)
MI990081 (Mar. 12, 1999)
MI990082 (Mar. 12, 1999)
MI990083 (Mar. 12, 1999)
MI990084 (Mar. 12, 1999)

Minnesota

MN990005 (Mar. 12, 1999)
MN990007 (Mar. 12, 1999)
MN990008 (Mar. 12, 1999)
MN990015 (Mar. 12, 1999)
MN990027 (Mar. 12, 1999)
MN990031 (Mar. 12, 1999)
MN990035 (Mar. 12, 1999)
MN990039 (Mar. 12, 1999)
MN990052 (Mar. 12, 1999)
MN990058 (Mar. 12, 1999)
MN990061 (Mar. 12, 1999)

Volume V

IOWA

IA990005 (Mar. 12, 1999)
IA990029 (Mar. 12, 1999)

MISSOURI

MO990015 (Mar. 12, 1999)
MO990016 (Mar. 12, 1999)

Volume VI

None

Volume VII

CALIFORNIA

CA990001 (Mar. 12, 1999)
CA990002 (Mar. 12, 1999)
CA990004 (Mar. 12, 1999)
CA990009 (Mar. 12, 1999)
CA990027 (Mar. 12, 1999)
CA990028 (Mar. 12, 1999)
CA990029 (Mar. 12, 1999)
CA990030 (Mar. 12, 1999)
CA990032 (Mar. 12, 1999)
CA990033 (Mar. 12, 1999)
CA990035 (Mar. 12, 1999)

CA990036 (Mar. 12, 1999)
 CA990037 (Mar. 12, 1999)
 CA990038 (Mar. 12, 1999)
 CA990039 (Mar. 12, 1999)
 CA990040 (Mar. 12, 1999)
 CA990041 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 20th day of May 1999.

Carl J. Poleskey,
Chief, Branch of Construction Wage Determinations.

[FR Doc. 99-13339 Filed 5-27-99; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL INSTITUTE FOR LITERACY

Submission for OMB Review; Comment Request

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institute for Literacy (NIFL) invites comments on the submission for OMB review. The Information Collection Requests (ICR) describes the

nature of the information collection and its expected cost and burden.

DATES: Interested persons are invited to submit comments on or before June 28, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Education Department, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Until June 10, 1999, requests for copies of the proposed ICR should be addressed to: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006, Attention: Sondra Stein. After June 10, 1999, the street address is changed to 1775 I Street, NW, Suite 730 (all other information remains the same). Requests for copies can be obtained electronically at the following internet address: sabbott@nifl.gov or can be faxed to 202/632-1512.

FOR FURTHER INFORMATION CONTACT:
 Sondra Stein at 202/632-1508.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested parties an opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. Each proposed ICR contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents an frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites comment at the address above.

Dated: May 25, 1999.

Sharyn M. Abbott,

Executive Officer, NIFL.

[FR Doc. 99-13661 Filed 5-27-99; 8:45 am]

BILLING CODE 6055-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdrawn From Listing and Registration; (Pre-Paid Legal Services, Inc., Common Stock, Par Value \$.01 Per Share) File No. 1-9203

May 21, 1999.

Pre-Paid Legal Services, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8-A which became effective on May 10, 1999, on the New York Stock Exchange, Inc. ("NYSE"). Trading of the Company's Security on the NYSE commenced at the opening of business on May 13, 1999.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of preambles and resolutions adopted by the Executive Committee of the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered, among other things, the desirability of avoiding the direct and indirect costs of, and the division of the market resulting from, listing the Security on both the Amex and the NYSE. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(d) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before June 11, 1999, submit by letter to

the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-13581 Filed 5-27-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27032]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 21, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 14, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 14, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Atlantic City Electric Company (70-9485)

Atlantic City Electric Company ("ACE"), 800 King Street, P.O. Box 231, Wilmington, Delaware 19899, an electric utility subsidiary of Conectiv, a registered holding company, has filed an application under section 9(a)(1) and 10 of the Act and rule 54 under the Act.

ACE currently operates a 66 MW combustion turbine generating unit ("Unit") in Gloucester County, New Jersey, under a lease that will terminate July 2, 1999. At the time the lease was executed in 1973, the original cost of the Unit to the lessor was approximately \$4 million. ACE proposes to purchase the Unit from the lessor for a purchase price of \$8.3 million.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-13580 Filed 5-27-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41432; File No. SR-NASD-99-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Limited Usage Service Fees

May 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010 to eliminate its Limited Usage

Service Fee.³ Below is the text of the proposed rule change. Proposed deletions are in brackets.

[(e) Limited Usage Service

The charges to be paid by a profession subscriber for access to Nasdaq Level I Service and the Last Sale Information Service through an authorized portable quotation device capable of receiving quotations for not more than 250 securities in a time shall be \$6.00 per month per device.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to eliminate its Limited Usage Service fee.⁴ Currently, professional market participants may obtain, through an approved portable quotation device, Nasdaq Level I and Last Sale Information on up to 250 Nasdaq securities for a monthly fee of \$6.00. The fee currently has only approximately 95 subscribers and has never exceeded 200 users during its existence. In light of this low participant usage and the burdens associated with administering the Limited Usage Service, Nasdaq has determined to discontinue this service and its related fee. Nasdaq notes that the information provided through the Limited Usage Service will still be widely available to professionals through numerous other mediums and vendors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Sections

³ Although listed in the proposal as section "(f) Limited Usage Service," Nasdaq clarified that it is section (e). Per conversation between Thomas Moran, Assistant General Counsel, Nasdaq, and Heather Traeger, Attorney, Market Regulation, SEC on April 29, 1999.

⁴ This fee was established on a pilot basis on January 3, 1984. See Securities Exchange Act Release No. 20522 (January 3, 1984), 49 FR 1440 (January 11, 1984).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

15A(b)(5)⁵ and (6)⁶ of the Act in that the proposed rule change is designed to provide for the equitable allocation of reasonable fees among those using its facilities or systems and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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.

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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 File No. SR-NASD-99-22, June 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-13582 Filed 5-27-99; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3185]

State of Colorado

As a result of the President's major disaster declaration on May 17, 1999, I find that Bent, El Paso, Larimer, Otero, and Weld Counties in the State of Colorado constitute a disaster area due to damages caused by severe storms and flooding beginning on April 29, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 15, 1999, and for loans for economic injury until the close of business on February 17, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Baca, Boulder, Crowley, Douglas, Elbert, Fremont, Grand, Jackson, Kiowa, Las Animas, Lincoln, Logan, Morgan, Prowers, Pueblo, and Teller Counties in Colorado; Albany and Laramie Counties in Wyoming; and Kimball County, Nebraska.

The interest rates are:

	Percent
Physical Damage:	
Homeowners With Credit Available Elsewhere	6.875
Homeowners Without Credit Available Elsewhere	3.437
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 318506. For economic injury the numbers are 9C8900 for Colorado, 9C9000 for Wyoming, and 9C9100 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 19, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99-13585 Filed 5-27-99; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3181: Amendment #2]

State of Kansas

In accordance with a notice received from the Federal Emergency Management Agency dated May 6, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on May 3, 1999 and continuing through May 6, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 2, 1999, and for economic injury the deadline is February 4, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 19, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99-13586 Filed 5-27-99; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3182; Amendment #1]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency dated May 13, 1999, the above-numbered Declaration is hereby amended to include Red River County in the State of Texas as a disaster area as a result of damages caused by severe storms and tornadoes that occurred on May 4, 1999.

In addition, applications for economic injury loans from small businesses

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 17 CFR 200.30-3(a)(12).

located in the contiguous counties of Delta, Franklin, Hopkins, Lamar, and Titus in the State of Texas, and Choctaw County, Oklahoma may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 4, 1999, and for economic injury the deadline is February 7, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 18, 1999.

Herbert L. Mitchell,

Acting Associate, Administrator for Disaster Assistance.

[FR Doc. 99-13584 Filed 5-27-99; 8:45 am]

BILLING CODE 8025-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D-160]

WTO Dispute Settlement Proceeding Regarding Section 110(5) of the U.S. Copyright Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"), by the European Communities (the "EC"), to examine section 110(5) of the U.S. Copyright Act. In this dispute, the EC alleges that section 110(5) is inconsistent with obligations of the United States under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by June 21, 1999, to be assured of timely consideration by the USTR in preparing its final written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: U.S.—Section 110(5) Dispute, Office of the United States Trade Representative, 600

17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT:

Mélida N. Hodgson, Associate General Counsel, (202) 395-3582; Claude Burcky, Director of Intellectual Property, (202) 395-6864.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on April 15, 1999, the EC submitted a request for the establishment of a WTO dispute settlement panel to examine section 110(5) of the U.S. Copyright Act, which provides that, under certain conditions, the communication of musical works via a radio or television by certain establishments shall not constitute copyright infringement. The WTO Dispute Settlement Body ("DSB") will establish a panel for this purpose on May 26, 1999.

Major Issues Raised and Legal Basis of the Complaint

The EC alleges that Section 110(5), as amended by the Fairness in Music Licensing Act of 1998, violates Article 9(1) of the TRIPS Agreement, which incorporates articles 1 to 21 of the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention"). More specifically, the EC alleges that section 110(5) is inconsistent with Articles 11(1) and 11bis(1) of the Berne Convention which grants authors of literary and artistic works, including musical works, certain exclusive rights. Section 110(5) provides under subparagraph (A) that the communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes is not an infringement of copyright unless a direct charge is made to see or hear the transmission, or the transmission thus received is further transmitted to the public. Subparagraph (B) of section 110(5) provides that, under certain conditions relating, *inter alia*, to the size of the establishment and the number of loudspeakers or audiovisual devices, the communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a licensed radio or television broadcast station, is not an infringement of copyright.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D-160, United States—Section 110(5) of the U.S. Copyright Act) may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the

public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. James Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99-13557 Filed 5-27-99; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-99-13]

Petitions for Exemption; Summary of Petitions Receiving; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 21, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Cherie Jack (202) 276-7271 or Terry Stubblefield (202) 267-7624 Office of

Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 24, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28834.

Petitioner: LifePort, Inc.

Section of the FAR Affected: 14 CFR 25.562 and 25.785(b).

Description of Relief Sought: To exempt LifePort, Inc., from the requirement of 14 CFR 25.562 and 14 CFR 25.785(b) to permit certification of medical stretchers for transport of persons whose medical condition dictates such accommodations on the Dassault Model Falcon 2000.

Docket No.: 29435.

Petitioner: Point Adventure Lodge and Iliamna Air Guides.

Section of the FAR Affected: 14 CFR 135.267(f).

Description of Relief Sought: To permit IAG to realign its calendar quarters by 1 month from quarters ending in June 30 and September 30, to quarters ending in July 31 and October 31, respectively, to meet the flight crewmember rest requirements of 14 CFR 135.267(f).

Docket No.: 29471.

Petitioner: Terry L. Florie.

Section of the FAR Affected: 14 CFR 61.213(a)(3).

Description of Relief Sought: To permit Mr. Florie to be eligible for a ground instructor certificate or rating without passing the knowledge test on the fundamentals of instructing required by 14 CFR 61.213(a)(3).

Docket No.: 29500.

Petitioner: Alaska's Enchanted Lake Lodge, Inc.

Section of the FAR Affected: 14 CFR 135.267(f).

Description of Relief Sought: To permit AELL to adjust its calendar quarters by 1 month from quarters ending in June 30, to quarters ending in July 31, as to allow AELL pilots to meet the flight crewmember rest requirements of 14 CFR 135.267(f).

Docket No.: 29503.

Petitioner: Delta Air Lines, Inc.

Section of the FAR Affected: 14 CFR 121.344(b)(3).

Description of Relief Sought: To permit Delta to continue to operate its Lockheed L-1011 TriStar and Boeing Model 727 aircraft scheduled to be

retired from service before the August 20, 2001, compliance deadline for installation of digital flight data recorders (DFDRs), without installing the approved DFDRs at the next heavy maintenance check for those aircraft after August 18, 1999.

Docket No.: 29534.

Petitioner: Freshwater Adventure, Inc.

Section of the FAR Affected: 14 CFR 91.323(b)(4).

Description of Relief Sought: To permit FWA to operate its Grumman Goose G-21A amphibian aircraft at a weight that is in excess of that airplane's maximum certificated weight.

Dispositons of Petitions

Docket No.: 26936.

Petitioner: Woods Air Fuel, Inc.

Section of the FAR Affected: 14 CFR 91.9(a).

Description of Relief Sought/Disposition: To permit WAF to operate certain aircraft without complying with the zero fuel and landing weight requirements of the operating limitations prescribed for the aircraft in the FAA-approved flight manual.

Grant, 5/7/99, Exemption No. 6892

[FR Doc. 99-13641 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99-03-C-00-PLB To Impose/Use the Revenue From a Passenger Facility Charge (PFC) at Clinton County Airport, Plattsburgh, NY

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/use the revenue from a PFC at Clinton County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. Ralph L. Hensel, Airport Manager: Clinton County Airport, 11 Airport Road, Suite 101, Plattsburgh, New York 12901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Clinton under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Levine, Airport Engineer, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, (516) 227-3807. 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/use the revenue from a PFC at Clinton County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 12, 1999, the FAA determined that the application to impose/use the revenue from a PFC submitted by the County of Clinton was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 10, 1999.

The following is a brief overview of the application.

PFC Application No.: 99-03-C-00-PLB.

Level of the proposed PFC: \$3.00

Proposed charge effective date: July 1, 1999

Proposed charge expiration date: May 1, 2001

Total estimated PFC revenue: \$63,764

Brief description of proposed project(s):

- Obstruction Evaluation & Aerial Mapping
- Airport Master Plan Update
- Off Airport Obstruction Removal (Phase I)
- Easement Acquisition
- Off Airport Obstruction Removal (Phase II)
- Terminal Expansion & Renovations

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi and charter operators (ATCO) filing DOT Form 1800-31.

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: Fitzgerald Federal Building #111,

Airports Division, AEA-610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Clinton.

Issued in Garden City, New York on May 17, 1999.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 99-13642 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clear Creek County, Colorado

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed transportation project for transportation improvements and alternatives analysis of Interstate 70 (I-70) from Empire Junction to the top of Floyd Hill at the Highland Hills Interchange in Clear Creek County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Sands, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, CO 80228, Telephone: 303/969-6730, extension 362.

SUPPLEMENTARY INFORMATION: Pursuant to Title 23, Code of Federal Regulations, Part 771, Environmental Impact and Related Procedures (40 CFR 1501.7), the FHWA, in cooperation with the Colorado Department of Transportation (CDOT), will prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for proposed transportation improvements and alternatives analysis of I-70 from Empire Junction to the top of Floyd Hill in Clear Creek County, Colorado. The proposed improvement would involve the reconstruction of all or parts of the existing I-70 corridor (as described above) for a distance of approximately sixteen miles. The EIS will evaluate the No-Action and Build alternatives(s) on this I-70 corridor and determine the estimated costs and potential impacts associated with each.

A Major Investment Study (MIS) was performed by CDOT in 1998 to evaluate solutions for the mobility and

congestion problems in the I-70 corridor from the interchange of I-70 and C-470 in Jefferson County, Colorado, west bound to Glenwood Springs, Colorado. The MIS recommended a vision incorporating futuristic thinking over a fifty-year planning horizon. In order to minimize highway improvements, the vision emphasizes changing travel behavior and preservation of the environmental character of the corridor. This EIS is a direct result of the recommendations detailed in the MIS.

The proposed improvements resulting from the MIS are considered necessary to provide for increased safety, existing traffic demand, and projected future travel demand. Alternatives which may be evaluated include: (1) improved four lane roadway typical sections, (2) standard six lane roadway section, (3) non-standard six lane roadway section, (4) Twin Tunnel (MP 242) modifications, (5) interchange improvements, (6) an envelope for the preservation of Fixed Guideway Transit (FGT) system, (7) intermodal transfer center(s), (8) Transportation System Management (TSM) measures, (9) curve smoothing to increase the interstate design geometrics, and (10) No-Action.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, written comments, suggestions or questions should be directed to the FHWA at the address provided above or directed to: Ms. Cecelia Joy, Planning and Environmental Manager, Colorado Department of Transportation-Region 1, 18500 East Colfax Avenue, Aurora, Colorado 80011, Telephone: 303/757-9112.

All significant social, economic, and environmental impacts of the proposed alternatives carried through the EIS process will be evaluated. Depending upon the alternatives under study, impacts to be evaluated may include safety and mobility, visual, social, historic, cultural and archaeological resources, local economy, Section 4(f) and Section 6(f) issues, noise, wetlands, threatened and endangered wildlife species, animal migration, water resources, floodplains, hydrology, geology, air quality, and potential contaminant sources (hazardous wastes). Depending upon the preferred alternative and the associated impacts of that alternative, construction-related impacts and secondary and cumulative impacts may also be evaluated. Subsequently, mitigation of any significant adverse impacts would be developed in the EIS for that alternative.

In accordance with the National Environmental Policy Act, the Draft EIS will be prepared with required engineering design and environmental studies. These studies are necessary to propose a preferred alternative and to complete the document. After its publication, the Draft EIS will be available for public and agency review and comments, and a public hearing will be held. On the basis of the Draft EIS and the comments received, a preferred alternative will be selected and preparation of the Final EIS and Record of Decision will proceed.

FHWA, CDOT and other local agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the proposed alternatives. Information describing the purpose of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be available. These scoping materials may be requested by contacting Ms. Cecelia Joy at the address and phone number above. Scoping comments may be made verbally or in writing to Ms. Joy and at future public meetings. Refinements to scoping will continue through coordination with affected parties, organizations, federal, state and local agencies and one-on-one meetings.

Information describing the status of the project and soliciting comments will be sent to appropriate Federal, State, local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal.

The public will receive notices on location and time of future meetings and public hearings through newspaper advertisements and other means.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. If you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Cecelia Joy at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: May 18, 1999.

Ronald A. Sperl,

Environmental/ROW Manager, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 99-13610 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-5014; notice 2]

Bridgestone/Firestone, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone, Inc. (Bridgestone) determined that certain tires manufactured in 1998 of various sizes and brands are not in full compliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Bridgestone also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Although the applicant stated this was a noncompliance with FMVSS No. 119, NHTSA considers this to be a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 109, New pneumatic tires. On March 2, 1999, the agency received a letter from Bridgestone concurring that the relevant standard is indeed FMVSS No. 109.

Notice of receipt of the application was published, with a 30-day comment period, on February 15, 1999, in the **Federal Register** (64 FR 6937). NHTSA received no comments on this application during the 30-day comment period.

Paragraph S4.3.2 of FMVSS No. 109 requires each tire to be marked in accordance with Part 574, Tire Identification and Recordkeeping. If a tire lacks this correct information, it fails to comply with FMVSS No. 109 and is subject to the notification and remedy requirements of Chapter 301, unless exempted pursuant to 49 U.S.C. 30118(d) and 30120(h) on grounds of inconsequentiality.

On December 12, 1998, Bridgestone produced approximately 1,389 tires with an incorrect date code. The affected tires were marked incorrectly with a date code of "509," instead of the correct date code of "508." The tires

were manufactured at Bridgestone's Oklahoma City Plant.

Bridgestone supports its application for inconsequential noncompliance by stating that all of the tires manufactured in the affected sizes and brands meet all the agency's requirements, except the correct date code. The purpose of the date code is to identify a tire so that, if necessary, the appropriate action can be taken in the interest of public safety—such as, a safety recall notice.

The agency believes that in the case of a tire labeling noncompliance, the true measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's ability to locate them, if the tires were to be recalled for a performance-related noncompliance. Bridgestone has stated that it will include the 509 code in any future recall of tires manufactured in its Oklahoma City plant during the 50th week of 1998. In addition, the tires meet all of the agency's safety performance requirements.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 25, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99-13645 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-99-5143 (Notice No. 99-7)]

Hazardous Materials Transportation Advisory; Year 2000 (Y2K) Conversion

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Year 2000 (Y2K) enforcement policy advisory notice.

SUMMARY: Because many elements of the nation's transportation system rely on computers, computerized equipment, and electronic databases, the year 2000 may see potential problems and disruptions that could have an adverse

impact on transportation safety or result in unnecessary delays and additional costs. RSPA believes that most, if not all, of these potential problems and disruptions may be avoided by taking relatively simple steps to determine whether currently operating computer systems will misinterpret the year "00" as 1900, rather than 2000. The purpose of this notice is to advise persons performing functions subject to the Hazardous Materials Regulations (HMR) that RSPA does not intend to reduce civil penalties for violations of the HMR or withdraw notices of probable violation, unless the responsible party is able to demonstrate a timely and appropriate level of effort to identify and prevent such occurrences. This notice also provides information on Y2K resources.

FOR FURTHER INFORMATION CONTACT: Mr. John J. O'Connell, Jr., (202) 366-4700, Office of Hazardous Materials Enforcement or Mr. Edward H. Bonekemper, III, (202) 366-4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

Background. The Year 2000 (Y2K) issue arises because a number of computerized functions require recognition of a specific year, day, and time, but many computers (including computerized equipment) recognize only the last two digits of a year's date (i.e., 1998 is 98; 2000 is 00). Therefore, when the calendar changes to the year 2000, some computers and some equipment with an embedded computer chip, may have difficulty interpreting the correct date. They may interpret the year to be 1900 or some other year. As a result, some computers and equipment containing embedded computer chips may be unable to function properly. Others may continue to operate, but erroneously, while others simply may stop and need to be restarted. Some systems may create data that look correct, but in reality contain errors, while other systems may continue to operate correctly.

In addition, some technical experts warn that certain computer-related systems may have trouble functioning properly on more than a dozen other dates arising over the next two years. For example, the digital representation of September 9, 1999, 9/9/99 ("four 9s"), may be interpreted as the end of a file or infinity, and, thus, may have unintended consequences. This policy statement also encompasses concerns over computer-related testing problems that may arise as a result of any of the dozen or more dates. Together, these dates are referred to as "Y2K."

Enforcement policy. Under delegations from the Secretary of Transportation, RSPA has broad authority to issue and enforce rules and regulations governing the safe transportation of hazardous materials (49 CFR Part 1) (49 U.S.C. § 5101 *et seq.*). RSPA shares enforcement authority of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) with DOT's four modal administrations (U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, and Federal Railroad Administration). RSPA has primary enforcement jurisdiction in regard to the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or retesting of any packaging which is represented, marked, certified, or sold for use in the transportation of hazardous materials, including any United Nations standard or DOT specification or exemption packaging (except with respect to modal-specific bulk containers, which are the responsibility of the applicable modal administration). RSPA also has jurisdiction over any violation of an exemption or approval issued under Federal hazardous materials transportation law, and over any offerer of any hazardous material for transportation in a packaging other than a modal-specific bulk packaging.

Under subpart D of part 107, Title 49, Code of Federal Regulations, a respondent in a RSPA civil penalty action may propose a compromise to a notice of probable violation or may request a formal administrative hearing. RSPA's Chief Counsel, in consultation with the Associate Administrator for Hazardous Materials Safety, has discretion to reduce proposed civil penalties or dismiss the notice of probable violation when the respondent presents evidence justifying mitigation or dismissal.

RSPA's Chief Counsel, in consultation with RSPA's Associate Administrator for Hazardous Materials Safety, will not reduce a proposed civil penalty, dismiss a violation, or withdraw the notice of probable violation if the proposed violation is based on a Y2K-related equipment or process malfunction unless the responsible party is able to demonstrate an appropriate level of effort to avoid a Y2K problem prior to the occurrence of the violation.

Emphasis on Testing. RSPA strongly urges all persons performing functions subject to the HMR to test their computer systems for Y2K vulnerability, and to establish contingency plans should Y2K problems result in critical functions shutting down or malfunctioning. Public safety requires

compliance with the HMR. The regulated community, therefore, must take appropriate steps necessary to anticipate and resolve potential safety compliance problems that may result from Y2K-related problems. In an effort to ensure timely compliance, RSPA's intent in adopting this enforcement policy is to promote the necessary and early testing of computer systems. RSPA is committed to encouraging and enforcing full adherence to safety requirements regardless of potential Y2K-related problems.

Examples of potential Y2K-related problems that may lead to noncompliance with requirements of the HMR include the following:

- Packaging fabrication machinery that may produce containers intended for use in hazardous materials transportation service that do not conform to specifications;
- Packaging testing equipment that may produce erroneous data concerning a container's ability to meet standards;
- In-house telephone switching equipment that may mis-route calls made to an emergency response telephone number for use in event of an emergency involving a hazardous material;
- Failure of a remote terminal to immediately access a record that is permitted to be maintained at a party's principal place of business; and
- Use of non-Y2K compliant electronic data bases that track due dates, including those addressing—

1. Requalification of compressed gas cylinders,
2. Renewal of hazardous materials training for hazmat employees, and
3. Renewals for certain exemptions, approvals or registrations issued under the HMR.

Y2K Information Resources. As part of its efforts to avoid transportation safety related problems arising from Y2K, RSPA's hazardous materials safety internet site. (<http://hazmat.dot.gov/y2k.htm>) contains information, and links to sites on the worldwide web, that persons subject to requirements of the HMR may find useful to the identification of potential problems and strategies for resolving those problems.

Issued in Washington, D.C. on May 24, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Elaine E. Joost,

Acting Chief Counsel.

[FR Doc. 99-13644 Filed 5-27-99; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications**

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected

completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S.

Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001, (202) 366-4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically very complex and is of significant impact

or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on May 24, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application	Applicant	Reason for delay	Estimated date of completion
11699-N	GEO Specialty Chemicals Bastrop, LA	4	06/30/1999
11767-N	Ausimont USA, Inc., Thorofare, NJ	4	06/30/1999
11817-N	FIBA Technologies, Inc., Westboro, MA	1, 4	06/30/1999
11862-N	The BOC Group Murray Hill, NJ	4	06/30/1999
11894-N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	06/30/1999
11927-N	Alaska Marine Lines, Inc., Seattle, WA	4	06/30/1999
11934-N	UtiliCorp United, Inc., Omaha, NE	4	06/30/1999
12001-N	Albemarle Corporation Baton Rouge, LA	4	06/30/1999
12020-N	Rhone-Poulenc, Inc., Shelton, CT	4	06/30/1999
12029-N	NACO Technologies Lombard, IL	4	06/30/1999
12032-N	Physical Acoustics Quality Services Lawrenceville, NJ	4	06/30/1999
12033-N	PPG Industries, Inc., Pittsburgh, PA	4	06/30/1999
12051-N	General American Transportation Corporation Chicago, IL	4	06/30/1999
12064-N	Occident Chemical Corp., Webster, TX	4	06/30/1999
12071-N	Pennwalt India Limited Worli, Mumbai, IN	4	06/30/1999
12072-N	Consani Engineering (PTY) Limited Cape Province, RA	4	06/30/1999
12106-N	Air Liquide America Corporation Houston, TX	4	06/30/1999
12123-N	Eastman Chemical Co., Kingsport, TN	4	06/30/1999
12125-N	Mayo Foundation Rochester, MN	4	06/30/1999
12126-N	LaRoche Industries Inc., Atlanta, GA	4	06/30/1999
12130-N	FIBA Technologies, Inc., Westboro, MA	4	06/30/1999
12142-N	Aristech Chemical Corp., Pittsburgh, PA	4	06/30/1999
12144-N	Sea-Land Service, Inc., Charlotte, NC	4	07/31/1999
12146-N	Luxfer Gas Cylinders Riverside, CA	4	07/31/1999
12148-N	Eastman Kodak Company Rochester, NY	4	07/31/1999
12156-N	Columbia Falls Aluminum Co., Columbia Falls, MT	4	06/30/1999
12158-N	Hickson Corporation Conley, GA	4	06/30/1999
12164-N	Rhodia Inc., Shelton, CT	4	07/31/1999
12166-N	Dow Corning Corp., Midland, MI	4	07/31/1999
12171-N	Arichell Technologies, Inc., West Newton, MA	4	07/31/1999
12173-N	ARCO Alaska, Inc., Anchorage, AK	4	07/31/1999
12181-N	Aristech Pittsburgh, PA	4	07/31/1999
12183-N	Connecticut Yankee Atomic Power Co., East Hampton, CT	4	08/31/1999
12187-N	Sexton Can Co., Inc., Cambridge, MA	4	08/31/1999
12191-N	Van Hool N.V. Belgium	4	08/31/1999
12194-N	Air Products & Chemicals, Inc., Allentown, PA	4	08/31/1999
12203-N	Celanese Ltd., Dallas, TX	4	08/31/1999
12205-N	Independent Chemical Corp., Glendale, NY	4	08/31/1999

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
3415-M	U.S. Department of Defense (MTMC), Falls Church, VA	4	07/31/1999
4354-M	PPG Industries, Inc., Pittsburgh, PA	1	07/31/1999
9266-M	ERMEWA, Inc., Houston, TX	4	06/30/1999
9419-M	FIBA Technologies, Inc., Westboro, MA	4	06/30/1999
10677-M	Suunto USA, Carlsbad, CA	4	06/30/1999

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
10929-M	Consolidated Rail Corporation, Philadelphia, PA	4	06/30/1999
11173-M	Olin Corporation, Norwalk, Ct	4	06/30/1999
11327-M	Phoenix Services Limited Partnership, Pasadena, MD	4	07/31/1999
11379-M	TRW Vehicle Safety Systems, Inc., Washington, MI	4	06/30/1999
11769-M	HCI USA Distribution Co., Inc., Irvine, Ca	4	07/30/1999
11984-M	United Parcel Service Company, Louisville, KY	4	07/31/1999
12013-M	HCI USA Distribution Companies, Incorporated Irvine, CA	4	07/31/1999

[FR Doc. 99-13568 Filed 5-27-99; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency; Office of Thrift Supervision; Federal Reserve System; Federal Deposit Insurance Corporation****Submission for OMB Review; Comment Request**

AGENCIES: Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (FRB); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the OCC, OTS, FDIC, and FRB (Agencies) are soliciting comments concerning their extension of the currently approved information collections contained in their respective Community Reinvestment Act (CRA) regulations. **DATES:** Comments should be submitted by July 27, 1999.

ADDRESSES: Comments should be directed as follows:

OCC: Communications Division, Attention: Paperwork Docket No. 1557-0160, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV. Comments are available for inspection and photocopying at 250 E Street, SW, Washington, DC.

OTS: Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, Attention 1550-0012, 1700 G Street NW, Washington, DC. Hand deliver comments to the Public Reference Room, 1700 G Street NW, lower level, from 9:00 a.m. to 5:00 p.m. on business days. Send facsimile transmissions to

FAX number (202) 906-7755, or to (202) 906-6956 (if comment exceeds 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street NW from 9:00 a.m. to 5:00 p.m. on business days.

FRB: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Additionally, comments may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

FDIC: Steven F. Hanft, Assistant Executive Secretary for Regulatory Analysis, Attention: Comments/CRA, Federal Deposit Insurance Corporation, Room 4001B, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to room F-4001B, 1776 F Street, NW, Washington, DC, on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent through facsimile to (202) 898-3838 or by the Internet to: COMMENTS@FDIC.GOV.

OMB: In addition, copies of comments should be sent to the OMB desk officer for the Agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Gates or Camille Dickerson, (202)874-5090, Legislative and Regulatory Activities Division (1557-0160), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Mary Rawlings-Milton, (202) 906-6028, Manager, Records Management Branch, Information Management and Services, (1550-0012), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

FRB: Mary M. West, Federal Reserve Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898-3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:**Background***Introduction*

The PRA (44 U.S.C. 3501 *et seq.*) requires that an agency receive approval from the Office of Management and Budget (OMB) of an information collection that is subject to the PRA before the agency may collect the information. To obtain OMB approval for collections of information contained in rules, an agency must publish initial estimates in the **Federal Register** of the burden that likely will be imposed by a given information collection and invite comments on their accuracy. The agency is then required to prepare revised estimates, if necessary, taking the comments into consideration and publish a second **Federal Register** notice. At the time of the second publication, the agency also submits to OMB a request for approval of the information collection. If OMB determines that the information

collection satisfies the relevant criteria,¹ it will approve the collection. Approval typically lasts for three years, after which an agency must obtain a renewal of the OMB approval by going through the same steps outlined above if it wishes to continue collecting the information.

The Agencies have submitted a joint request to OMB, pursuant to the PRA, to renew approval of the information collections in their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). The CRA regulations were developed jointly by the Agencies in a rulemaking process that concluded with the issuance of final regulations in 1995. See Community Reinvestment Act Regulations, 60 FR 22156 (May 4, 1995). The Agencies jointly developed the paperwork burden estimates for the final rules, and, similarly, have jointly developed the burden estimates in this notice.

The Agencies have made no substantive revisions to the CRA regulations since the regulations were adopted in 1995. Thus, there is no change to the information collection provisions of the CRA regulations, and the Agencies' request for OMB review involves a reestimate of burden but no change in the underlying information collections.

The final CRA regulations issued in 1995 were not merely revisions of the prior rules, but a new and comprehensive reworking of the Agencies' approach to CRA implementation. Therefore, the 1995 burden estimates were based on assumptions and projections, rather than on experience with the information collection provisions of the revised CRA regulations. The Agencies have reevaluated the burden associated with the CRA regulations based on their experience in administering the regulations, changes in the number and business strategies of reporting institutions, and the comments received as part of the process for obtaining an extension of OMB's approval of the information collections.

- As a result of this analysis, the Agencies have concluded that large banks and thrifts²—generally,

institutions with \$250 million or more in assets and institutions regardless of asset size, that are affiliates of holding companies with bank and thrift assets of \$1 billion or more—spend significantly more time geocoding loans and collecting and reporting optional loan data than estimated in 1995. The term “geocoding” means the identification of the census tracts or block numbering areas and the metropolitan statistical areas (MSAs) where applicable, for small business and small farm loans, outside-MSA home mortgage loans, appropriate affiliate loans, and, in some instances, consumer loans. This geocoding burden accounts for most of the increase over the Agencies' 1995 burden estimates.

- The Agencies' reestimate of geocoding burden has no effect on institutions that have assets of less than \$250 million and that are not affiliates of a holding company with banking and thrift assets of \$1 billion or more. These institutions, referred to in this Notice as “small institutions,” are not required to geocode. The Agencies continue to estimate that the CRA regulations impose a modest information collection burden on small institutions—an average of 10 burden hours per institution per year.

- For large institutions, the Agencies estimate average burden hours, i.e., the total number of burden hours divided by the number of institutions affected, as follows: OCC—612.7 burden hours per large institution per year; FRB—634.6 burden hours per large institution per year; FDIC—624.3 burden hours per large institution per year; and OTS—554.2 burden hours per large institution per year. Differences in burden among Agencies result from differences in the number of loans reported by institutions. Total burden hours for the collection are presented, by agency, in the **Burden Estimates** section of this notice.

- As OMB requires, the Agencies' burden estimates include not only burden hours associated with mandatory data collections, but also burden hours attributable to certain data collection, maintenance, and reporting activities that are optional under the CRA regulations. Recordkeeping for consumer loans pursuant to § _____.42(c)(1) is an example of an optional data collection and maintenance activity. If an institution

of the prior two calendar years, had total assets of less than \$250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than \$1 billion.” § _____.12(t) or § 563e.12(s).

elects to collect and maintain these data, however, certain requirements do apply.

Discussion of Comments Received

Three of the Agencies—the OCC, the OTS, and the FDIC—published requests for comment on the information collections contained in the CRA regulations.³ In light of the comments received by the three Agencies, and since the FRB has delegated authority⁴ from OMB to review and approve collections of information subject to the PRA, the FRB opted to delay publication of its initial **Federal Register** notice. The FRB has had full benefit of the initial public comments received by the other Agencies, has reviewed these comments, and has participated fully in the development of the burden estimates described in this notice.

Two commenters responded to the OCC's and the FDIC's **Federal Register** notices of intent to request that OMB renew its approval of the CRA information collections. One commenter, a bank trade association, raised various questions regarding the CRA regulations, including the information collection requirements. The second commenter, a bank holding company, raised issues involving the factors used by the Agencies in determining compliance.

Authority To Collect Information

The bank trade association commenter asserted that the CRA does not authorize any data collection and that the information collection requirements contained in the Agencies' CRA rules are unauthorized. The Agencies carefully considered these same assertions in connection with their analysis of the public comments received during the CRA rulemaking process and continue to disagree with the commenter. First, the CRA specifically requires the Agencies to issue regulations to carry out its purposes. See 12 U.S.C. 2905. The information collection and reporting requirements contained in the CRA regulations are necessary to permit the Agencies to carry out the statutory directives regarding assessment, evaluation, assigning ratings, reporting, and consideration of performance in connection with corporate applications. See 12 U.S.C. 2903, 2906. Second, the CRA regulations are also authorized by each Agency's general authority to examine, supervise, and issue regulations governing banks and thrifts.

³ The publication dates and **Federal Register** citations for these notices are as follows: OCC: 63 FR 4692 (Jan. 30, 1998); OTS: 62 FR 64,908 (Dec. 9, 1997); and FDIC: 63 FR 3324 (Jan. 22, 1998).

⁴ See 5 CFR Part 1320 App. A.

¹ To be approved, an information collection must: be the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives; not unnecessarily duplicate information otherwise available to the agency; have practical utility; and seek to minimize the cost of the collection to the agency without shifting disproportionate costs or burdens to the public. See 5 CFR Part 1320.

² The CRA regulations do not contain a definition of a large bank or thrift. They define a small institution as one that “as of December 31 of either

See 12 U.S.C. 93a (OCC); 1462a, 1463, and 1464 (OTS); 1819 (FDIC); 248 (FRB). See also 60 FR at 22173-74 (preamble to 1995 final regulations discussing need and basis for information collection).

Location of Small Business Loans

The bank holding company commenter questioned the need for information about the location of small business loans. The commenter asserted that, under the CRA regulations, small business lending is evaluated primarily by the size of the loan and the size of the business. The Agencies evaluate small business lending using these factors, but they also consider where the borrower is located. This requirement helps the Agencies evaluate how an institution helps to meet the needs of its entire community, including low- and moderate-income neighborhoods. As part of this evaluation, examiners consider the proportion of loans made in the institution's assessment area, the dispersion of loans throughout the institution's assessment area, and the number and amount of loans made in areas of different income categories. The Agencies have reduced the burden associated with this requirement, however, by permitting an institution to report the location of a small business loan by *either* the location of the business headquarters or the location where the greatest proportion of the proceeds are to be applied. See "Interagency Questions and Answers Regarding Community Reinvestment," 62 FR 23645 (May 3, 1997) (Q&A 1 addressing § __.42(a)(3)).

Other Issues

The bank holding company commenter also raised two general concerns with the CRA regulations. First, noting that institutions must classify income levels of various geographies according to the 1990 census, the commenter urged the Agencies to take into account subsequent events that have a material adverse impact on a geography's income level for purposes of this classification. Although the Agencies rely on official census information, they also consider subsequent events in an institution's performance evaluations in many ways—for example, in the context of an institution's performance and through annual updating of the income levels of the institution's individual borrowers, including the borrowers residing in such a geography.

This commenter also remarked that when the Agencies evaluate CRA performance, loans categorized as made outside an institution's assessment area,

which may include credit card loans, are not evaluated favorably. The Agencies note that many out-of-area loans, including credit card loans, to low- and moderate-income individuals can be considered favorably in a performance evaluation so long as the institution has addressed adequately the needs of borrowers within its assessment area. See *id.* at 23632 (Q&A 4 addressing § __.22(b)(2) and (3)).

Burden Estimates

The bank trade association commenter asserted that the Agencies' burden estimates were too low, and provided anecdotal information intended to demonstrate this point. The Agencies note that the final CRA regulations issued in 1995 were not merely revisions of the prior rules, but were a new and comprehensive reworking of the Agencies' approach to the CRA. These regulations measure institutions' CRA performance using criteria that vary with the size, business strategy, and other characteristics of the institution. As a result, the 1995 burden estimates were necessarily based on assumptions and projections, rather than on actual experience with the information collections required by the CRA regulations. In addition, since that time, the number and business strategies of covered institutions has changed.

To test the continuing validity of those assumptions, the Agencies each consulted informally with a number of institutions of varying sizes about the information collection burden they experience as a result of the CRA regulations. These institutions provided information useful to the Agencies in understanding the burden of specific aspects of the CRA information collections. However, the number of institutions consulted was too small to enable the Agencies to make useful projections regarding CRA burden industry wide. Further, because of differences in the institutions' size and geographic locations, the range of estimated burden reported by the institutions was extremely broad. Thus, the burden estimates described in this notice are not extrapolated from the information provided by those institutions.

The burden estimates contained in this notice were developed by staff from the Agencies. They reviewed the provisions in the regulations that impose paperwork burden and arrived at estimates based on the Agencies' experience in administering the CRA regulations over the past three years. In reaching the updated estimates, the Agencies' staff considered both the information provided by the trade

association commenter and the information provided by the institutions that were informally consulted.

In particular, the Agencies have concluded that large institutions are spending substantially more time geocoding loans and collecting and reporting optional loan data than was originally estimated. The Agencies' initial estimates of burden for the CRA regulations included two assumptions: First, that geocoding software would significantly reduce the burden of the geocoding requirements for large institutions; and second, that large institutions would fully employ then-existing geocoding software and upgrade their systems as improvements to that software were developed. Neither of these assumptions has proven to be accurate. As a result, the Agencies significantly increased their burden estimates from those done in 1995.

Although institutions do typically use a software program to geocode, portions of the geocoding task must still be done manually for some loans. For example, an employee may need to consult census tract maps or street index books or place a call to the Census Bureau if the information needed to geocode is not included in their software program. Moreover, it has taken longer than anticipated for burden-reducing improvements in the software to become available. For example, the Federal Financial Institutions Examination Council's (FFIEC) improved data-entry software and its geocoding website did not become fully available to the industry until after the March 1, 1997, due date for reporting calendar year 1996 data. Finally, it appears that institutions sometimes rely on manual processing to geocode even though there is software available that can perform much of the work.

The Agencies and financial institutions now have three years of experience with the geocoding requirements and the level of use of available tools for complying with these requirements. As a result, the Agencies are better able to review and estimate the geocoding burden. The Agencies have increased the information collection burden estimate for large institutions significantly. The reestimation of geocoding burden does not affect small institutions because they are not subject to the geocoding requirements unless they choose to be evaluated under the lending, investment, and service tests.

In order to have a better understanding of the overall burden imposed by the CRA regulations, the Agencies averaged recordkeeping and reporting burden over the total number

of reporting institutions. The Agencies did not distinguish between the lending characteristics of different charters when averaging the burden. As a result, although the Agencies were careful in their attempt to estimate the burden imposed by CRA on the industry overall, the averages presented do not necessarily reflect the burden experienced by the institutions of any specific agency. For instance, thrift institutions generally report many fewer small business and small farm loans than banks. On the other hand, the number of home mortgage loans reported by the average thrift is higher than that of a bank. These differences in the credit offered by various charters may result in differences between the estimated burden associated with the charters and actual burden experienced. As a whole, however, the Agencies believe that this methodology best expresses the overall aggregate burden imposed on institutions.

Burden Estimates

Title

OCC: Community Reinvestment Act Regulation (12 CFR 25).
OTS: Community Reinvestment Group I.
FRB: Recordkeeping, Reporting, and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment Act).
FDIC: Community Reinvestment Act.

OMB Control Number

OCC: 1557-0160.
OTS: 1550-0012.
FRB: 7100-0197.
FDIC: 3064-0092.

Type of Review: Extension of a currently approved collection without revision.

Form Number: None.

Abstract: This submission covers an extension of the Agencies' currently approved information collections in their CRA regulations. The Agencies need the information collected to fulfill their obligations under the CRA (12 U.S.C. 2901 *et seq.*) to evaluate and assign ratings to the performance of institutions in connection with helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices. The Agencies use the information in the examination process and in evaluating applications for mergers, branches, and certain other corporate activities. Financial institutions maintain and provide the information to the Agencies.

Affected Public: Businesses or other for-profit; This information collection

will not have a significant economic impact on a substantial number of small entities.

Number of Respondents

OCC:

Small national banks: 1,907.
Large national banks: 612.
Total: 2,519.

OTS:

Small thrifts: 849.
Large thrifts: 305.
Total: 1,154.

FRB:

Small institutions: 762.
Large institutions: 227.
Total: 989.

FDIC:

Small institutions: 5,415.
Large institutions: 754.
Total: 6,169.

Total Annual Responses

OCC:

Small national banks: 1,907.
Large national banks: 612.
Total: 2,519.

OTS:

Small thrifts: 849.
Large thrifts: 305.
Total: 1,154.
FRB: Small institutions: 762.
Large institutions: 227.
Total: 989.

FDIC:

Small institutions: 5,415.
Large institutions: 754.
Total: 6,169.

Frequency of Response: Annually.

Total Annual Burden Hours

OCC:

Small national banks: 19,070 hours.
Large national banks: 374,955 hours.
Total burden: 394,025 hours.

OTS:

Small thrifts: 8,490 hours.
Large thrifts: 169,035 hours.
Total: 177,525 hours.

FRB:

Small institutions: 7,620 hours.
Large institutions: 144,060 hours.
Total: 151,680 hours.

FDIC:

Small institutions: 54,150 hours.
Large institutions: 470,711 hours.
Total: 524,861 hours.

Comments

All comments will become a matter of public record. Comments are invited on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- (b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 21, 1999.

Karen Solomon,

Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: May 21, 1999.

By the Office of Thrift Supervision.

Frank R. DiGalleonardo,

Chief Information Officer and Director, Office of Information Systems.

Board of Governors of the Federal Reserve System, May 20, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Dated: May 21, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99-13567 Filed 5-27-99; 8:45 am]

BILLING CODE OCC: 4810-33-P, OTS: 6720-01-P, FRB: 6210-01-P, FDIC: 6714-01-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination

AGENCY: United States Information Agency.

SUBJECT: Culturally significant objects imported for exhibition determinations.

This is an amendment to Notice Regarding Culturally significant Objects Imported for Exhibition in the exhibit entitled "Saints and Sinners: Caravaggio and the Baroque Image." This is to amend **Federal Register** Doc. 98-17529, 63 FR 36037 (July 1, 1998) by adding the following language after the words "through May 24, 1999": "and at the National Gallery of Art, Washington, D.C., from on or about May 30, 1999 to on or about July 18, 1999."

Dated: May 25, 1999.

Les Jin,

General Counsel.

[FR Doc. 99-13689 Filed 5-27-99; 8:45 am]

BILLING CODE 8230-01-M

Corrections

Federal Register

Vol. 64, No. 103

Friday, May 28, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Options on Three Month Eurodollar FRAs

Correction

In notice document 99-11785 beginning on page 26365 in the issue of

Friday, May 14, 1999, in the subject heading "Eurodollar" was misspelled. [FR Doc. C9-11785 Filed 5-27-99; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99-142-000, et al.]

Rathdrum Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 99-13122 beginning on page 28169 in the issue of Tuesday, May 25, 1999, make the following correction(s):

On page 28170, in the second column, in the second line, "Docket No. EG99-2872-000" should read "Docket No. ER99-2872-000".

[FR Doc. C9-13122 Filed 5-27-99; 8:45 am]

BILLING CODE 1505-01-D

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: June 29-30, 1999-Beatty, NV: Review of the Department of Energy's (DOE) Analysis of a Design for a Potential Respoitory a Yucca Mountain, Nevada, and of Scientific Studies Undertaken at the Yucca Mountain Site

Correction

In notice document 99-12736 appearing on page 27608 in the issue of Thursday, May 20, 1999, make the following correction(s):

1. On page 27608, in the second column, in the fourth complete paragraph, in the third line, "Tie" should read "Time".

2. On the same page, in the third column, in the second line, "www.nwitrb.gov" should read "www.nwtrb.gov".

[FR Doc. C9-12736 Filed 5-27-99; 8:45 am]

BILLING CODE 1505-01-D

Final Rule

Friday
May 28, 1999

Part II

Department of Commerce

National Oceanic and Atmospheric
Administration

15 CFR Part 902

50 CFR Part 285 et al.

Atlantic Highly Migratory Species
Fisheries; Fishery Management Plan, Plan
Amendment, and Consolidation of
Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 285, 300, 600, 630, 635, 644, and 678

[Docket No. 981216308-9124-02; I.D. 071698B]

RIN 0648-AJ67

Atlantic Highly Migratory Species (HMS) Fisheries; Fishery Management Plan (FMP), Plan Amendment, and Consolidation of Regulations

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

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). This action implements the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implements the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) as required by the Atlantic Tunas Convention Act (ATCA), and consolidates regulations for HMS conservation and management into one part of the Code of Federal Regulations (CFR) to comply with the President's Regulatory Reinvention Initiative.

DATES: This rule is effective July 1, 1999 except that the addition of § 635.25 and the removal and reservation of §§ 285.22 and 644.21(a) are effective May 24, 1999, the revisions to § 600.725(v) will be effective July 26, 1999, § 635.69 will be effective September 1, 1999, and § 635.4(b) will be made effective when the Office of Management and Budget (OMB) approves the information collection contained therein. When approved, NMFS will publish in the **Federal Register** notification of the effective date of § 635.4(b).

ADDRESSES: Copies of the HMS FMP, Amendment 1 to the Billfish FMP, the final rule and supporting documents, including the Revised Final Environmental Impact Statements (FEIS) and the Final Regulatory Flexibility Analyses (FRFA), summaries of these items, or information on sources for permit applications and reporting forms can be obtained from

Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282, phone (301) 713-2347, fax (301) 713-1917.

FOR FURTHER INFORMATION CONTACT: Pat Scida regarding tuna issues at (978) 281-9260; Jill Stevenson regarding swordfish issues at (301) 713-2347; Margo Schulze regarding shark issues at (301) 713-2347; Buck Sutter regarding billfish issues at (727) 570-5447; Karyl Brewster-Geisz regarding limited access at (301) 713-2347; and Chris Rogers regarding the regulatory consolidation at (301) 713-2347.

SUPPLEMENTARY INFORMATION: To meet requirements of the Magnuson-Stevens Act, NMFS prepared an FMP for Atlantic tunas, swordfish and sharks and an amendment to the Atlantic Billfish FMP. NMFS published a Notice of Availability of the Draft Amendment 1 to the Billfish FMP on October 9, 1998 (63 FR 54433) with a comment period ending on January 7, 1999, and a Notice of Availability of the Draft HMS FMP on October 26, 1998 (63 FR 57093), with a comment period ending on January 25, 1999. NMFS published a proposed rule to implement the FMPs on January 20, 1999 (64 FR 3154) and extended the comment periods for the FMP documents from January 25 to March 4, 1999, to coincide with the comment period on the proposed rule. NMFS scheduled public hearings to receive comments on the FMPs and proposed regulations, announced in the **Federal Register** on January 22, 1999 (64 FR 3486).

NMFS did not identify a preferred alternative for BFT stock rebuilding in the draft HMS FMP because new information on stock status from the September 1998 stock assessment by the Standing Committee on Research and Statistics (SCRS), as well as the results of negotiations at the November 1998 ICCAT meeting, were not available at the time. On February 25, 1999, NMFS published a Notice of Availability of an addendum to the Draft HMS FMP and proposed supplemental regulations to implement the addendum (64 FR 9298). The addendum and supplemental rule contained alternatives and updated this information only for BFT: BFT rebuilding, domestic allocations, quota adjustment procedures, measures to reduce dead discards of BFT, General category effort controls for the 1999 fishing season, and data collection requirements.

On March 4, 1999, NMFS announced an additional public hearing and further extended the comment period on the

FMPs and proposed rules from March 4 to March 12, 1999 (64 FR 10438). All comments received by March 12, 1999, whether specifically directed to any of the documents or to the proposed rule and its supplement, were considered in the decisions on the final documents and the final rule.

Information regarding the management of HMS under the draft HMS FMP and Draft Amendment 1 to the Atlantic Billfish FMP was provided in the preamble to the proposed regulations to implement those FMPs and in the preamble to the supplemental rule to implement the HMS FMP addendum and is not repeated here. Additional background information can be found in the FMPs and supporting documents available from NMFS (see ADDRESSES). Although the codified regulatory text contained in the supplemental proposed rule to implement the HMS FMP addendum has been incorporated into this final rule, the uncoded 1999 bluefin tuna landings quota specifications proposed in that same document will be published elsewhere in this **Federal Register** issue.

NMFS received approximately 5,000 comments via letter, postcard, facsimile, and electronic mail. Many individuals and groups provided verbal and written comments at public hearings. Those comments are summarized here followed by NMFS' responses thereto.

Comments and Responses

General

Comment 1: Quota management is inappropriate for a recreational fishery. I do not support a recreational closure of any fishery.

Response: Recreational landings of bluefin tuna and blue and white marlin are subject to quotas or caps due to international management recommendations. In addition, domestic regulations prohibit retention of certain species by all user groups, including a subset of shark species and spearfish, because these species are either particularly vulnerable or little is known about their status. In the final HMS FMP and Billfish FMP amendment, NMFS implements measures that are designed to increase flexibility and allow continued participation in the recreational fishery despite the caps or quotas. For example, the Billfish FMP amendment manages the recreational fishery primarily through the use of minimum sizes, rather than bag limits or seasonal closures.

Comment 2: Our coastal and offshore resources need more protection from

foreign fishing fleets; NMFS is disadvantaging U.S. fishermen; NMFS should not implement all these domestic measures because foreign fleets will catch the fish instead.

Response: There is no foreign fishing for HMS within the U.S. EEZ. Atlantic-wide, NMFS works through the ICCAT process as well as bilateral efforts (Canada, Mexico) to address issues of common concern in the management of HMS.

Comment 3: NMFS has to implement the strongest possible domestic measures for protecting these fine species [HMS] as a safeguard against inaction at the international level.

Response: NMFS agrees that strong domestic measures must be taken to rebuild and maintain HMS. However, for most HMS, international cooperation is essential to a successful management program. The final HMS FMP and Billfish FMP amendment establish a foundation for the development of international rebuilding programs for overfished HMS.

Comment 4: These regulations propose to impose a host of restrictions and controls on recreational fishing that are unnecessary and burdensome, and do little or nothing to accomplish the basic goal of rebuilding HMS, including billfish fisheries that are overfished.

Response: NMFS disagrees. Rebuilding HMS requires improved monitoring and accounting for all sources of mortality, including recreational fisheries. In addition, NMFS is required under Magnuson-Stevens Act and ATCA to provide comparable monitoring of all fisheries. The final HMS FMP and billfish FMP Amendment provide for new measures that will enhance monitoring and knowledge of all HMS fisheries, including recreational fisheries, and that implement controls on recreational landings under international agreement, such as the limit on school bluefin tuna and on marlin landings. Nevertheless, the final FMP and amendment reflect public comment on recreational restrictions, as some measures have been reduced and/or made voluntary in nature, such as participation in workshops and in observer programs.

Comment 5: The regulations should specify that U.S. citizens, while fishing on foreign vessels in foreign waters, may comply with the regulations for that foreign venue, even if they are less restrictive than U.S. regulations, and must comply if they are more restrictive.

Response: National standard (NS) 3 requires "To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be

managed as a unit or in close coordination." Previous Atlantic billfish regulations, implemented solely under the authority of the Magnuson Act, restricted fishing-related activities (possession and retention, size limits, gear limitations and incidental catch restrictions) within the jurisdictional limits of the U.S. EEZ. U.S.-flagged commercial and recreational vessels operating exclusively outside the U.S. EEZ were not affected by these restrictions, although the sale, purchase or barter of Atlantic billfish harvested from the management unit (i.e., for blue and white marlin, the Atlantic Ocean north of 5° N. latitude) was prohibited. However, implementation of Atlantic blue marlin and white marlin regulations under both the Magnuson-Stevens Act and ATCA will make these regulations applicable to all U.S. citizens and U.S.-flagged commercial and recreational vessels, regardless where fishing. NMFS disagrees that such application of the Atlantic billfish regulations is unfair and too restrictive on U.S. fishermen. The regulations will be much more effective if they are extended under the authority of ATCA to cover the operational area of U.S.-flagged vessels in the Atlantic Ocean, and the range of the impacted stock. The rebuilding of Atlantic billfish stocks requires reductions in mortality Atlantic-wide, necessitating management measures for Atlantic billfish throughout their range.

Comment 6: The language concerning management through international measures is incompatible with the language of the Magnuson-Stevens Act. It is clear that the United States is to promote optimum yield (OY), rather than become involved with the details of foreign management measures.

Response: NMFS supports the promotion of OY in all fisheries, including OY as part of a rebuilding plan for overfished species. For most HMS, international cooperation is essential to a successful management program. In addition to continued bilateral efforts, the final HMS FMP and billfish FMP amendment provide the foundation for the development of international rebuilding programs for overfished HMS.

Comment 7: There should be an interim final rule for the public to review and comment upon the final measures before the rule becomes effective.

Response: NMFS disagrees. There was an extensive comment period on the draft HMS FMP and draft billfish FMP amendment, the bluefin tuna addendum to the HMS FMP, as well as the proposed rule and supplement to the

proposed rule. Nearly 5,000 comments were received, along with record attendance at the 27 public hearings, and AP meetings to address public comment. It is clear that the public was fully aware of and took advantage of the opportunity to comment on these proposals. The final HMS FMP and billfish FMP amendment clearly demonstrate that, where possible, NMFS has effected changes that meet the same objectives but with less impact on the affected communities. Finally, these documents provide a framework for the continued management of these species, and delays will only hinder progress.

Comment 8: Framework provisions should be taken out of the FMP, as they are not understood by the public, and there is no oversight on the framework procedures used by NMFS.

Response: NMFS disagrees. The purpose of the framework process is to facilitate timely management of HMS. Measures proposed under the framework process will be subject to public comment and at least one public hearing, and if appropriate, an AP meeting as well. NMFS has clarified the objectives to which these framework provisions apply, and somewhat narrowed the range of framework measures from the proposed framework.

Comment 9: Commercial interests are favored over good scientific management of the fish, and over interests of the long-standing recreational fishery.

Response: NMFS disagrees. The final measures in the HMS FMP and billfish amendment are based on the best scientific information available and include closure of the commercial fishery for sharks, swordfish and pelagic longline fishing of BAYS to all but those active in the fishery. The final shark measures include substantial reductions in commercial quotas and an expanded list of prohibited species. Bluefin tuna are subject to an international rebuilding program, and a foundation is established for the development of an international rebuilding program for swordfish, bigeye tuna, and billfish at future ICCAT meetings. Recreational measures have been honed to focus on those that are most effective while still meeting management goals.

Comment 10: The HMS FMP is extremely long and complicated covering many species. It would have been better to have separate hearings on each species rather than all HMS. Timing and location of public hearings need more input from public sector.

Response: The development of the HMS FMP has greatly benefitted from the holistic approach to the management of swordfish, sharks, and

tunas. Many of these species are harvested by the same commercial and recreational user groups, and an integrated FMP affords an improved management strategy for all species. The billfish FMP remains separate, however, due to the exclusively recreational nature of this fishery. Nevertheless, NMFS has and will continue to hold joint AP meetings on issues of common concern, and draw important parallels between management of billfish and other HMS. Location and timing of public hearings are developed in consultation with AP members, the location of current participants, and within the schedule required to satisfy a variety of legal constraints and logistic limitations.

Comment 11: NMFS has not implemented programs to provide reliable, real time monitoring of recreational catch by private anglers as required by law.

Response: NMFS disagrees. The HMS FMP and billfish FMP amendment add to existing recreational data reporting requirements, including expanded permitting and logbook requirements, tournament registration and reporting, and an observer program. Recreational catch and harvest of HMS and billfish are also monitored by the Marine Recreational Fisheries Statistics Survey (MRFSS), the Large Pelagic Survey, mandatory self-reporting of all bluefin tuna landed, and individual state recreational fisheries surveys. In addition, the framework measures in the FMP and amendment allow for expanded recreational monitoring. NMFS will continue to work with the APs and affected public to expand and develop these efforts to improve recreational monitoring.

Comment 12: The HMS FMP is biased against the recreational fishing industry and favors commercial fisheries. The HMS FMP does not address the destructive nature of longline fishing. The FMP is overly burdensome for the collection of recreational fisheries data.

Response: NMFS disagrees. The HMS FMP is focused on reducing fishing mortality for overfished species of sharks, tunas, and swordfish. The HMS FMP also addresses those resources that are currently considered to be fully fished. The final measures in the HMS FMP include closure of the commercial fishery for sharks, swordfish and pelagic longline fishing of BAYS to all but those active in the fishery. The final shark measures include substantial reductions in commercial quotas and an expanded list of prohibited species. Bluefin tuna are subject to an international rebuilding program, and a foundation is established for the development of an

international rebuilding program for swordfish, bigeye tuna, and billfish at future ICCAT meetings. The final HMS FMP and Billfish FMP Amendment provide for new measures that will enhance monitoring and reporting in all HMS fisheries, both commercial and recreational. The final actions reflect public comment on recreational restrictions, as some measures have been reduced and/or made voluntary in nature, such as participation in workshops and in observer programs.

Comment 13: Recreational landing estimates for pelagic species are generated from the MRFSS database and these estimates of landings are not accurate.

Response: NMFS disagrees. The MRFSS data program is designed to estimate recreational catch and effort over broad areas. While the program admittedly does not capture information on pulse fisheries or rare event fisheries, such as billfish and swordfish, the generated estimates and their proportional standard error estimates give an indication of their statistical validity. The Large Pelagic Survey (LPS) is designed to better capture catch and effort data on HMS. NMFS plans to continue this survey and consider expanding the program to additional geographic areas.

Comment 14: Except for billfish, no basis exists for how the agency allocates catch among user groups.

Response: NMFS disagrees. NMFS bases all allocation of fishing privileges on NS 4, which requires all allocations, should they be necessary, to be fair and equitable to all such fishermen, be reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Comment 15: NMFS penalizes fishermen who provide data by using those data to place restrictions on the fishermen.

Response: NMFS disagrees. NS 1 calls for the prevention of overfishing and NS 2 states that management measures will use the best scientific information available. Data are used to monitor the fishery to prevent overfishing and to support management measures to ensure the future health of the resource. If a fishery is judged to be overfished, all sources of information will be assessed to address the problem. Should fishermen not provide information, or provide inaccurate information, the management measures developed by NMFS to remedy the overfishing could be more burdensome than necessary on the fishing sectors depending on the fishery resource.

Comment 16: NMFS should adopt a more precautionary fishing mortality threshold that is lower than the fishing mortality that will result in maximum sustainable yield (MSY).

Response: NMFS agrees and has adopted $0.75F_{MSY}$, which is consistent with precautionary technical guidance for NS 1 established by NMFS scientists.

Atlantic Billfish

Comment 1: The selected alternatives do not reflect any of the advice given by the Billfish AP.

Response: NMFS disagrees. The advice from the Billfish AP was noted under each action in the draft FMP amendment. The agency's rationale for selecting preferred alternatives, including those that were not supported by the Billfish AP was also included in the plan. The Billfish AP was established under section 302(g)(4) of the Magnuson-Stevens Act, "to assist in the collection and evaluation of information relevant to the development of any fishery management plan or amendment." However, it is important to note that decisions and recommendations made by the AP are advisory in nature. Many of the final actions are based on advice from the APs.

Comment 2: NMFS violated NS 1 of the Magnuson-Stevens Act and NEPA by not including a viable rebuilding plan for blue and white marlin in the draft FMP amendment.

Response: NMFS disagrees. The draft FMP amendment contained elemental components for rebuilding on an Atlantic-wide basis. However, the final amendment more clearly defines the relationship between domestic management actions and international rebuilding alternatives. Domestic measures ensure U.S. compliance with the 1997 ICCAT recommendation. The final FMP includes final actions to establish the foundation for the development of an international 10-year rebuilding plan. NMFS will work with ICCAT member nations to adopt a rebuilding program that meets the standards of the Magnuson-Stevens Act and the NSGs, including an appropriate rebuilding time period, targets, limits, and explicit interim milestones for recovery, expressed in terms of measurable improvements of overfished stocks. The final FMP amendment lists specific management measures that could be a part of the international strategy.

Comment 3: NMFS should scrap the draft Atlantic billfish FMP amendment and develop a new document focusing on rebuilding overfished billfish stocks

by reducing bycatch in the U.S. pelagic longline fishery.

Response: The multidimensional focus of the draft FMP amendment addressed the 1997 ICCAT recommendation and the U.S. mandates under the Magnuson-Stevens Act and ATCA. The actions taken in the final FMP amendment are critical steps in the ICCAT process, formulating the basis for international regulations that will rebuild overfished billfish stocks. Rebuilding overfished Atlantic billfish stocks is not possible solely by reducing or eliminating bycatch in the U.S. pelagic longline fishery due to the small percentage of mortality caused by U.S. vessels. The HMS FMP will be the primary tool for designing, analyzing and implementing management measures to control bycatch in association with all HMS commercial fisheries, including Atlantic billfish.

Comment 4: The management measures included in the Billfish framework provisions should be dropped because they would allow NMFS to implement these regulatory actions without input from the Billfish Advisory Panel or from the public.

Response: NMFS disagrees. Both framework adjustment measures and proposed FMP amendments must go through extensive public and analytical review, including development and review by the APs, if appropriate.

Comment 5: Actions taken by the United States alone cannot sufficiently reduce billfish mortality levels Atlantic-wide to rebuild overfished billfish stocks. Therefore, management actions taken by NMFS, without the support and adoption by ICCAT, are a waste of time and money.

Response: NMFS disagrees. While unilateral management action by the United States cannot rebuild overfished billfish stocks, the United States has been a leader in conservation of Atlantic billfish, and has taken actions (e.g., the 1988 Atlantic billfish FMP) to show our willingness to take the critical steps necessary to conserve these stocks. This fact has been a primary negotiation tool at ICCAT, and it is questionable whether the recent ICCAT actions (i.e., the 1997 and 1998 ICCAT recommendations) could have been possible without these efforts. Therefore, the final actions and framework provisions in the FMP amendment and HMS FMP will form the foundation for the development of rebuilding plans following the 2000 (marlins) and 2001 (sailfish) assessments.

Comment 6: NMFS received comments supporting and opposing a 10-year recovery period for blue marlin and white marlin. Comments against the

10-year recovery period include: the recovery time period of 10 years is too long; a shorter time frame could be justified based on the life history characteristics of Atlantic blue and white marlin; the recovery to biomass rebuilding target within 10 years is impossible without international cooperation by Atlantic commercial fishing operations; and rebuild overfished populations as quickly as possible, not in the maximum period allowed by law.

Response: NMFS maintains the recovery period of 10 years in the final FMP amendment. Life history is not the sole consideration for determining recovery time period alternatives. The Magnuson-Stevens Act specifies that a recovery period be as short as possible, taking into account the status and biology of any overfished stocks of fish, as well as the needs of fishing communities, recommendations by international organizations in which the United States participates (e.g., ICCAT), and interactions of the overfished stock of fish with the marine ecosystem. The final guidelines for NS 1 indicate that these factors may be used to adjust the rebuilding period up to 10 years. NMFS proposed a 10-year recovery period to minimize negative impacts on recreational and commercial communities/entities. Agreements at ICCAT may dictate that rebuilding of Atlantic billfish may take up to 10 years, indeed even longer.

Comment 7: The model used to generate the recovery periods for blue marlin and white marlin may provide overly optimistic projections of the time required for rebuilding.

Response: The non-equilibrium stock-production model used to generate recovery periods was based on the best available science at the time the draft FMP amendment was developed. NMFS maintains these results in the final FMP amendment, but will review the applicability of this model following the 2000 (marlins) and 2001 (sailfish) Standing Committee for Research and Statistics (SCRS) stock assessments. Subsequently, modifications may be warranted in the recovery period or other components of the rebuilding plan.

Comment 8: The minimum stock size thresholds (MSSTs) selected for Atlantic billfish in the draft FMP amendment are too low and should be more precautionary.

Response: NMFS agrees that the MSSTs selected for Atlantic billfish in the draft FMP amendment should be more precautionary. The formulation of MSST for Atlantic billfish using $(1-M)B_{MSY}$, where M is the instantaneous

natural mortality rate, is a proxy for the minimum stock size at which rebuilding to the maximum sustainable yield level would be expected to occur within 10 years if the stock or stock complex were exploited at the maximum fishing mortality threshold. Quantitative data necessary to calculate natural mortality rates are not available; however, reasonable values can be estimated based on life history parameters and age structure of the population. Estimates of M range from 0.05 to 0.15 for Atlantic blue marlin, from 0.1 to 0.2 for Atlantic white marlin, and from 0.2 to 0.3 for western Atlantic sailfish. The draft FMP utilized values near the lower-end of the precautionary range; however, based on further analyses, the MSST values selected for the final FMP amendment for Atlantic blue and white marlin and sailfish are $0.95B_{MSY}$, $0.85B_{MSY}$, and $0.75B_{MSY}$, respectively.

Comment 9: NMFS received comments both supporting and opposing the extension of the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions under ATCA. These comments include the following: the extension is an important step closing a loophole in the regulations that allows Atlantic billfish to be caught and sold south of 5° N; this measure unfairly restricts U.S. recreational anglers fishing in foreign waters, especially when fishing in foreign tournaments; U.S. commercial vessels operating under foreign contracts or in countries where all fish caught must be landed will be adversely affected; enforcement of these regulations would be impractical and costly for the relatively few U.S.-flagged commercial and recreational vessels operating in foreign waters that would be impacted by this proposed management measure.

Response: NMFS agrees with comments supporting the proposed preferred alternative to extend the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions under ATCA. Expansion of the regulatory authority is supported by NS 3 that requires "To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." Implementation of Atlantic billfish regulations under both the Magnuson-Stevens Act and ATCA will make these regulations applicable to all U.S. citizens and U.S.-flagged commercial and recreational vessels, regardless of where they are fishing. NMFS disagrees

that such application of the Atlantic billfish regulations is unfair and too restrictive on U.S. fishermen.

Regulations will be much more effective if they are extended under the authority of ATCA to cover the operational area of U.S.-flagged vessels in the Atlantic Ocean. Commercial vessels fishing under lease arrangements in other countries may need to apply for Exempted Fishing Permits (EFPs) in order for the agency to collect necessary management information, and to prevent violations of U.S. law. Since the same vessels potentially catching billfish are also operating under other Atlantic-wide fishing prohibitions (north and south Atlantic swordfish) that require enforcement and monitoring, problems with additional enforcement of billfish regulations impacting U.S. commercial pelagic longline vessels operating in the Atlantic are expected to be minimal.

Comment 10: NMFS should implement time/area closures specifically to reduce bycatch of Atlantic billfish.

Response: NMFS disagrees. Based on the currently available data, NMFS does not think implementing large closed areas with the sole objective of reducing billfish bycatch is practicable because of the minimal effect on billfish and the significant social and economic impacts on pelagic longline fishermen and their communities. However, NMFS is preparing additional analyses to identify large areas to protect small swordfish and will consider the impacts of these closures on billfish stocks.

Use of Best Available Science in Billfish Management

Comment 1: NMFS violates NS 2 by ignoring or inappropriately applying available scientific information in the draft FMP amendment.

Response: NMFS disagrees. The draft FMP amendment used the most recent data available. Scientific information and data sources used in formulation of the plan include the MRFSS, Large Pelagic Survey, Recreational Billfish Survey, Cooperative Tagging Center, SCRS stock assessments and reports, NMFS research/reports, as well as research funded by the agency and independent research, including publications in scientific journals, preliminary reports on ongoing research, and personal communication with experts in the field. NMFS has developed a comprehensive research and monitoring plan (October, 1998) to support the conservation and management of Atlantic HMS as required by 971(i)(b) of ATCA. The objective of this comprehensive research

and monitoring plan is to ensure that NMFS science is of the highest quality and that it advances the agency's ability to make sound management decisions.

Comment 2: NMFS should limit regulatory changes to recommendations by committees comprised of professional scientists, not politicians, in order to reflect the best available science.

Response: NMFS disagrees. The Magnuson-Stevens Act, ATCA, and ICCAT recognize the highly migratory nature of these international fisheries, which necessitates an interdisciplinary approach to fisheries management. The APs play an important role in advising NMFS not just on science, but on practical constraints, as well as social and economic impacts of various management alternatives.

Fair and Equitable Allocation of Restrictions/Benefits Among Billfish Fishery Sectors

Comment 1: NMFS is apparently relying only on reductions in U.S. recreational landings to rebuild overfished billfish stocks, which is inconsistent with NS 4. The recreational billfish community is responsible for only a small portion of Atlantic-wide mortalities and has a record of voluntary conservation as evidenced by the high percentage of released billfish, yet the majority of management measures included by NMFS in the draft Atlantic billfish FMP amendment are unfairly focused on recreational anglers.

Response: NMFS agrees that the recreational billfish community is responsible for only a small portion of Atlantic-wide mortalities and commends their voluntary conservation. However, NMFS disagrees that the management measures included in the draft Atlantic billfish FMP amendment were unfairly focused on recreational anglers. The draft FMP amendment specifically stated that the level of reductions in landings required to rebuild overfished billfish stocks will necessitate international cooperation; reduction or even elimination of all sources of U.S. billfish mortality alone is insufficient to achieve rebuilding as the United States is responsible for approximately 5 percent of the Atlantic-wide mortalities of marlin. Reductions of 2,443 mt from 1996 total Atlantic landings will be required to rebuild stocks of blue marlin and 638 mt for white marlin; the total U.S. reported mortality of Atlantic marlin during 1996 was 302.3 mt. The final Atlantic Billfish FMP Amendment includes increases in minimum size limits in order to reduce landings; the 25-percent reduction in blue and white marlin landings will

result in reductions of U.S. recreational landings of approximately 21,000 pounds (9.52 mt); however, on a larger scale, this recommendation will result in nearly a 3.4 million decrease in Atlantic-wide marlin landings from 1996 levels by other ICCAT member countries. The 1997 ICCAT recommendation also requires improvement in monitoring, data collection and reporting in all Atlantic billfish fisheries.

Comment 2: Continuing the prohibition on commercial landings of Atlantic billfish, while allowing recreational fishermen to land billfish, is unfair and discriminatory.

Response: NMFS disagrees. A fundamental element of the 1988 Atlantic billfish FMP was the prohibition of possession and sale of commercially caught billfish within the U.S. EEZ. Allowing recreational fishermen to land billfish is consistent with traditional usage of this fishery. A major objective of the FMP amendment is to develop a rebuilding plan for overfished billfish stocks, and although unilateral actions by the United States will not rebuild these highly migratory species, additional mortalities experienced on these stocks by allowing U.S. commercial harvest would run counter to the objectives of NS 1 and the FMP amendment. The Billfish FMP amendment retains the prohibition of possession and sale of commercially-caught billfish.

Community Impacts Resulting From Billfish Measures

Comment 1: Destin, FL, Port Aransas, TX, and other coastal towns were not included in the community analysis of the draft Atlantic billfish FMP amendment. The Atlantic billfish recreational fishery is an important component of these locations, therefore, these areas should be included in any analysis of economic and community impacts of management restrictions.

Response: NMFS agrees that some towns where the Atlantic billfish recreational fishery is an important component were not included in the community analysis of the draft Atlantic billfish FMP amendment. However, the billfish community profiles included in the draft FMP amendment are not intended as an exhaustive list of where recreational billfish angling is an important component of the local economy and culture, rather they provide a broad perspective on representative areas. Consistent with NS8, the final FMP amendment first identifies and describes representative Atlantic billfish communities (on the basis of geographic location, gear-type

and operational framework of the various components of the fishery) and then assesses their differing nature and the magnitude of the likely effects of this FMP amendment. The final FMP amendment also summarizes anticipated social impacts resulting from the implementation of the Atlantic billfish FMP amendment on a broader scale, based on the comments received during the comment period for the draft FMP amendment and proposed rule. Public hearings for the proposed rule to implement the draft Atlantic billfish FMP amendment were held in a wide range of locations (including Panama City, near Destin and Ft. Walton and Port Aransas) to collect comments from numerous billfish angling communities.

Comment 2: Destin, Florida has changed an important billfish tournament to an all-release format based on the economic threat of a potential zero bag limit included in the proposed rule. If sponsorships and participation in the tournament decline because of the change to catch-and-release strategy, the local economy will be negatively impacted, as will charities that have historically received financial support from this event.

Response: NMFS evaluated thousands of comments on the issue of economic impacts of an adjustable bag limit and other measures included in the draft plan, some of which merited changes in the final FMP amendment. While the intent of the draft FMP amendment was not to cause severe impacts to communities, the change to a "no-kill" tournament format should be applauded and certainly is consistent with the precautionary management strategy of the 1996 Magnuson-Stevens Act. It should be noted that many other tournaments have gone to an all-release format without a reduction in participation. NMFS restates advice of the 1988 Atlantic Billfish FMP, encouraging all tournaments to adopt a catch-and-release philosophy.

Billfish Harvest Controls and Retention Limits

Comment 1: NMFS should require catch-and-release only of Atlantic billfish by all recreational anglers. Allowing recreational anglers to land billfish is inconsistent and counterproductive with the objectives of the FMP amendment, and undermines the goals of the FMP. Closing the recreational Atlantic billfish fishery, except to catch-and-release, supports the conservation ethic of this recreational user group; will maximize net economic benefits to the nation by managing the fisheries for long term OY; is consistent with the ICCAT

recommendation; and meets the critical U.S. leadership goal to promote international conservation.

Response: NMFS disagrees. Most recreationally caught billfish are already released, either voluntarily or in compliance with minimum size limits. However, some anglers prefer to land some billfish. Allowing those few fish to be landed is consistent with ICCAT conservation recommendations and recognizes the multi-faceted objectives of domestic and international management of the billfish fishery.

Comment 2: NMFS should not prohibit the use of multiple hooks in the Atlantic billfish recreational fishery. Using the precautionary approach as a rationale to support this measure is contrary to the mission statement of NMFS as there is absolutely no science-based justification for this action. Limiting the number of hooks in a lure or bait is an unnecessary regulation because this will not enhance post-release survival rates; and will have no direct benefit to recovery of Atlantic billfish resources. This measure would significantly reduce angler hook-up rates, as well as have a negative economic impact on anglers by requiring purchases of new equipment and on tackle manufacturers.

Response: NMFS has not included this proposed action in the final rule. This measure was developed as a result of discussions with the Billfish AP, which includes representatives from the charter boat industry, sport fishing groups, and Fishery Management Council appointees familiar with the recreational billfish industry. The objective of this alternative was to reduce the probability of injury to gills, throat and eyes, thereby decreasing release mortality rates. After NMFS and the Billfish AP reviewed public comments on this issue, the majority of panel members rescinded their support of this measure.

Comment 3: NMFS received several different comments regarding the use of dehooking devices, including: NMFS should require the use of dehooking devices by both recreational and commercial fishermen targeting billfish to reduce post-release mortality; NMFS should not mandate but promote the use of dehooking devices by both recreational and commercial fishermen; and NMFS should only allow recreational anglers to utilize hook-removal devices, but still require commercial fishermen to cut their gear to release a billfish because a dehooking device can not practically be used to release a billfish caught on pelagic longline gear, and will result in an increase in bycatch mortality as

fishermen use this "loop-hole" try to save hooks; and NMFS should allow the removal of the hook by any means, provided that it can be accomplished safely and without increased damage to the hooked fish.

Response: The draft FMP amendment preferred alternative was to "allow the removal of the hook from recreational and commercially caught billfish." NMFS maintains this action in the final FMP amendment but does not mandate the use of dehooking devices. Their use as a mechanism to reduce post-release mortality is allowed but not required. There were no conclusive, peer-reviewed scientific results on which to base such a mandate at the time this FMP amendment was developed. However, commercially available dehooking devices have been effective in other commercial and recreational fisheries and have been successfully employed on removing hooks from other large fish. NMFS will include information on such dehooking devices in its pelagic longline workshops, as well as in its educational outreach programs. The final rule implementing the FMP amendment preserves the requirement that billfish that cannot be legally retained must remain in the water at all times, but no longer requires that the line be cut. Instead, the final rule specifies that the hook may be removed, provided that the method of hook removal used does not harm the fish, and may enhance its survival. Proper handling techniques to remove a hooked billfish from commercial or recreational gear will also be included in the pelagic longline workshops, in order to enhance the effectiveness of this final action and minimize the mortality of all releases.

Comment 4: It is impossible to determine the size of an Atlantic billfish without removing the fish from the water.

Response: NMFS disagrees. The 1988 Atlantic Billfish FMP noted similar comments, but cited advice from the SAFMC Billfish Advisory Panel which stated experienced billfish anglers and captains would have little difficulty in estimating the size of these fish quite accurately. The Plan's intent is "to encourage the release of all billfishes not needed for tournament competition or of trophy fish, and since tournament anglers generally have no difficulty estimating fish size and trophy fish would be substantially in excess of the minimum sizes, this is not expected to be a major problem" (SAFMC, 1988). The final rule implementing the FMP amendment preserves the requirement that billfish that cannot be legally retained must remain in the water at all

times. NMFS continues to support this regulation and will use its educational outreach programs for recreational fishermen to instruct them on the proper handling and release of billfish to maximize their survivability.

Comment 5: The recreational landings caps for Atlantic blue and white marlin are unfair and unnecessary. If adopted, this proposal would be a significant U.S. policy change for billfish management in the United States from one that controls mortality through size limits and the encouragement of catch and release, to a quota management system. Imposing quotas in recreational fisheries does not work. They are highly disruptive to the orderly conduct of the fishery and weaken confidence in the entire management system.

Response: These measures are necessary because blue marlin and white marlin are overfished. Furthermore, the United States is compelled to comply with ICCAT recommendations as required under ATCA, therefore the United States, and all other ICCAT member countries/entities, must reduce landings (i.e., fish brought back to the dock vs. catch which is taken by fishing gear at sea) by at least 25 percent from 1996 levels. The true impact of this recommendation can only be evaluated in terms of Atlantic-wide reductions in marlin landings. The 25-percent reduction in blue and white marlin landings will result in reductions of U.S. recreational landings of approximately 21,000 lb (9.52 mt reductions in marlin landings); however, on a larger scale, this recommendation will result in nearly a 3.4 million pound decrease (over 1,400 mt reductions in marlin landings) in Atlantic-wide marlin landings from 1996 levels by other ICCAT member countries. The final FMP amendment utilizes a size-based strategy to reduce U.S. recreational landings to required levels.

Comment 6: NMFS received comments supporting and opposing the recreational retention limit of one Atlantic billfish per vessel per trip. Comments that support the recreational retention limit include: NMFS should implement the proposed recreational retention limit for billfish; the limit of one billfish is appropriate in that it will result in reduced landings of marlin without creating a hardship for the charter boat industry since few billfish are retained by anglers; and a limit of one billfish would be consistent with Florida state regulations. Comments against this measure include: NMFS should eliminate the recreational retention limit of one Atlantic billfish per vessel per trip; given the rare nature

of billfish catches, and even rarer incidences of billfish landings, a limit of one billfish per vessel per trip would be ineffective in reducing landings by any significant amount; and this measure would have significant negative economic impacts on tournaments that have a "grand slam" category (i.e., prize for landing a blue marlin, white marlin and sailfish).

Response: Retention of more than one billfish during a recreational trip is relatively rare, but the recreational retention limit was included in the draft FMP amendment as part of a precautionary management strategy, and to ensure compliance with landing caps established by the 1997 ICCAT recommendation. In the interest of responding to public comment on the impact of implementing recreational retention limits in the Atlantic billfish fishery, and in consideration of the ability of NMFS to manage landings (mortality) with size limits that can be adjusted through interim or proposed and final rule measures, the limit is rejected in the final Atlantic billfish FMP amendment. Reliance on size limits alone to control landings simplifies regulatory constraints and effectively accomplishes the same goal.

Comment 7: NMFS should remove the provision providing the AA the authority to adjust the billfish recreational retention limit with 3-day notice, including to a zero bag limit. Imposing an adjustable limit for billfish is excessive and unnecessary regulation of this recreational fishery. Contrary to the Magnuson-Stevens Act and Regulatory Flexibility Act requiring the selection of the least burdensome alternative, the proposed measure imposes the greatest economic uncertainty in the billfish fishery. Tournaments could be canceled, or at least experience significant reduction in participation, solely on the possibility of a prohibition of landing any fish. NMFS could manage this fishery through a minimum size limit in such a way that landings are reduced by at least 25 percent, without closing the fishery.

Response: In consideration of the ability of NMFS to manage landings (mortality) with size limits that can be adjusted through interim or proposed and final rule measures, the provision providing the AA additional explicit authority to adjust the retention limit to zero is in the final Atlantic billfish FMP amendment. However, this approach may be reconsidered in the future if management by minimum size limits is insufficiently successful.

Comment 8: NMFS should prohibit any billfish from being imported into the United States, regardless of where

the billfish are caught (i.e., Pacific or Atlantic Ocean).

Response: NMFS agrees that consideration of prohibiting any billfish imports may be warranted in the future.

Comment 9: NMFS received comments for and against the proposed preferred minimum size limits, including: the Atlantic billfish size limits in the draft FMP amendment should be implemented; the Atlantic marlin size limits proposed by NMFS are excessive, in that they will reduce landings more than necessary to comply with the 1997 ICCAT recommendation; and the minimum size limits should be in round numbers that are easier to remember, for example 100 inches (254 cm) lower jaw fork length (LJFL) for blue marlin rather than 99 inches (251 cm) LJFL.

Response: NMFS agrees with comments supporting the proposed preferred minimum size limits. The increase in minimum sizes for Atlantic blue marlin to 99 inches LJFL, 66 inches (168 cm) LJFL for Atlantic white marlin and 63 inches (160 cm) LJFL for sailfish is the final management action because it would reduce mortality rates by at least 25 percent for each of these overfished species at minimal short-term economic expense with long-term economic benefits.

Comment 10: NMFS received comments for and against the proposed preferred alternative to prohibit the retention of longbill spearfish. Comments against this measure include: lack of scientific information on this species is not an adequate reason to prohibit its retention; this measure would only hinder any research efforts; retention should be allowed until further data are made available that indicate this species is overfished; and as an alternative measure, NMFS should establish a toll free number for fishermen to report longbill spearfish landings and use this information for scientific purposes.

Response: The absence of adequate scientific information is not a reason for failing to take appropriate conservation and management measures. The precautionary approach asserts "states should apply the precautionary approach widely to conservation, management, and exploitation of living aquatic resources in order to protect them and preserve their aquatic environment (1995 Food and Agriculture Organization (FAO) International Code of Conduct)." Longbill spearfish are rarely encountered by commercial fishermen or recreational anglers, and are generally not included as a target species in billfish tournaments. Therefore, this

measure should have only minimal negative social or economic impacts. The status of spearfish stocks is unknown, but the rare nature of this species necessitates a cautious management strategy to avoid any potential negative impacts to the stock.

Billfish Monitoring, Permitting and Reporting

Comment 1: NMFS should expand the use of sampling protocols utilized in the Gulf of Mexico to other Atlantic coastal areas to improve monitoring of recreational billfish landings.

Response: NMFS agrees. The 1997 ICCAT recommendation for improvement in monitoring and data collection, as well as the establishment of landing caps for Atlantic blue and white marlin, has focused attention on the need for improvement in sampling and monitoring programs to ensure that the United States is in compliance with international agreements. The Gulf of Mexico program was instrumental in providing a historical framework for developing the notification and reporting requirements for billfish tournaments, but expansion of this program to other areas may not provide the sampling levels necessary to ensure compliance with the ICCAT recommendation. Additional monitoring and reporting requirements have been added to the FMP amendment, including logbooks, permits and a voluntary observer program for charter-headboat vessels, and mandatory tournament registration.

Comment 2: NMFS received several different comments on the proposed outreach programs, including: the proposed outreach programs for recreational billfish anglers are a waste of time and federal resources, recreational anglers already practice conservation in releasing over 90 percent of their catch; the proposed outreach programs will be a valuable addition to the FMP amendment depending on the level of cooperation with state and other federal agencies, fishing constituent groups, etc.; and, attendance at workshops and seminars held as part of this measure should be mandatory.

Response: NMFS disagrees that the proposed outreach programs for billfish anglers are a waste of time. Although recreational anglers already release approximately 90 percent of their catch and NMFS has established a catch-and-release fishery management program in the final FMP amendment, release of live fish does not guarantee their survival. Outreach programs established in this amendment will provide proper handling, tagging, measuring and

release techniques in order minimize the mortality of all live releases, a proactive approach to meeting several objectives of this FMP amendment. Attendance at workshops by charter boat operators and recreational anglers will not be mandatory, but will be encouraged and promoted through various constituent groups, trade publications and federal and state agencies (e.g., NMFS Office of Intergovernmental and Recreational Fisheries, Sea Grant). It is important to note, however, the success of any outreach program is predicated on reaching the entire billfish recreational angler community, which may eventually require implementation of a permit or other registration procedure.

Comment 3: Requiring billfish and other HMS tournaments to notify NMFS four weeks prior to commencement of the tournament is punitive and unnecessary. Without corresponding time and area closures of longline fishing in spawning and nursery areas, mandatory tournament registration is unfairly biased against the recreational fishing industry.

Response: NMFS disagrees. The 1997 ICCAT recommendation requires improvement in monitoring, data collection and reporting in all Atlantic billfish fisheries. The tournament notification requirement is critical to developing a sampling frame for tournaments to allow for better monitoring, data collection, and reporting of billfish and other HMS tournaments. Tournament registration also gives NMFS a sampling frame to obtain information on participation level, angler effort, as well as social, economic and fisheries characteristics data. Information from the tournament registration forms will provide a general guide to the total number tournaments, their locations, number of participants, etc. This action will greatly improve NMFS' collection of a data from a significant segment of the recreational HMS fishery at a relatively small social and economic cost. This requirement is comparable to the logbook data that are submitted by charter/headboats, and commercial fishermen in that it collects catch and effort information.

Comment 4: The definition of an HMS tournament, including Atlantic billfish, as "any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching such fish," is too broad.

Response: The definition of tournament is intentionally broad so that as much data as possible can be collected to better identify the universe of billfish anglers. While all

tournaments will be required to register, tournament directors must report only if selected.

Comment 5: The Atlantic billfish tournament reporting form needs to be revised to more closely match the type of information that can practically be collected during a tournament.

Response: NMFS will hold joint workshops with fishing organizations and interested members of the public to discuss the best format for accurate reporting of necessary data.

Comment 6: Tournaments selected to report should have 100-percent compliance and summary data should be made available to tournament directors, the HMS APs, and ICCAT Advisory Committee in a timely fashion, comparable to other fisheries managed under ICCAT quotas.

Response: NMFS will work to ensure that data from tournament reports are promptly collected, compiled, and processed to provide summary data on a timely basis. This information is part of the annual National Report, as well as the annual SAFE report.

Comment 7: NMFS should include penalties and/or sanctions for failing to register/and or report catch data.

Response: NMFS agrees. The Magnuson-Stevens Act currently provides penalties and permit sanctions for regulations promulgated under the Act. The Magnuson-Stevens Act (section 308(a)) specifies that any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. Section 307(1)(a) of the Magnuson-Stevens Act states that it is unlawful for any person to violate any provision of this Act or any regulation or permit pursuant to this Act. Failure to register and/or report, if selected, is a violation of the regulations and may be forwarded to NOAA General Counsel for review.

Comment 8: The draft Atlantic billfish FMP fails to recognize or utilize the cooperative tagging program.

Response: NMFS disagrees. The Billfish FMP amendment includes information for Atlantic blue marlin, Atlantic white marlin, and sailfish, on the total number of tagged and released fish over the last 43 years as part of the Cooperative Tagging Center (CTC) program. Information on the geographical area where most of the tagging activity occurred and during what times of year, the average distance tagged fish traveled before recapture, and specific movement patterns exhibited by some fish is also included

in this section. The CTC database was incorporated into maps with other effort sources to assist with determining essential fish habitat designations. The life history characteristics, gleaned in part from the CTC data, were often a factor in the consideration of management actions for the final FMP amendment. Recent support of a single billfish stock is also based in part on tag recoveries, which indicate both trans-Atlantic and trans-equatorial movement of billfish.

Comment 9: NMFS should not require permits and logbooks for charter boats.

Response: NMFS disagrees. The 1997 ICCAT recommendation required improvements in monitoring, data collection, and reporting from all fisheries that encounter Atlantic billfish. The draft FMP amendment proposed the use of mandatory permits and logbooks for charter/headboat operations. These management measures provide catch and effort data for Atlantic billfish that currently are not well quantified. Therefore, NMFS maintains that permits and logbooks for charter/headboats must be mandatory.

Comment 10: The Atlantic blue and white marlin landing caps were generated from reported landings for 1996, when NMFS only minimally estimated landings based on samples of selected billfish tournaments and the Large Pelagic Survey. NMFS has proposed several improvements in monitoring in the FMP amendment that will increase the accuracy of landing estimates, which could unfairly reduce the number of billfish available to be landed, relative to 1996, in order to comply with the 1997 ICCAT recommendation.

Response: NMFS agrees that a statistically valid system must be developed to ensure an accurate comparison between 1996 and years after monitoring accuracy is increased. A review of all available information is currently being conducted to obtain the most accurate, scientifically-based landings for 1996. Other methods are also being developed to examine catch and landing rates to determine if these values can be used to reflect the reductions in landings between 1996 and 1998, resulting from the two interim rules (March 24, 1998, 63 FR 14030; and September 29, 1998, 63 FR 51859) implemented to increase size limits of blue and white marlin during 1998 to immediately comply with the 1997 ICCAT recommendation.

Comment 11: NMFS should not change the fishing year. The proposed fishing year does not reflect the true operational time frame of the recreational billfish fishery and could

disadvantage anglers and tournaments during the spring through potential regulatory changes implemented by NMFS to control landings to comply with ICCAT recommendation. Also, the proposed June 1 to May 31 fishing year is incompatible with ICCAT reporting by calendar year.

Response: NMFS disagrees. The June 1 to May 31 fishing year was selected as a final action for the Atlantic billfish FMP to provide NMFS with sufficient time to meet legal requirements for implementing ICCAT recommendations (e.g., notice and comment). NMFS will report billfish and swordfish landings to ICCAT on both a calendar year and fishery year basis. A June to May fishing year is also consistent with most other HMS fisheries, thereby meeting Objective 5 of FMP amendment. If landing caps for Atlantic blue or white marlin are exceeded, as determined by the most recent tournament and other landings data, it is possible that NMFS would raise the minimum size to avoid exceeding the landing caps, which could lead to spring tournaments being negatively impacted. However, it is anticipated that the size limits implemented in the final rule will be sufficient to avoid this possibility.

Comment 12: NMFS fails to propose any adequate mechanisms to ensure U.S. compliance with the 1997 ICCAT recommendation for Atlantic billfish, contrary to the mandates of ATCA. The proposed minimum size limits and/or recreational retention limits, and the provision providing the AA authority to adjust the retention limit to zero, will not accurately account for all recreational landings, as required under this ICCAT recommendation.

Response: NMFS disagrees. The FMP amendment adopts several new monitoring, permitting, and reporting requirements to better quantify the number of fishermen and effort. These requirements will be evaluated as part of the annual SAFE and National Reports and if determined inadequate, framework provisions in the FMP amendment will be utilized. Framework provisions for possible future actions include vessel permits for all U.S. registered vessels fishing recreationally for Atlantic HMS and a landing tag for all recreationally landed billfish. In the event that the ICCAT-recommended landing caps are close to being reached, NMFS has the authority, under section 305 (d) of the Magnuson-Stevens Act to take appropriate action.

Comment 13: The expansion of the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions for all Atlantic

billfish under both Magnuson-Stevens Act and ATCA could result in the double reporting of recreational landings from U.S. citizens fishing in foreign waters.

Response: NMFS disagrees. The final FMP amendment includes a final action to expand the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implement regulatory actions for Atlantic blue marlin and Atlantic white marlin under both Magnuson-Stevens and ATCA. NMFS will work with the Department of State, and other agencies to ensure that fish are counted accurately and to ensure that accurate catch data are submitted to ICCAT.

Billfish International Rebuilding Strategy

Comment 1: NMFS should negotiate with ICCAT to prohibit the landing of billfish throughout the Atlantic Ocean.

Response: For some ICCAT member countries/entities, billfish are used for subsistence and/or as a source of income, while others may have a "no discard" policy. However, this does not preclude these ICCAT member countries/entities from agreeing to additional management measures. The United States must continue to work with other members to reach a practical solution to rebuild Atlantic billfish resources. Indeed, the United States sponsored the 1998 ICCAT resolution calling for additional conservation measures following blue and white marlin stock assessments in 2000 and sailfish stock assessment in 2001. Recovery of overfished Atlantic billfish stocks will require a multi-national approach.

Comment 2: It is mathematically impossible for NMFS to reduce U.S. billfish mortalities by 25 percent simply by placing restrictions on the recreational fishery. NMFS should apply the ICCAT-recommended 25 percent reduction to all U.S. sources of mortality, not just billfish landed by recreational anglers.

Response: The 1997 ICCAT recommendation requires member countries/entities to "Reduce, starting in 1998, blue marlin and white marlin landings by at least 25 percent for each species from 1996 landings, such reduction to be accomplished by the end of 1999." Although the majority of U.S. billfish mortalities reported to ICCAT are a result of dead discards from the pelagic longline fishery, the ICCAT recommendation only applies to U.S. recreational anglers because they are the only U.S. sector allowed to land billfish. The United States is obligated by ATCA to comply with this recommendation.

An Atlantic billfish bycatch reduction strategy is established using the management tools included in the HMS FMP. Billfish mortality attributed to bycatch in the pelagic longline fleet is managed through the HMS FMP.

Comment 3: The United States has existing regulations that limit billfish landings (size limits for recreational anglers, and prohibitions on commercial possession of Atlantic billfish), therefore the 1997 ICCAT recommendation does not apply to this country.

Response: NMFS disagrees. The 1997 ICCAT recommendation requires a reduction of Atlantic blue marlin and Atlantic white marlin landings by at least 25 percent from 1996 levels, and there is no provision exempting countries with existing billfish regulations that limit allowable landings. Each member is to advise ICCAT on an annual basis of measures in place or to be taken that reduce landings of marlins or fishing effort. The United States is complying with this recommendation by increasing the minimum size limit of Atlantic blue marlin and white marlin, and continuing the commercial prohibition.

Economic Impacts Resulting from Billfish Measures

Comment 1: The draft FMP amendment overlooks the negative economic impacts of the preferred alternatives on recreational communities. Preferred alternatives will have negative economic impacts on not just direct participants in the Atlantic billfish fishery but travel-related industries; fishing-related businesses; and local charities that receive large donations from tournaments proceedings.

Response: The draft FMP amendment and the supplementary RIR/IRFA identified, based on the best-available information, the potential social and economic impacts of the various management measures, including expenditures by recreational anglers. The IRFA thoroughly discussed the recreational retention limit, along with the zero retention limit provision, and NMFS has dropped this measure from the final FMP amendment. NMFS has also established a voluntary observer program for charter/headboat vessels, in part to reduce the negative economic impacts that would be associated with a mandatory observer program for charter boats, and has dropped the prohibition of multiple hooks.

Comment 2: The preferred management measures selected by NMFS ignore the greater economic value of recreational fisheries relative to

that of the pelagic longline commercial fishery.

Response: NMFS disagrees. The draft FMP amendment and the supplementary RIR/IRFA refer to a 1989 study by Fisher and Ditton of Texas A&M University that provided an estimated economic impact (i.e., money spent) of the recreational component of the billfish fishery to be in excess of \$180 million. The draft FMP amendment and the supplementary RIR/IRFA also included an estimate of the total gross revenues foregone from dead discards of all billfish over the eight-year period between 1988 and 1996, \$5.3 million, or \$664,648 per year. The draft FMP amendment specifically stated: "While these values are far from insignificant, they are considerably less than the \$180 million spent each year by tournament anglers alone, and net economic benefits of \$2 million per year."

Comment 3: NMFS should evaluate which industry (recreational or commercial) provides the most economic value to the United States and select management measures accordingly. The recreational billfish community annually generates millions of dollars for the U.S. economy (economic impact) in the pursuit of what essentially constitutes a catch-and-release fishery. Conversely, commercially caught billfish have no value because they must all be discarded. The total ex-vessel value of targeted commercial species (i.e., tuna and swordfish) contributes less to the national economy than recreational highly migratory species anglers. Therefore, NMFS should ban use of pelagic longline gear in the U.S. EEZ.

Response: NMFS disagrees. The final RIR and the IRFA discuss common misconceptions of comparing recreational versus ex-vessel economic effects. Additionally, in determining final management actions, the economic value of a fishery is an important consideration, however it is not the sole criterion. NMFS must consider additional factors and consider resultant potential impacts on each fishing sector. While NMFS recognizes the significant economic value of billfish recreational fishery, it does not support banning the use of longline gear.

Comment 4: NMFS should reduce billfish bycatch mortality by developing a buyout program to reduce or eliminate pelagic longline vessel effort in the Atlantic Ocean.

Response: Consideration of a fishing capacity reduction plan, as well constraints on buyback programs and funding mechanisms were described in the draft FMP amendment. A buyout

program can only be effective in the reduction of billfish bycatch if the overall effort (i.e., number of hooks in the water) is reduced. The final FMP amendment action to establish an Atlantic billfish bycatch reduction strategy includes buyout programs as one of six elemental components in the HMS FMP that may be used to effectively reduce effort and longline bycatch mortalities. NMFS may consider establishing a buyout program in the HMS FMP after the rebuilding program in that plan is established, along with limited access.

Comment 5: Atlantic billfish tournaments that require landing billfish constitutes "trade, barter, or sale." NMFS should prohibit cash/merchandise prizes in association with these tournaments to reduce the incentive to land Atlantic billfish.

Response: NMFS disagrees. Regulations state that the sale or purchase of billfish from its management unit is prohibited (50 CFR 635.31). A survey of tournament rules has shown that a billfish is not required to be given to the tournament to qualify for a prize, rather the fish is only subject to a measurement of its weight. The fish is ultimately retained as the property of the individual submitting the fish for entry in the tournament, therefore no purchase or sale of the billfish has occurred and the regulations have not been violated. Any tournament that violates the prohibition on sale would be subject to civil action. However, the final FMP amendment does not prohibit cash/merchandise prizes in association with billfish tournaments as long as they are not given in exchange for any billfish.

Atlantic Tunas

Comment 1: NMFS should prohibit longline and net gear (including driftnets and purse seines) in the bluefin, yellowfin, and bigeye tuna fisheries.

Response: Driftnet gear is already prohibited in the bluefin tuna fishery and through this final action is prohibited in the fisheries for other Atlantic tunas (bigeye, albacore, yellowfin, skipjack (BAYS tunas). Pair trawls are prohibited in all Atlantic tuna fisheries. Longline gear is restricted in the bluefin tuna fisheries with strict target catch requirements for incidental catch retention. Through this final action, fishermen who wish to enter the BAYS longline fishery are required to obtain limited access permits for both Atlantic swordfish and sharks. As such, access to the BAYS longline fishery is limited. Since pelagic longline gear is used to target swordfish and other fish

species, prohibiting the gear in the Atlantic tuna fisheries would result in increased tuna discards. NMFS maintains that there is no reason at this time to prohibit the use of purse seine gear in the Atlantic tuna fisheries. Bycatch concerns are minimal and access to the fishery is limited.

Comment 2: NMFS received numerous comments regarding bluefin tuna landings quota allocation, supporting and opposing limiting the Purse Seine quota to 250 mt. NMFS also received requests to reallocate some Purse Seine quota to other categories (commercial and recreational) to reflect historical participation and/or the increase in fishery participants (e.g., the Angling category). Comments in support of Purse Seine quota reduction include: the Purse Seine allocation is inconsistent with NS 4 in that the allocation is not fair and equitable, a few individuals receive an excessive share of the landings quota, and since Individual Vessel Quotas are transferrable, it is conceivable that a single owner could acquire rights to the entire Purse Seine Quota; NMFS should not incorporate the IVQ system by reference; and NMFS should implement a buyback program for the Purse Seine fishery. Comments in opposition to limiting the Purse Seine category to 250 mt include: the proposed cap was neither presented in the draft HMS FMP nor to the HMS AP for discussion, would be an arbitrary and capricious action, and would be contrary to the Magnuson-Stevens Act provision that NMFS "allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery;" the argument that the fishery does not contribute catch per unit effort (CPUE) data is invalid; NMFS should not take this action without conducting a comparative analysis of allocations leading to "excessive quota shares;" and the AP, in discussing the issue of Purse Seine quota (as referenced in the proposed rule) was referring to relative quota shares rather than an absolute quota tonnage.

Response: As described in the FMP, NMFS bases the quota allocations on consideration of several factors, including the collection of the best available scientific data and the optimization of social and economic benefits. When NMFS established the current limited entry system with non-transferable individual vessel quotas (IVQs) for purse seining in 1982, NMFS considered the relevant factors outlined in section 303(b)(6) of the Magnuson-Stevens Act. In 1992, NMFS established "base" quotas for all categories, which were based on the historical share of

landings in each of these categories during the period 1983 through 1991. In 1995, NMFS reduced the Purse Seine category base quota by 51 mt, in large part because the Purse Seine category does not provide a catch per unit effort time series used to estimate trends in stock size. This reduced quota was the base for the allocation to purse seines in 1996 through 1998. NMFS believes that limiting the future Purse Seine category to this same quota level is fair and equitable, given that the limited entry (IVQ) system has limited participants who are insulated from increased competition and participation, in contrast to the other categories that are open-access fisheries with increasing participation and intense competition for the quota. Similarly, based on consideration of the historical participation of those in the Purse Seine fishery, NMFS does not believe that the allocation to the Purse Seine category, including any possible transfers of quota within the category, constitutes an excessive share of the bluefin tuna quota.

However, NMFS notes that the AP did not have an opportunity to address the Purse Seine quota in the context of the quota increase. Therefore, NMFS will hold the 8 mt in the Reserve until after the AP has discussed the issue. If NMFS concludes that a different result is appropriate, the Purse Seine category quota would be modified through the framework provisions in the FMP.

NMFS has no plans to consider a vessel buyback in the Purse Seine fishery at this time.

Comment 3: NMFS received numerous comments in support of a prohibition on the use of spotter aircraft by vessels (other than Purse Seine category vessels) participating in the bluefin tuna fishery, specifying that the prohibition would, among other reasons: lengthen the season via reduced catch rates, "level the playing field" for those fishermen who do not use planes, decrease bycatch and discard of undersized bluefin tuna, affirm the basis for the allowance of multiple landings for the Harpoon category (i.e., dependence on good weather), return the Harpoon category to its traditional fishing methods, and reduce the potential for accidents. NMFS received comment that the final rule should be issued before May 15, 1999, so that vessel owners can choose their appropriate permit category. NMFS also received several comments from opponents of a prohibition, including: NMFS should address the spotter plane issue independently of the FMP and should base its decision on the best available science; NMFS has failed

to identify the important fishery-independent data (e.g., on bluefin tuna distribution, behavior, and environmental biology) collected by spotter pilots and has implied in the FMP that CPUE-based indices are the only scientific data of any importance to bluefin tuna management; and arguments to prohibit the use of planes in the bluefin tuna fishery are baseless. Other comments NMFS received regarding the spotter plane issue include: NMFS should make a decision regarding an increase to the Harpoon quota independent of the decision on spotter planes; NMFS should implement a subquota for Harpoon vessels that are assisted by spotter planes; NMFS should implement a daily catch limit of one bluefin tuna per day for Harpoon vessels; and NMFS should hire spotter pilots to conduct scientifically valid, fishery-independent aerial surveys. NMFS also received comment that, since many General category permit holders may obtain a Harpoon category permit if NMFS implements a spotter plane prohibition (for vessels other than in the Purse Seine category), NMFS should increase the Harpoon category quota.

Response: NMFS did not implement a final action regarding this issue in the HMS FMP. A separate rulemaking will be undertaken after further deliberation and analyses. NMFS agrees that analysis of the effects of spotter aircraft on vessels participating in the bluefin tuna fishery must be based on the best available science. NMFS intends to complete a final rule on this issue prior to the commencement of the General and Harpoon category fishing seasons, June 1, 1999, and understands that it is preferable to announce the decision prior to the deadline for permit category changes.

Comment 4: NMFS should not require that Atlantic tunas other than bluefin tuna be landed with the tail attached; this regulation is unnecessary and restrictive. The current dressing procedures, which leave pectoral fin and the dorsal fins attached, provide the necessary physical features for accurate species identification. Keeping tail fins intact creates processing and storage problems for tunas that will reduce quantity and price.

Response: NMFS recognizes the impact of the current required landing form on commercial fishermen, especially longline fishermen. NMFS requires the landing of Atlantic tunas with the tail and one pectoral fin attached to facilitate enforcement of minimum size. However, NMFS is currently analyzing yellowfin and bigeye tuna measurement data to

develop a formula to convert measurements (e.g., pectoral fin to fork measurement or pectoral fin to keel measurement) for yellowfin and bigeye tuna landed with the head removed. NMFS may consider allowing yellowfin and bigeye tuna to be landed with head and tail removed when an appropriate conversion formula is developed.

Comment 5: NMFS received numerous comments regarding restricted-fishing days (RFDs), some of which support the status quo, some of which oppose RFDs altogether, and some suggesting alternate schedules, including: in order to extend the General category season, NMFS should implement more RFDs than proposed, e.g., 3 days or more per week (Sundays, Wednesdays, and Fridays or Sundays, Mondays, and Wednesdays) in addition to the days that correspond to Japanese market closures, and NMFS should begin the schedule of RFDs for 1999 in early July.

Response: NMFS has considered these comments and agrees additional General category RFDs may increase the likelihood that fishing would continue throughout the summer and fall, and would further distribute fishing opportunities without increasing bluefin tuna mortality. NMFS will announce annually the General category effort control schedule (time period subquotas and RFDs) through a final specifications notice. NMFS intends to announce the 1999 RFD schedule and address comments regarding effort controls in the final specifications, to be published concurrent with this final rule. See Appendix 3 of the final HMS FMP for the 1999 effort control schedule and a discussion of the effort control alternatives.

Comment 6: NMFS received some comments in support of the status quo General category time-period subquotas (three periods), and some suggesting alternate schedules, including: NMFS should implement two General category time-period subquotas (e.g., for June-August and September-December) since prices are higher in August than September and to avoid derby conditions in October.

Response: NMFS addresses comments regarding effort controls in the 1999 final specifications notice, published concurrent with this final rule. See Appendix 3 in the final HMS FMP for the 1999 effort control schedule and a discussion of the effort control alternatives.

Comment 7: NMFS received several comments requesting more certainty regarding the Angling category season, retention limits, and quota allocation, including: NMFS should implement a

separate daily retention limit for U.S. Coast Guard inspected vessels; NMFS should separate recreational landings quotas for Charter and private vessels; NMFS should implement more and/or different regional subquotas; NMFS should implement date-certain seasons; NMFS should balance the entire Angling category quota over three years; and NMFS should shift the north/south dividing line for the Angling category. Further comment included: NMFS should establish a set season with daily retention limits and minimum sizes by area and make adjustments for overharvests and underharvests annually vs. inseason. With this approach, the recreational industry and anglers can make plans for the fishing season that will not get disrupted by uncertain changes (i.e., closures and adjustments to the daily retention limit). An improved data collection program would be an important part of this and could be pursued with industry support to provide accurate catch and effort data for quota/stock monitoring purposes and to determine the sub-area quotas/seasons for the following year. The annual assessment of the catch and adjustment of the sub-area quotas should make it easier to analyze and implement a better location for the north/south line and the possibility of a third area in the vicinity of Montauk, New York and north.

Response: In the HMS FMP, NMFS describes the challenges in managing and monitoring the recreational fishery for bluefin tuna, with its highly variable catch rates and locations, and the ICCAT restrictions on the catch of school size bluefin tuna. In order to monitor recreational landings of bluefin tuna, NMFS requires cooperation from the recreational community in using the Automated Catch Reporting System and participation in the Large Pelagic Survey. NMFS has the authority and flexibility to open and close the Angling category in sub-areas in order to ensure equitable fishing opportunities. The recent ICCAT recommendation which allows 4 years for countries to balance their landings of school size bluefin tuna also should allow the United States more flexibility in managing this fishery, and NMFS is committed to working with the Advisory Panel, the States, and recreational fishermen in order to better manage the Angling category fishery.

Comment 8: NMFS should postpone action on the bycatch measures until it has at least a full year's data from all fishing sectors, in order to proceed in a fair, equitable, and effective manner.

Response: NMFS has based the bycatch measures on the best available

information. Further, NS 9 requires NMFS to minimize bycatch to the extent practicable.

Comment 9: NMFS should permit spearguns as an allowable gear type in the Atlantic tunas Angling category fishery.

Response: The fishery for Atlantic tunas is subject to intense competition among the various user groups; the addition of spearguns as an allowable gear type could cause additional conflict among the user groups, and may pose other problems including safety and discard concerns. Therefore, NMFS is not adding spearguns as an allowable gear type at this time.

Comment 10: NMFS received numerous comments for and against the proposed recreational daily retention limit of 3 yellowfin tuna per angler. Those in support of the retention limit include: NMFS has ignored the expansion of the recreational yellowfin tuna (and bigeye tuna) effort despite the U.S. commitment to ICCAT to limit effective yellowfin effort to the reported 1992 level, so NMFS should implement recreational restrictions now; a daily retention limit of 3 yellowfin tuna per angler is excessive; NMFS should implement a yellowfin tuna daily retention limit since yellowfin tuna seem to be of less weight than in previous years. Comments in opposition to the retention limit include: As yellowfin tuna are not currently considered overfished, there is no basis for a yellowfin tuna daily retention limit; a limit now may lead to a further reduction of the retention limit in subsequent years, as has happened in the bluefin tuna fishery; NMFS has proposed no commercial limits, so the recreational limit is inequitable; setting a recreational daily retention limit may disadvantage the United States in ICCAT negotiations (if a yellowfin tuna quota is recommended in the future) if it results in decreased U.S. landings; a retention limit would have a negligible impact on fishing mortality since on most trips, each angler lands 3 or fewer yellowfin tuna, and in many areas, captains voluntarily limit each angler to 3 or fewer yellowfin tuna; there is no domestic benefit for the regulation since U.S. landings comprise only approximately 4 percent of the Atlantic landings; and until NMFS has scientific data that show that the implementation of daily retention limits is warranted, NMFS should not take any action that affects only the recreational sector.

Response: NMFS acknowledges the importance of yellowfin tuna to the recreational fishing industry. NMFS chooses to take the precautionary approach since the latest SCRS report

indicates that the current fishing mortality rate on yellowfin tuna is probably higher than that which would support maximum sustainable yield on a continuing basis. Further, effort restrictions are consistent with the ICCAT recommendation to limit effective fishing effort for yellowfin tuna to 1992 levels. NMFS has already implemented, or is implementing through the HMS FMP, several restrictions in the commercial yellowfin tuna fisheries, including limited access in the purse seine and longline BAYS fisheries, and the prohibition on pair trawl gear and driftnets in the Atlantic tunas fishery. NMFS maintains that limiting access to the recreational yellowfin tuna fishery is not desirable at this time and that the retention limit is an alternative management measure that is consistent with the ICCAT recommendation. This retention limit for yellowfin tuna is designed to prevent excessive landings in the recreational fishery and maximize long-term fishing opportunities.

Comment 11: NMFS should allow dealers more than 5 days after the completion of each bi-weekly reporting period to submit bluefin tuna bi-weekly reports. Price information is not available for bluefin tuna shipped to Japan until 4 days after landing, and allowing dealers only one day to submit the information is unreasonable.

Response: NMFS agrees, and understands that the proposed reporting requirement may be difficult for dealers to comply with considering the market for bluefin tuna. Therefore, NMFS is not modifying the current 10-day reporting period for bluefin tuna bi-weekly reports.

Comment 12: NMFS should not hold 20 mt of the Angling category school bluefin tuna subquota in reserve, given that NMFS may now balance overharvests and underharvests over a four-year period.

Response: Because of high, and highly variable catch rates, the Angling category can easily harvest and exceed its school bluefin tuna subquota. NMFS maintains that holding some school bluefin tuna landings quota in reserve is prudent in that it will help to ensure U.S. compliance with the ICCAT-recommended limit on the retention of school bluefin tuna. NMFS may allocate tonnage from the school bluefin tuna reserve during the season, as appropriate.

Comment 13: The provision to add or deduct bluefin tuna underharvest or overharvest, as applicable, should be discretionary only for school bluefin tuna, which can be balanced over a four-

year period. For all other size classes, the provision should be mandatory.

Response: NMFS agrees and has clarified the regulations to be consistent with the ICCAT recommendation. In the case of bluefin tuna overharvest or underharvest, NMFS must subtract the overharvest from, or add the underharvest to, the appropriate quota category, or subcategory, with the exception of the Angling category school bluefin tuna subcategory, for the following fishing year, provided that the total of the adjusted landings quotas and the Reserve is consistent with the ICCAT Rebuilding Program. In the following year, NMFS also may allocate any remaining landings quota from the Reserve to cover this overharvest, consistent with the established criteria.

For the Angling category school bluefin tuna subcategory, because of the ICCAT-recommended 4-year balancing period, NMFS may subtract the overharvest from, or add the underharvest to, the school bluefin tuna subquota for the following fishing year. NMFS must, prior to the end of the 4-year balancing period, make adjustments to account for overharvest of school bluefin, if necessary to comply with the ICCAT Rebuilding Program.

Quota monitoring in the bluefin tuna fishery is difficult and overharvests are likely, thus accounting for overharvests will not be "punitive," in that one category or subcategory's landings quota overharvest will not be redistributed to other categories. While some comments submitted to NMFS have suggested that categories should be "rewarded" or "punished" for their under/overharvests as described above, NMFS maintains it is not the intent of ICCAT or a domestic management objective to redistribute quota from one category to another due to overharvest. The ICCAT provision regarding overharvest and underharvest is designed to address consistent mortality, not just compliance.

Comment 14: The Angling category fishery should be catch and release only.

Response: NMFS considered the elimination of the small fish landings quota for bluefin tuna, but rejected this alternative because the elimination of the school, large school, and small medium bluefin tuna fishery would have adverse social and economic impacts on the recreational and charter/headboat sectors, and would reduce NMFS' ability to collect the best available data on the catches of the broadest range of age classes possible for stock assessment purposes.

Comment 15: Commercial yellowfin tuna landings should be reduced by at least 50 percent.

Response: As indicated in a previous response, NMFS has taken numerous measures to restrict the commercial yellowfin tuna fisheries. Therefore, NMFS maintains that no further action regarding the commercial yellowfin tuna fisheries is necessary at this time. NMFS is concerned about the level of fishing mortality on this stock, and will continue to monitor the status of the yellowfin tuna fisheries.

Comment 16: NMFS should continue to allow the traditional harvest of skipjack, bonito, and bait fish with driftnet gear. This gear has been used off the coast of New Jersey for 11 years. This is a clean fishery with no bycatch of marine mammals or endangered species. The draft HMS FMP shows that skipjack and bonito stocks are underutilized and U.S. catches are at low levels. The fisheries for skipjack and bonito are mixed; a directed fishery for bonito cannot be pursued without skipjack as bycatch.

Response: Because the Magnuson-Stevens Act does not include bonito in its definition of HMS, NMFS is not implementing bonito conservation and management measures in this FMP. NMFS recognizes that the prohibition on driftnets for Atlantic tunas would preclude a small coastal driftnet fishery from retaining its catch of skipjack. NMFS may issue EFPs to the limited number of coastal driftnet fishermen affected by the gear prohibition in order to collect more information on this fishery and help determine NMFS' future course of action. Individuals who wish to use driftnet gear when targeting species other than Atlantic tunas may apply to NMFS for an EFP to land incidentally caught Atlantic tunas (other than bluefin).

Comment 17: NMFS should allow individuals renting vessels to obtain an Atlantic tunas permit (e.g., for tourists in the U.S. Virgin Islands and Puerto Rico).

Response: Any vessel with state registration or U.S. Coast Guard documentation may obtain an Atlantic tunas permit. Individuals chartering or renting a vessel for which NMFS has issued an Atlantic tunas permit are therefore eligible to fish for Atlantic tunas.

Comment 18: The existing and proposed bluefin tuna regulations violate the Magnuson-Stevens Act, specifically NS 1. The HMS FMP should include a valid designation of MSY, OY, and EFH, using the precautionary approach, as well as objective and measurable criteria for defining overfishing and the measures for ending overfishing and rebuilding the fishery. The ICCAT rebuilding program also

violates NS 2, which requires the use of the best scientific information available, and it was adopted without public input. NMFS must explain why it is using untested models to set MSY. Additional measures that should be included in the HMS FMP include increased observer coverage, minimization of bycatch in spawning areas such as the Gulf of Mexico, and minimization of bycatch by regulating longline fishing gear.

The HMS FMP and proposed regulations also violate the United Nations Agreement on Straddling Stocks, which requires the application of the precautionary approach in the management of fish such as bluefin tuna.

Response: The ICCAT rebuilding program meets the standards of the Magnuson-Stevens Act in that it includes an appropriate time period, targets, limits, and explicit interim milestones for recovery; NMFS indicated in the draft FMP that adoption of the ICCAT rebuilding program would be the preferred alternative if these standards were met. The ICCAT rebuilding program is based on the SCRS stock assessment, which is the best scientific information available. It is consistent with both the Magnuson-Stevens Act and the Atlantic Tunas Convention Act in that it implements a quota equal to the ICCAT-recommended allocation for the United States, and maintains traditional fishing patterns of U.S. vessels. The bluefin tuna rebuilding program is precautionary in that it provides the flexibility to modify the Total Allowable Catch, the MSY target, and/or the rebuilding period based on subsequent scientific advice.

Finally, note that NMFS is implementing a time/area closure and a limitation on length of the mainline to reduce pelagic longline dead discards.

Comment 19: In the draft FMP, NMFS has used definitions and methodologies that ascribe higher values to the recreational fishery or the "existence value" of HMS than to the "net economic benefits" of the commercial fishery. NMFS appears to interpret NS 8 as less equal than NS 1.

Response: NMFS disagrees; NMFS is not ascribing higher values to the recreational fishery, or the "existence value" of HMS. To prepare this FMP in accordance with the Magnuson-Stevens Act, NMFS has addressed the National Standards for both the commercial and recreational sectors using the best available information. In addition, the NSGs state that the consideration of community impacts must not compromise the achievement of conservation requirements.

Comment 20: Regarding public hearings, NMFS should ensure that individuals be provided an environment in which they can express their comments for the record. At a few of the HMS FMP public hearings, some individuals felt physically or otherwise threatened by other attendees while or after making their comments and have expressed that they will not give comments at public hearings until NMFS addresses this issue.

Response: NMFS is very concerned about comments that concern for personal safety is hindering the public process. NMFS agrees that all attendees at public hearings should be able to articulate their comments in a safe environment. Public comment is an essential part of rulemaking, and public hearings can be an important element in the public comment process. NMFS acquires good information from the comments presented at public hearings and expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of each public hearing, a NMFS hearing officer explains the meeting ground rules (e.g., attendees will be called to give their comments in the order in which they registered to speak, each attendee will have an equal amount of time to speak, and attendees should not interrupt one another). The hearing officer attempts to structure the meeting so that all attending members of the public are able to comment, if they so choose, regardless of the controversiality of the subject(s). Attendees are expected to respect the ground rules, and if they do not, they will be asked to leave the hearing. In the future, when announcing HMS public hearings or scoping meetings, NMFS will include in the notice a reminder of the ground rules for these meetings.

Comment 21: In the FMP, the objectives for bluefin tuna management, especially those regarding the preservation of traditional fisheries and historical fishing patterns, should be listed separately, as should the objectives for the other HMS fisheries, and the seven objectives (three listed in the 1995 bluefin tuna Final EIS and four in a 1992 bluefin tuna final rule) should be included. This will be especially important for future ICCAT negotiations as other nations may seek a portion of the west Atlantic Total Allowable Catch.

Response: In preparing one FMP for the management of Atlantic tunas, swordfish, and sharks, NMFS has chosen to list the management objectives together. However, NMFS has added language to the objectives to include preserving traditional fisheries

as well as historical fishing patterns and participation.

Comment 22: NMFS should allocate the fair share of the 1998 ICCAT-recommended U.S. landings quota increase to the Incidental category, the Harpoon category, and the Purse Seine category, and should ensure that any future landings quota increases be distributed fairly and according to each user group's historical share of the fishery. NMFS does not need to maintain such a large reserve, given the improvements in commercial quota monitoring, the new 4-year balancing period for school bluefin tuna, and the proposed school bluefin tuna reserve. NMFS should allocate 17 mt from the Reserve to the Harpoon category quota, to reflect the Harpoon category's traditional participation in the fishery.

Response: The FMP implements percentage share allocations for bluefin tuna, and all categories other than the Purse Seine category will share in the impacts of both quota increases and reductions (see response to comment 2). Bluefin tuna allocation issues were discussed extensively at several HMS AP meetings in 1998, and there was general support for maintaining the 1997/1998 quota allocations (which are based upon the historical share of landings in each of these categories during the period 1983 through 1991, modified in 1995 and 1997). While NMFS agrees that improved commercial bluefin tuna monitoring, along with the 1998 ICCAT recommendation and the measures adopted in this FMP, allow for more flexible management of the fishery, NMFS maintains that the Reserve is necessary to ensure that the United States does not exceed its ICCAT-recommended landings quota, and to utilize it for inseason or post-season transfers as necessary and appropriate.

Comment 23: In order to avoid potential bycatch mortality, NMFS should not implement a daily retention limit for the Incidental other subcategory (e.g., for traps), but rather should allow landings until the quota is filled.

Response: The FMP eliminates the Incidental permit category for Atlantic tunas, and creates two new categories: "Longline" to reflect the existing authorization of directed longline fisheries for tunas other than bluefin tuna, and "Trap" to account for unavoidable catch of bluefin tuna by pound nets, traps, and weirs. To address enforcement issues concerning unauthorized landings of bluefin tuna under the Incidental category quota, fixed gear other than "traps" and purse seines for non-tuna fisheries will no

longer be allowed to land bluefin tuna. Because of the limited "Trap" quota, and the infrequent catch of bluefin tuna by pound nets, traps, and weirs, NMFS maintains that the proposed one fish per year retention limit for the Trap category is sufficient, and will not result in additional bycatch.

Comment 24: The comment period for the Bluefin Tuna Addendum was not long enough.

Response: NMFS filed the supplemental proposed rule regarding bluefin tuna issues on February 22, 1999, and express-mailed copies of the Bluefin Tuna Addendum to AP members and other consulting parties to maximize time to review the document before the deadline for comments. In response to public requests that additional time was needed to review the Addendum, NMFS subsequently extended the comment period deadline (except for proposed swordfish import restrictions) to March 12, 1999, to allow for 2 weeks of additional comments, and added a public hearing at the end of the scheduled 26 hearings.

Atlantic Swordfish

Swordfish Rebuilding

Comment 1: NMFS received many comments in support of swordfish rebuilding programs with various timetables, including the adoption of an ICCAT-recommended rebuilding program and rebuilding programs shorter than 10 years.

Response: NMFS must implement the ICCAT-recommended quota once it is accepted by the United States, and has supported the development of a rebuilding program for swordfish by ICCAT scientists. NMFS believes a 10-year rebuilding program for North Atlantic swordfish is appropriate. NMFS considered a shorter rebuilding program but seeks to balance a reduction in short-term impacts on small businesses and recovery of the stock.

Comment 2: NMFS should ban swordfish fishing for 5 years.

Response: The United States cannot reduce the swordfish quota to zero for 5 years; the United States is required by ATCA to adopt ICCAT quotas once the United States accepts the ICCAT recommendation. NMFS is establishing a foundation for working through the ICCAT process, to develop an international rebuilding program for Atlantic swordfish once measures are accepted by the United States. Unilateral action will not rebuild swordfish. Banning U.S. swordfish fishing will not rebuild the stock; international action is necessary.

Comment 3: NMFS should have a clear statement of objectives and measures for the international rebuilding of swordfish, contrary to what happened at ICCAT in 1998 with bluefin tuna. Those objectives should include a 10-year rebuilding program with associated quota reductions, closed spawning areas to reduce bycatch of juvenile swordfish, and a reduction in fishing capacity.

Response: The ICCAT Advisory Committee (IAC) works with the U.S. commissioners to ICCAT and NMFS to develop the negotiating strategy at ICCAT. The HMS FMP serves as the foundation for developing an international rebuilding program that is consistent with the Magnuson-Stevens Act; the final action states that NMFS believes a 10-year program is appropriate. The IAC and commissioners will seek comment on the U.S. position at ICCAT at five regional meetings in the Fall of 1999 as well as at the IAC meeting scheduled for October 1999.

Comment 4: NMFS should include an allowance for having swordfish fillets/steaks on board for personal consumption, similar to the groundfish fishery management plan.

Response: NMFS cannot implement this measure at this time because it was not contained in the proposed rule (or draft FMP). However, NMFS has studied similar existing regulations in other fisheries and may raise the issue at a future meeting of the HMS Advisory Panel.

Comment 5: NMFS should reinstate the commercial retention limit (trip limit) for swordfish to help maintain higher prices and make sure quotas are not exceeded.

Response: NMFS established the commercial retention trip limit in order to slow catch rates. Since that time, many large capacity vessels have left the Atlantic pelagic longline fishery. If a need arises in the future, NMFS will consider other commercial retention limits, as well as other alternatives, for addressing these problems.

Comment 6: NMFS should not exempt vessels with a vessel monitoring system (VMS) unit from the swordfish retention limits in the North Atlantic Ocean during a closure of that directed fishery. Vessels could make one set south of the line, come north, and then continue to make sets north of the line and NMFS would not know where the swordfish were caught.

Response: VMS is required by all pelagic longline vessels, and regulations have been altered to accommodate this measure, therefore, there is no "exemption." NMFS agrees that VMS

does not indicate how many swordfish are caught in a set. However, VMS would reveal if a longline set was made in the (closed) north Atlantic, should such a violation occur. It is not necessary to know the number of fish caught in a closed area to impose civil penalties.

Comment 7: When the quota for swordfish landings is met, no swordfish imports should be allowed into the United States.

Response: NMFS disagrees. Trade restrictive measures must be based on strong evidence that there are resource conservation benefits to such measures and must be consistent with international legal obligations. Note also that NMFS has implemented a final rule prohibiting the import of Atlantic swordfish less than the ICCAT alternative minimum size, and requiring documentation of the source of all swordfish imports in an effort to better monitor international fishing levels.

Comment 8: The swordfish data collected off the coast of south Florida in the 1980s are biased and incomplete. The fishery was severely depleted at that time due to the expansion of the near-shore longline fishery off Florida, which adversely affected juvenile and migrating fish.

Response: The data collected on fishing mortality of juvenile and migrating swordfish off Florida in the 1980s are currently the best available scientific information to reflect the historical conditions of that fishery. However, if additional data become available, they could be incorporated in the stock assessment.

Swordfish Recreational Fishery

Comment 1: NMFS received many comments on the issue of accounting for recreational fishing mortality, including suggestions for future monitoring programs. These suggestions included maintaining the status quo, establishing a new recreational directed fishery quota, or supporting the proposed measure of subtracting recreational landings from the incidental catch quota.

Response: NMFS needs time to assemble the historical data that exist and therefore cannot set a reasonable recreational directed fishery quota at this time. However, NMFS recognizes that effort in this sector is growing as swordfish encounters appear to be increasing in some areas and therefore swordfish recreational landings need to be subtracted from the U.S. swordfish quota. NMFS will subtract recreational swordfish landings from the incidental catch quota and may establish a directed

fishery quota and monitoring program, when and if appropriate.

Comment 2: NMFS should establish a recreational swordfish retention limit of 1 swordfish per person per day.

Response: NMFS disagrees. Recreational directed fishing mortality is not sufficiently known at this time to determine the impacts of a recreational retention limit for swordfish. Retention limits may be established in the future through the framework process.

Comment 3: The proposed regulations imply that if the recreational catch is subtracted from the Incidental catch quota and that quota category closes because the quota is met, then there will be a closure of the recreational fishery.

Response: NMFS' intent is to account for all sources of mortality, including the recreational catch of swordfish. Therefore, if the incidental catch quota category is closed, all fishermen who catch swordfish incidentally, including all recreational fishermen, must release them. As noted in Comment 1 in this section, NMFS may consider a subquota for recreationally-caught swordfish in the future.

Counting Dead Discards Against the Swordfish Quota

Comment 1: NMFS received many comments on the issue of accounting for all sources of mortality on the swordfish stock. These comments supported either unilateral or multilateral (or both) measures to count dead discards against overall quotas.

Response: NMFS agrees that accounting for all sources of mortality will enhance rebuilding, and this FMP establishes the foundation to count dead discards against the swordfish quota. NMFS cannot count dead discards against the ICCAT quota unless recommended by ICCAT.

Comment 2: If NMFS counts dead discards of swordfish against the quota, then NMFS should eliminate the minimum size and allow fishermen to land and utilize all hooked swordfish.

Response: NMFS implemented the alternative ICCAT minimum size of 33 lb dw in 1996 and has implemented a ban on sale of swordfish less than that size in the United States. Counting dead discards against the U.S. quota may serve as an incentive for fishermen to avoid areas of small swordfish concentration. By coupling a minimum size measure with a future time/area closure, NMFS' intent is to reduce U.S. mortality of undersized swordfish.

Comment 3: Allocation of quotas should be gear-specific and discards should be counted against these specific gear allocations.

Response: NMFS authorized longline, harpoon, and other handgear fishermen to fish for Atlantic swordfish in a directed commercial fishery. NMFS does not intend to further sub-divide the directed quota at this time due to low swordfish landings by handgear fishermen. Dead discards would be counted against the entire category.

Comment 4: NMFS counted swordfish dead discards against the quota in the past and it did not make a difference to the stock.

Response: NMFS has always monitored and reported dead discards in the commercial swordfish fishery to ICCAT, and this mortality was taken into account in assessing total mortality of swordfish. NMFS wants to account for all sources of mortality, and to create every incentive for vessel operators to minimize bycatch and bycatch mortality of HMS. Rebuilding swordfish stocks requires more than just accounting for dead discards, it requires a decrease in fishing mortality rate to rebuild overfished stocks. In the past, the fishing mortality rate was too high and has resulted in overfishing, regardless of whether dead discards were included in the quota.

Swordfish Size Limits

Comment 1: NMFS should consider eliminating the minimum size limit for swordfish because other countries keep all their swordfish.

Response: A minimum size is effective only if it results in a decrease in catch of small swordfish because fishermen are able to modify their behavior or if the survival of released fish is sufficiently high to offset the fishing mortality that may result. Fishermen have been able to reduce small swordfish bycatch to a certain extent, but additional measures may now be necessary to enhance the effectiveness of the minimum size (e.g., time/area closures.) NMFS recognizes the need for further progress in reducing small swordfish mortality, and will use all available information to consider other measures to do so (e.g., time/area closures, gear modifications, etc.)

Comment 2: The United States has failed to comply with ICCAT recommendations to protect juvenile swordfish.

Response: NMFS has adopted the alternative minimum size for swordfish, has prohibited the sale of undersized swordfish, and keeps appropriate records of swordfish discards. All of these measures are consistent with ICCAT recommendations to protect small swordfish.

Comment 3: NMFS received many comments on the minimum size for

swordfish that ranged from maintaining the status quo to adopting a schedule of small annual increases in the swordfish minimum size limit above the current minimum size limit of 33 lb (15 kg) dressed weight (dw). Other comments: include the minimum size in the framework; consider more creative options for minimum sizes such as changing tolerance levels so the swordfish are not wasted; and consider options that would be acceptable in the international context to reduce size compliance issues that would otherwise undercut rebuilding schedules.

Response: Reducing mortality of small swordfish is important to the recovery of the stock. Increasing the minimum size in increments over time, however, makes it difficult to assess changes in stock size and structure due to the way size-specific abundance data are collected. Increasing the minimum size might increase longline discards given the fact that swordfish do not segregate by size class throughout the Atlantic. NMFS prefers to maintain the minimum size and implement time/area closures, gear modifications, and other measures to reduce bycatch of undersized swordfish and increase survival of released fish. NMFS has included the swordfish minimum size in the FMP framework and is addressing small swordfish bycatch reduction through development of more effective time/area closures of the pelagic longline fishery.

Atlantic Sharks

Shark Fishing Gears

Comment 1: NMFS should prohibit commercial fishing gears; NMFS should prohibit longline gear.

Response: NMFS disagrees. The final actions in the HMS FMP are expected to meet the conservation goals to rebuild large coastal sharks (LCS) and prevent overfishing of pelagic and small coastal sharks (SCS) while allowing limited commercial harvest of sharks to continue.

Comment 2: NMFS should ban shark drift gillnets because of excessive bycatch of finfish and protected species in that fishery, and because the Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations do not address sea turtle and finfish bycatch issues.

Response: NMFS is gathering information on the effect of drift gillnets in Atlantic shark fisheries on protected species, juvenile sharks, and other finfish. However, because the limited data available at this time do not indicate high bycatch and bycatch mortality of protected species, juvenile sharks, and other finfish in the shark drift gillnet fishery, NMFS is not

prohibiting use of this gear in shark fisheries at this time, consistent with NS 2 which requires that management measures be based on the best scientific information available. NMFS requires 100 percent observer coverage in the southeast shark drift gillnet fishery at all times to increase data on catch, effort, bycatch and bycatch mortality rates in this fishery.

Comment 3: NMFS should not adopt the ALWTRP regulations, which are implemented under the Marine Mammal Protection Act, under Magnuson-Stevens Act because the purposes and goals of the Acts are different.

Response: NMFS believes that adoption of these regulations under the Magnuson-Stevens Act will increase effective regulatory consistency by regulating fishing activities under the authority of the Magnuson-Stevens Act to comply with Marine Mammal Protection Act objectives. NMFS is currently considering the implications of several regulations that affect the practice of strikenetting in the shark drift gillnet fishery. These regulations include the List of Fisheries and Gear under the Magnuson-Stevens Act (64 FR 4030), the ALWTRP regulations under the Marine Mammal Protection Act (64 FR 7529), and the proposed rule to implement the HMS FMP (64 FR 3154). NMFS will address any inconsistencies through future regulatory and other actions.

Comment 4: NMFS should require 100 percent observer coverage in the southeast shark drift gillnet fishery to make sure that all bycatch is documented.

Response: NMFS agrees.

Comment 5: The ALWTRP regulations, which are effective in April, 1999, will have huge economic impacts on, and may eliminate, the southeast shark drift gillnet fishery due to the prohibition on night sets.

Response: The economic effects of the regulations implementing the ALWTRP were considered in that rulemaking (62 FR 39175, July 22, 1997; 64 FR 7529, February 16, 1999).

Comment 6: NMFS should not require 100 percent observer coverage in one fishery; observer coverage should be comparable in all fisheries.

Response: NMFS agrees that observer coverage should be comparable in that the level of coverage should be adequate to meet scientific and management data needs. NMFS disagrees that levels of observer coverage must be the same across fisheries that use different gear, fish in different areas, or have different bycatch rates.

Comment 7: NMFS should consider converting all shark drift gillnet boats to longline gear to reduce bycatch and the costs of monitoring this fishery.

Response: NMFS believes that the combination of the measures in the HMS FMP, including capping the SCS quota, the requirement for 100 percent coverage at all times in southeast shark drift gillnet fishery, and adoption of the ALWTRP regulations under Magnuson-Stevens Act, are appropriate to address bycatch concerns in this fishery at this time.

Comment 8: NMFS should require species-specific reporting in the menhaden purse seine fishery, count all dead discards of sharks against the commercial quotas, and encourage use and development of bycatch excluder devices.

Response: NMFS agrees that more species-specific reporting and increased observer coverage may be warranted to determine the catch, effort, and bycatch and bycatch mortality rates in the menhaden purse seine fishery. NMFS intends to fully analyze available information and will work with the appropriate regulatory agencies to consider additional management measures in the future as necessary.

Comment 9: NMFS should implement the authorized gears for sharks as proposed.

Response: NMFS agrees. NMFS is currently considering the implications of several regulations that affect the practice of strikenetting in the shark drift gillnet fishery. These regulations include the List of Fisheries and Gear under the Magnuson-Stevens Act (64 FR 4030), the ALWTRP regulations under the Marine Mammal Protection Act (64 FR 7529), and the proposed rule to implement the HMS FMP (64 FR 3154). NMFS will address any inconsistencies through future regulatory and other actions.

Sharks-General

Comment 1: The original FMP is working and NMFS should give the regulations a chance to be reflected in the science before making more changes.

Response: NMFS disagrees. The final HMS FMP measures for Atlantic sharks are in large part based on 1998 Shark Evaluation Workshop results that indicate that additional reductions in effective fishing mortality are necessary to rebuild LCS. The HMS FMP also implements several precautionary measures for pelagic and SCS in order to prevent these species from being overfished.

Comment 2: NMFS should ensure that states implement similar size

restrictions for sandbar sharks; effective LCS and SCS management will require coordination with regional councils and states.

Response: NMFS has asked states to attend AP meetings and to implement regulations consistent with Federal regulations. Several states have implemented or are in the process of implementing consistent or more stringent shark regulations. NMFS intends to continue to work with the Atlantic and Gulf coastal states, the regional fishery management councils, and the regional commissions to coordinate consistent regulations for sharks in state and Federal waters.

Comment 3: NMFS developed management options without international consensus and has failed to pursue comparable shark conservation throughout the range of these species. NMFS should justify implementing unilateral actions when international actions are necessary to rebuild shark stocks.

Response: Domestic action is warranted due to the fact that several important nursery areas are located within U.S. waters and that proactive domestic management is a critical element for successful international shark management. NMFS disagrees that it has failed to pursue comparable shark conservation internationally. The United States was a leading participant in the recent FAO Consultation on Shark Conservation and Management, which resulted in the adoption of the Global Plan of Action for Sharks. ICCAT is pursuing additional data collection and analyses on sharks through its current authority. NMFS is also pursuing regional management through cooperative discussions with Canada and Mexico.

Comment 4: NMFS must increase observer coverage and port sampling (perhaps to 50 percent of fishing effort) to determine the effectiveness of the measures in the HMS FMP, particularly the effectiveness of minimum sizes to reduce fishing mortality on juvenile sandbar and dusky sharks, and to determine bycatch and bycatch mortality of prohibited species and undersized fish. NMFS should conduct length frequency monitoring on an annual basis.

Response: NMFS agrees that observer coverage, port sampling, and length frequency monitoring can be important tools in evaluating the effectiveness of the final actions, including the prohibition on possession of dusky sharks. One of NMFS' goals is to ensure that monitoring and observer coverage meet scientific assessment needs. NMFS

intends to take practicable steps to increase observer coverage.

Comment 5: NMFS should consider regional differences in its management.

Response: NMFS agrees and has attempted to do so in the development of the HMS FMP. NMFS believes that the establishment of ridgeback and non-ridgeback LCS subgroups and the new procedures to adjust for quota over/underharvest address these concerns.

Comment 6: NMFS received several comments regarding minimum sizes for sharks, ranging from a minimum size of 4 feet and 4.5 feet for all sharks, 5 feet for all sharks, 3 feet for all small sharks, 6 feet for large sharks, 6 feet for mako and thresher sharks, 7 feet for LCS, and 8 feet for blue sharks, and support for using slot limits for sharks.

Response: NMFS agrees with use of minimum sizes as a tool to reduce effective fishing mortality on sharks. For this tool to be successful, it must be relatively simple, comprehensive, and enforceable. NMFS has selected the most efficient minimum size limit for accomplishing the FMP objectives within these constraints. NMFS may consider additional management measures, including increasing minimum sizes and slot limits, in the future.

Comment 7: NMFS should do population assessments in 1999 for pelagic sharks and in 2000 for SCS.

Response: NMFS agrees that the stock status of pelagic sharks and SCS should be assessed at the soonest practicable time. The ICCAT SCRS bycatch subcommittee will be analyzing pelagic shark catch rates in May 1999, and the United States will participate in that meeting. Additional stock assessments will be conducted as practicable.

Comment 8: NMFS should establish all catch and release or tag and release fishing for sharks.

Response: NMFS disagrees. NMFS believes that limited harvest of some sharks subject to reduced retention limits and a minimum size in commercial and recreational fisheries meet the conservation goals to rebuild overfished species and prevent overfishing while minimizing social and economic impacts that an all tag-and-release fishing requirement would impose.

Comment 9: NMFS should rebuild coastal sharks within 30 years.

Response: NMFS agrees that the 30 year rebuilding program for the non-ridgeback LCS species outlined in the HMS FMP is appropriate. However, for the ridgeback LCS species, NMFS believes that a 39-year rebuilding program is appropriate because of the

sandbar shark (the primary ridgeback LCS) life history.

Comment 10: Analyses of total mortality may be in error if "catch" vs. "harvest" data are used, especially for sharks.

Response: NMFS agrees and the sections in the final HMS FMP that describe recreational fisheries, particularly for shark recreational fishing mortality, have been clarified and uniformly refer to recreational landings or harvest, not catches, consistent with MRFSS terminology.

Comment 11: NMFS should dissolve the Operations Team (OT) because the HMS AP fulfills the OT's role.

Response: NMFS agrees.

Comment 12: NMFS should initiate species identification training for sharks.

Response: NMFS agrees and intends to increase public education and outreach including workshops and the production of an identification guide for all HMS.

Shark Public Display Permitting and Reporting

Comment 1: NMFS should implement the proposed shark EFP process because it is necessary to track/enforce the regulations.

Response: NMFS agrees.

Comment 2: NMFS should extend the reporting period to 72 hours at a minimum and ideally to 5 days to allow collectors time to determine whether the animal can adapt to the aquarium (if not, the animals are released alive).

Response: NMFS agrees. In the draft HMS FMP, NMFS proposed to require EFP holders to mail in the information cards for authorized collections within 24 hours of collection to increase the ability to track and enforcement of authorized EFP activities. NMFS received several comments that supported extending the reporting period, and that were consistent with the intention of selected EFP process. Therefore, NMFS extends the reporting period to 5 days to allow collectors time to determine the health of the animal.

Comment 3: NMFS should not require American Zoo and Aquarium Association (AZA) membership in order to get an EFP because it is expensive and new aquariums cannot join until they've been open for a couple of years.

Response: NMFS agrees. The draft HMS FMP did not specifically propose to require AZA membership in order to receive an EFP, but did discuss the possibility of linking EFP issuance to AZA membership due to the detailed protocol and facility requirements for membership. Due to the inability of new aquariums to obtain AZA accreditation

and the burden and expense of the accreditation process, NMFS will not require AZA accreditation but will consider AZA accreditation, or equivalent standards, as meeting the requirement to provide adequate facilities for animal husbandry (under merits of the application).

Comment 4: NMFS should implement quarterly quotas for EFPs to ensure fair and equitable allocation of animals under the public display quota.

Response: NMFS disagrees. The HMS FMP does not establish quarterly quotas for EFPs because the selected annual quota of 60 mt ww should be sufficient to ensure fair and equitable allocation. Should the requests for sharks public display collections increase in the future, NMFS will reconsider the public display quota at that time.

Comment 5: NMFS should not implement the public display quota because the take is insignificant, the delays and burden in the current system are manageable, and aquarium people are honest.

Response: NMFS does not believe that low harvest levels preclude the need for improvements in monitoring and enforcement capabilities, where practicable. Regarding delays and burden under current regulations, NMFS believes that the benefits of increased monitoring and enforcement capabilities exceed those associated with the status quo.

Comment 6: NMFS should evaluate an EFP request based on the number of animals previously collected, not requested.

Response: NMFS believes that both the number of animals previously requested and collected must be considered in evaluating an application.

Comment 7: NMFS should not require the use of invasive tags which can become infected and are unsightly.

Response: NMFS agrees that the least invasive tags are preferable. NMFS implements the requirement that all sharks harvested under the selected public display regulations be immediately tagged with a Hallprint tag issued by NMFS in order to be considered an authorized collection. The tag may be removed from the animal and kept on file once the animal is transported to the aquarium where it will be displayed. NMFS may consider alternative types of tags as costs and practicalities warrant.

Comment 8: NMFS should develop species-specific public display quotas, especially for sand tiger sharks.

Response: NMFS agrees that species-specific harvest levels are preferable and NMFS may develop species-specific harvest levels as data permit.

Comment 9: Aquarium personnel should be allowed to remove the tags when the animal reaches its final destination and to keep the tags on file.

Response: NMFS agrees and has modified the HMS FMP and final rule accordingly.

Comment 10: NMFS should keep the status quo system because NMFS has not given the EFP process, which was new in 1998, a chance to be evaluated.

Response: NMFS disagrees. The current regulations governing EFP issuance have been in place, and NMFS has been issuing EFPs for sharks for the purposes of public display, since 1996. The prohibition on possession of sand tiger sharks, a popular aquarium species, in 1997 increased the requests and issuance of EFPs for public display in 1997 and 1998. Accordingly, NMFS has had three years to evaluate the current regulations and believes that the selected public display permitting and reporting system is preferable because it allows for increased monitoring and enforcement of the authorized collections.

Comment 11: NMFS should not count animals and tags for fish that are collected under an EFP but are eventually released alive.

Response: NMFS agrees, as long as the sharks are released alive.

Comment 12: NMFS should establish a separate public display quota for sharks exported to foreign aquariums.

Response: NMFS disagrees. Sharks harvested in Federal waters in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea are taken from the same stocks regardless of their ultimate destination such that NMFS does not believe that separate quotas are warranted.

Comment 13: The proposed public display quota of 60 mt ww is reasonable.

Response: NMFS agrees.

Anti-Finining of Sharks

Comment 1: NMFS should implement the proposed total prohibition on finning.

Response: NMFS agrees. Extending the prohibition on finning to all species of sharks will greatly enhance enforcement and contribute to rebuilding or maintenance of all shark species.

Comment 2: NMFS should not extend the prohibition on finning sharks because it disadvantages U.S. fishermen relative to foreign competitors and NMFS should allow a tolerance for blue shark fins to be landed.

Response: NMFS disagrees. Finning of sharks within the Federal management unit has been prohibited since the

original shark FMP was implemented in 1993 due to excessive waste associated with this practice. NMFS extends the prohibition on finning to all sharks to enhance enforcement and facilitate stock rebuilding and maintenance.

Sharks: Prohibited Species

Comment 1: NMFS should implement the prohibitions on possession for all species proposed as part of the policy change from prohibiting species that cannot withstand fishing pressure to one allowing retention of only those species known to be able to withstand fishing pressure.

Response: NMFS agrees.

Comment 2: NMFS should not include more species into the prohibited species group because enforcement is a problem and it is difficult to distinguish certain sharks from each other.

Response: NMFS acknowledges that some of the prohibited species are difficult to distinguish from species that are allowed to be retained. Regarding problems of enforcement, additional training and education in shark identification as well as reducing the number of shark species authorized for retention may facilitate enforcement. The approach taken in the HMS FMP should encourage fishermen who have doubts about the identification of a certain fish to release rather than retain it, thereby reducing fishing mortality of fish that are difficult to identify.

Comment 3: The proposed additions to the prohibited species list will increase dead discards because certain sharks are already dead when gear is retrieved. It would be better to utilize the mortality than discard.

Response: NMFS acknowledges that, for sharks that come to the vessel dead, adding them to the prohibited species list will increase regulatory discards. NMFS also acknowledges that adding such species to the prohibited species list will prevent utilization of such mortality. However, the benefits of preventing directed fisheries and/or markets for species that may not be able to withstand directed fishing pressure far outweigh the drawbacks of increasing regulatory discards, especially since NMFS believes that the magnitude of such regulatory discards is likely to be minor. As these species could have been retained previously and most have not been landed in large volume to date (except dusky sharks, see below), NMFS believes that most of these species are either not currently marketable or are not frequently encountered.

Comment 4: NMFS received numerous comments on the proposal to add dusky sharks to the prohibited

species management group, including complete support of the measure as proposed, support of a commercial prohibition with an allowance for recreational catches if there was a high minimum size, support of more regional management since the problems with dusky sharks seem to be mostly in the Atlantic, opposition to the proposal because current regulations provide adequate protection, concerns that a dusky shark prohibition will lead to data degradation because they will be landed as sandbar sharks due to their high market value, and concerns that a prohibition on dusky sharks for the Gulf of Mexico will increase waste and regulatory discards because they all come to the boat dead or because fishermen will discard all sandbar sharks as well because they cannot be distinguished from dusky sharks.

Response: By prohibiting possession of dusky sharks, NMFS expects that fishermen will adjust their fishing activities accordingly. Further, although many dusky sharks are dead when brought on board the vessel, some are not dead and requiring their release will reduce fishing mortality. Additionally, other measures in the HMS FMP will reduce fishing effort and, therefore, catch. NMFS also notes that dusky sharks have been placed on the Candidate Species List for the Endangered Species Act due to their stock status, which further justifies a prohibition on possession. The most effective way to reduce fishing mortality would be to prohibit fishing for sharks. However, NMFS believes that the measures in the HMS FMP will allow rebuilding while limited commercial fishing for and harvest of sharks can continue.

Comment 5: NMFS should prohibit the possession of sandbar sharks as well as dusky sharks because these species are caught frequently in the same areas on the same gear and because fishermen cannot tell them apart.

Response: NMFS disagrees that such a measure, which would essentially close directed commercial shark fisheries, is necessary to meet conservation goals and rebuild sandbar shark stocks. NMFS believes that the combination of final actions in the HMS FMP will rebuild sandbar sharks while allowing limited commercial harvest of sharks to continue.

Comment 6: NMFS should consider implementing a minimum size and maximum size for dusky sharks to protect both juveniles and adults. Since the largest sandbar shark is smaller than the largest dusky shark, a maximum size limit may allow fishing on all adult sandbar sharks while limiting fishing on

dusky sharks to only a portion of the population.

Response: At this time, NMFS believes that a complete prohibition on dusky sharks is warranted due to their severe population declines and low reproductive rate. NMFS may consider a minimum and maximum size limit as appropriate in the future as dusky shark populations rebuild.

Comment 7: Data do not support adding dusky, bignose, and bigeye thresher sharks to the prohibited species list; just because these species are not landed does not mean that they are not out there.

Response: NMFS disagrees that data do not support the prohibition on possession of dusky sharks. Catch rate data indicate large population declines of dusky sharks since the 1970s and NMFS is concerned that even bycatch mortality alone may negatively impact this species' ability to rebuild to MSY levels due to its low reproductive rate. Regarding the prohibition on possession of bignose and bigeye thresher sharks, addition of these species to the prohibited species list is a precautionary measure to ensure that directed fisheries and/or markets do not develop; the measure is not based on evidence of stock declines at this time.

Comment 8: NMFS should take longfin mako off the prohibited species list and add them to the pelagic list.

Response: NMFS disagrees. This species is added to the prohibited species list because it is not currently landed and including it on the prohibited species list will ensure that directed fisheries and/or markets do not develop until it is known that this species can withstand specified levels of fishing mortality.

Comment 9: NMFS should not prohibit night sharks because data indicating declines in catches are due to fishermen avoiding areas with night sharks in order to avoid small swordfish.

Response: NMFS acknowledges that changes in fishing patterns may affect catches and catch rate data and NMFS has listed this issue as a research area for further investigation. NMFS disagrees that prohibiting possession of night sharks based on existing data is inappropriate at this time; however, NMFS may consider additional management measures, including removing night sharks from the prohibited species management group, as data warrant.

Comment 10: NMFS received numerous comments on the proposal to add blue sharks to the prohibited species management group, including that NMFS should not add blue sharks

to the prohibited species management group because the catch rate data in the HMS FMP do not warrant a prohibition, that it is unfair and discriminatory to ban harvest of blue sharks in the recreational fishery while the commercial fisheries can kill 273 mt dw of blue sharks through the dead discard quota contrary to NS 4 and section 304(g) of the Magnuson-Stevens Act, that blue sharks are one of the last available species for recreational fisheries as regulations on other species have become more restrictive, that the prohibition on blue sharks would have significant economic impacts because numerous tournaments and charter operations in the mid-Atlantic and northeast target blue sharks, that waste is not as prevalent as the HMS FMP indicates because some tournaments provide blue shark meat to food banks and prisons, and that prohibiting blue sharks will increase regulatory discards, contrary to NS 9.

Response: NMFS agrees that blue sharks should not be added to the prohibited species management group. As stated in the draft HMS FMP, NMFS proposed the prohibition on blue sharks to address concerns regarding the high numbers of blue sharks discarded dead in commercial fisheries and to create an incentive to reduce blue shark discards (especially dead discards). NMFS proposed the prohibition on blue sharks for both the commercial and recreational fisheries to be equitable to all user groups. However, NMFS received substantial comments describing the social and economic impacts of the proposal to prohibit possession of blue sharks. In part due to these comments, the upcoming ICCAT SCRS meeting to analyze pelagic shark catch rate data, and the establishment of a blue shark quota against which landings and dead discards will be counted, NMFS withdraws the proposal and does not implement the prohibition on possession of blue sharks. By establishing a blue shark commercial quota and reducing that quota by blue shark dead discards as well as landings, NMFS hopes to create an incentive to maximize the survival of blue sharks caught incidentally to other fishing operations. NMFS will reduce the pelagic shark quota by any overharvest of the blue shark quota to address concerns that dead discards of blue sharks can constitute a significant portion of the pelagic shark quota. If dead discards of blue sharks do not exceed the selected 273 mt dw quota, the pelagic shark quota would not be affected.

Comment 11: NMFS should maintain the commercial prohibitions on those

species of concern (like blue sharks) but should allow recreational harvest with a high minimum size to continue because the impacts of recreational harvest are so low.

Response: NMFS disagrees. As stated in the draft HMS FMP, NMFS proposed the prohibition on possession of several shark species for both the commercial and recreational fisheries to be equitable to all user groups. While bycatch and bycatch mortality rates may warrant an analysis of allowing retention of species by some user groups while denying access to other user groups in the future, NMFS believes that regulations on retention should apply to all user groups equally at this time.

Comment 12: Environmental groups should put up some money for a "dusky fund" to pay for fishermen to photograph and release all the dusky sharks they catch.

Response: This comment is not within NMFS' authority to implement.

Commercial Shark Fishery

Comment 1: NMFS should ban commercial fishing for sharks, stop all sales of sharks caught offshore of the United States, and not allow any shark parts (especially fins) to be exported or consumed domestically.

Response: NMFS disagrees as noted above (under Shark Fishing Gears).

Comment 2: NMFS' proposed alternatives will destroy the directed shark fishery and do not provide for sustained participation by directed shark fishermen and their communities, contrary to NS 8.

Response: NMFS acknowledges that the final actions will likely have a significant economic impact on some shark fishermen, particularly LCS fishermen. NMFS specifically chose the final actions, as a group, both to minimize social and economic impacts to the extent practicable and to meet the goals of the HMS FMP and the Magnuson-Stevens Act to rebuild overfished fisheries. The final action attempts to maximize fishing opportunities while attaining the rebuilding requirements of the Magnuson-Stevens Act.

Comment 3: NMFS should schedule fishery openings for specified periods and adjust the season-specific quotas the following year.

Response: NMFS agrees.

Comment 4: NMFS should count dead discards and state commercial landings made after Federal closure against the quotas.

Response: NMFS agrees.

Comment 5: Counting dead discards and state commercial landings after Federal closures against the quotas is

"double-dipping" in that the assessments already account for dead discards and state landings and taking them off the quotas will doubly reduce the quotas.

Response: NMFS disagrees. Dead discards and landings in state waters after Federal closures are included in the stock assessments when evaluating stock status and making projections for rebuilding based on different harvest levels. However, dead discards and landings in state waters after Federal closures have not been included in establishing past total harvest levels, which has likely contributed to the need for recent harvest reductions. If NMFS does not include all mortalities when establishing harvest levels, actual harvest levels are set too high and total mortalities exceed levels that would allow rebuilding.

Comment 6: NMFS should establish a secondary target species quota for pelagic longline fisheries to allow secondary catches of LCS and pelagic sharks on pelagic longline vessels to be landed and to reduce waste.

Response: NMFS agrees that separate quotas or set-asides may be appropriate for directed and/or incidental fisheries or different gears. NMFS may consider further subdivisions of available shark quotas once limited access is implemented and appropriate quotas or set-asides can be determined.

Comment 7: NMFS should promote fuller utilization of catches instead of increasing regulatory discards. NMFS should consider eliminating all discards and requiring fishermen to land all their catches, which would provide true data and eliminate waste.

Response: NMFS agrees that fuller utilization of catches, consistent with conservation objectives and other applicable law, is preferable to regulatory discards. NMFS may consider additional management measures, including retention of all catches which are counted against applicable quotas, in the future as appropriate.

Comment 8: Measures for commercial fisheries should not be delayed pending development of a vessel buyback program.

Response: NMFS agrees.

Comment 9: NMFS should buy back commercial shark vessels.

Response: NMFS has the authority to administer a vessel buyback program depending on availability of funds.

Comment 10: NMFS should move finetooth sharks from the SCS management group to the LCS management group.

Response: NMFS disagrees that finetooth sharks should be moved from

the SCS management group to the LCS management group at this time because finetooth sharks have not been included in the LCS stock assessments to date. However, NMFS may consider adjustments to management groups under the framework procedure in the future.

Comment 11: NMFS should implement quarterly quotas to distribute shark catches more evenly.

Response: NMFS disagrees. The HMS FMP establishes several measures to address derby fishing conditions and distribution of shark catches. However, NMFS may consider additional measures, including quarterly quotas, as appropriate in the future.

Comment 12: NMFS should have its assessments peer reviewed before taking any further actions, especially since the 1997 regulations are still the subject of legal review.

Response: NMFS disagrees. The 1998 stock assessment represents the best available scientific information and peer review prior to implementing these measures is not necessary.

Comment 13: NMFS should reduce quotas.

Response: NMFS agrees that commercial quota reductions are needed to rebuild LCS. A commercial quota cap is implemented to prevent excessive growth in SCS fisheries. NMFS believes that the actions, including subquotas for porbeagle and blue sharks, under pelagic shark commercial quotas will meet conservation goals at current quota levels.

Comment 14: NMFS should hold workshops for commercial shark fishermen using rod and reel.

Response: NMFS agrees. NMFS intends to increase public education and outreach efforts including workshops for commercial fishermen.

Comment 15: NMFS should not issue any experimental commercial shark fishing permits because LCS are severely overfished and pelagic and SCS are fully fished and any new gears will only increase derby conditions.

Response: The status of shark stocks will be considered in decisions on whether to issue experimental fishing permits in commercial fisheries.

Large Coastal Sharks

Comment 1: NMFS should establish the proposed ridgeback LCS subgroup with the 4.5 ft (137 cm) fork length (FL) minimum size and the non-ridgeback LCS subgroup with the reduced quota of 218 mt dw.

Response: NMFS agrees.

Comment 2: NMFS should close the directed LCS fishery and apply any available quota for this group to the

unavoidable bycatch in the pelagic longline fisheries for other HMS. If it is concluded that these actions would preclude rebuilding of the coastal shark stocks, then neither recreational nor commercial harvest should be allowed until the stocks are rebuilt.

Response: NMFS disagrees, as noted in the preceding general shark section.

Comment 3: NMFS should deal with sharks on an emergency basis and cut the quota in half again.

Response: NMFS is reducing the non-ridgeback LCS and SCS quotas by 66 and 80 percent by weight, respectively, in addition to other measures (e.g., counting dead discards against the quota) that may further reduce the LCS, pelagic, and SCS quotas, consistent with the conservation goals.

Comment 4: The ridgeback LCS quota, in addition to the prohibitions on possession of dusky and other sharks, may actually increase fishing mortality on sandbar sharks; NMFS should reduce the quota on ridgeback LCS in addition to the minimum size.

Response: NMFS is aware that the prohibitions on possession of dusky and other sharks may increase fishing effort and mortality on sandbar sharks.

However, dusky sharks comprised 2 and 5 percent of commercial shark landings in 1996 and 1997, respectively, and other prohibited species comprised less than 1 percent. Therefore, NMFS does not expect increased effort to be significant because the reductions in landings due to the prohibition of these species are not large. Additionally, NMFS believes that the combination of final actions will sufficiently reduce effective fishing mortality to allow rebuilding of sandbar and other ridgeback LCS.

Comment 5: The proposed ridgeback vs non-ridgeback separation would skew the LCS quota toward slower-growing ridgebacks and could be extremely detrimental to their recovery. Status quo on the LCS management group except for overall quota levels would be better.

Response: NMFS disagrees. The final actions that establish ridgeback and non-ridgeback LCS subgroups with separate management is based in part on the recommendation of the 1998 SEW that "[e]very effort should be made to manage species separately." These actions do not manage on an actual species level because NMFS believes that the identification and enforcement problems of species-specific management are too great at this time. However, these actions will allow for management measures to be more tailored to those species complexes within the larger LCS group with which

different fisheries interact. These actions will establish higher harvest levels, but with a minimum size, for the ridgeback LCS than harvest levels for the non-ridgeback LCS due to the lack of size-depth segregation of the primary non-ridgeback LCS as well as new biological data that indicate that blacktip sharks have a lower reproductive rate than previously thought. For these reasons, NMFS selected a lower non-ridgeback LCS harvest level than that for ridgeback LCS, and does not believe that these actions will be detrimental to ridgeback LCS rebuilding. These separate management measures will allow for more tailored rebuilding programs than managing all 22 species of the LCS management group as an aggregate.

Comment 6: NMFS received several comments on minimum sizes for LCS, including support of the proposed limit, opposition to the proposed limit, that NMFS should implement species-specific minimum sizes and not an arbitrary 4.5 ft (137 cm) minimum size, that NMFS should implement a 120 cm minimum size for ridgeback LCS, that NMFS should implement a single minimum size for all LCS, and that NMFS should not implement a minimum size on sharks unless that minimum size is applied to all fishermen throughout the species' range.

Response: NMFS agrees that a single minimum size for ridgeback LCS is warranted. A single minimum size of 137 cm FL for all ridgeback LCS, based on the age at first maturity for sandbar sharks, will afford year-round protection in Federal waters for the juvenile and subadult sizes that are the most sensitive to fishing mortality. This minimum size for the ridgeback LCS subgroup is selected because the sandbar shark, the primary species in the commercial and recreational fisheries, segregates by size and depth so that fishing effort can be concentrated on the less sensitive adults. No minimum size is implemented for the non-ridgeback LCS subgroup because the primary species in this subgroup, the blacktip shark, does not segregate by size and depth such that a minimum size may actually increase effective fishing mortality (more small fish would be caught and discarded in order to harvest the same quantity of larger fish). NMFS does not believe that species-specific minimum sizes are practicable at this time due to the lack of species-specific biological information on some species such that the appropriate minimum size is unknown and due to the practical problems of education and enforcement of multiple minimum sizes. NMFS believes that establishing a

minimum size for ridgeback LCS is appropriate despite the lack of international management because strong domestic management is critical to establishing the foundation for international management and to compliance with domestic law.

Comment 7: Because some small ridgeback LCS will still be caught in deeper water where they will be regulatory discards, a minimum size will increase overall mortality rates because at least some of those small fish will be discarded dead.

Response: NMFS is aware that some undersized ridgeback LCS will still be caught in commercial fishing operations, which will be regulatory discards, and that some of these fish will be discarded dead. As stated in the HMS FMP, NMFS believes that such bycatch and bycatch mortality will be minimized to the extent practicable due to the size-depth segregation that sandbar and dusky sharks exhibit that should allow fishing efforts to concentrate on the mature adults. However, should the bycatch and bycatch mortality of undersized ridgeback LCS be higher than anticipated (based on observer data) and impede or jeopardize rebuilding, then NMFS may consider additional management measures to address these issues.

Comment 8: The proposed minimum size on ridgeback LCS will increase waste because many undersized fish come to the boat dead. This also encourages illegal fishing activity.

Response: NMFS acknowledges that the minimum size on ridgeback LCS may increase regulatory discards due to the inability of fishermen to land undersized fish and may increase waste if undersized fish are brought to the boat dead. As stated in the HMS FMP, NMFS is implementing a minimum size for ridgeback LCS due to observer data which indicate that sandbar sharks, the primary target species, segregate by size and depth so that fishing effort can be concentrated on adult sharks offshore. This size-depth segregation should minimize the amount of undersized fish caught and discarded (both dead and alive) such that regulatory discards and waste should also be minimized. (Due to the lack of depth-size segregation of the primary non-ridgeback LCS species, the blacktip shark, NMFS did not propose or implement a minimum size for this subgroup.) NMFS may consider additional management measures to address concerns regarding regulatory discards and waste due to the selected minimum size on ridgeback LCS as data warrant. Regarding illegal activity, the ridgeback LCS minimum size should be

readily enforceable which should minimize illegal harvest.

Comment 9: The adoption of a minimum size for ridgebacks is a good attempt to protect juveniles, but the position of forward measurement point is too variable. The first anterior cartilaginous dorsal fin ray (exposed when dorsal fin is removed) would be better.

Response: NMFS agrees and changes the acceptable measurement of a dressed ridgeback LCS carcass from the first anterior cartilaginous dorsal fin ray to the precaudal pit or terminal point of the carcass to determine the size of ridgeback LCS.

Comment 10: NMFS should restore the 1996 quota levels and implement minimum sizes, time/area closures, and limited access to control effort instead.

Response: NMFS disagrees. Status quo harvest levels for LCS (which are 50 percent lower than 1996 harvest levels) would not meet NS 1 to prevent overfishing and rebuild overfished fisheries. NMFS does not believe that minimum sizes, time/area closures, and limited access would sufficiently reduce effective fishing mortality to allow LCS rebuilding under 1996 quota levels.

Comment 11: NMFS should maintain the ridgeback LCS quota at 642 mt dw.

Response: NMFS agrees, subject to the final actions to take dead discards and state landings after Federal closures off Federal quotas and as reduced by the public display and scientific research quota.

Comment 12: NMFS should not reduce the non-ridgeback LCS quota but should leave it at 642.5 mt dw.

Response: NMFS disagrees. The final action for non-ridgeback LCS quota levels included a reduction of 66 percent by weight in part due to new biological information on blacktip sharks, and the fact that 1997 quota reduction of 50 percent was not as effective as expected. NMFS believes that without such a reduction in the non-ridgeback LCS quota, these stocks will not rebuild, contrary to NS 1.

Comment 13: NMFS should phase in the reduction in the non-ridgeback LCS quota because the 1997 reduction is still under legal review, the 1998 stock assessment for blacktips was poorly founded, and the problem of Mexican catches has not been addressed bilaterally.

Response: NMFS disagrees. The alternative to phase in the reduction in the non-ridgeback LCS quota was not selected due to NMFS' concerns that phased-in quota reductions may not be appropriate for species or species complexes that require such long rebuilding periods. Additionally, NMFS

reduced the LCS commercial landings in 1993 when the original shark FMP was established and maintained that landings level until 1997 when NMFS reduced the LCS commercial quota again as an interim measure pending establishment of a long-term rebuilding program. NMFS believes that the 1993 quota and 1997 interim reduction have already essentially phased in the reductions necessary for rebuilding LCS and that no further phase-in is warranted.

Comment 14: Limited access will be ineffective.

Response: NMFS disagrees. NMFS acknowledges that limited access will not solve all of the problems in the shark commercial fisheries but believes it is a significant first step in addressing overcapitalization.

Comment 15: NMFS received comments that the 4,000 lb (1.81 mt) commercial retention limit for LCS fisheries should be maintained, that the commercial retention limit is too high, and that the limit will result in discards.

Response: NMFS believes that the commercial LCS retention limit helps to extend the LCS seasons and that decreases in this limit may reduce the profitability of fishing trips and exacerbate derby fishing conditions. NMFS believes that the benefits of preventing derby fishing conditions from worsening, despite potentially increasing discards, outweigh the negative impacts of those discards.

Comment 16: A 0.7-percent return rate of sandbar sharks from Mexico constitutes a significant source of mortality and NMFS should consider that mortality in stock assessments.

Response: NMFS did consider Mexican catches of sandbar sharks in the 1998 SEW. As stated in the 1998 SEW Final Report, catches of LCS in Mexican fisheries were investigated and results from an intensive monitoring project of the artisanal shark fishery showed that sandbar sharks represented only 0.6 percent of the landings numerically. NMFS believes that these results are illustrative because the artisanal coastal fishery is estimated to account for about 80 percent of the total shark production in the Mexican side of the Gulf of Mexico. The low percentage of sandbar sharks in the Mexican artisanal fishery landings as well as a relatively low percentage of tag returns from Mexican waters did not support inclusion of Mexican landings in the species-specific assessment for sandbar sharks conducted at the 1998 SEW. Should additional information become available indicating that Mexican catches of sandbar sharks are substantial, NMFS will include this

information in the stock assessments for this species.

Small Coastal Sharks

Comment 1: NMFS received several comments on the SCS commercial quota including that the lower cap on SCS harvest is good, that NMFS should set the SCS quota lower than 1997 landings and not higher, that the 10 percent cap was arbitrary and the SCS stocks are declining, that NMFS should cap the SCS quota at 1997 levels and not 10 percent above, and that NMFS should keep the status quo for the SCS quota, at least until limited access is in place.

Response: A cap on the SCS quota at 10 percent above 1997 levels will prevent large expansions in the SCS fishery while minimizing social and economic impacts from other shark management measures pending additional assessment of SCS stock status. NMFS acknowledges that the loss of opportunity for substantial fishery expansion may have negative social and economic impacts. NMFS notes that the best available data on SCS indicate that catch rates for Atlantic sharpnose sharks, the dominant species in this management group, are not declining. Regarding the comment to cap the SCS at 1997 levels, not 10 percent above, NMFS notes that this measure is precautionary and that 1998 fishing levels may have increased (1998 landings data are not yet available). A commercial quota cap 10 percent above 1997 levels will minimize negative social and economic impacts if 1998 harvest levels exceeded 1997 levels. NMFS disagrees that status quo for the SCS quota is appropriate because the current quota is based on MSY levels from the assessment that supported the original shark FMP. Concerns have been raised by members of the HMS AP and members of the public that the assessment in the original shark FMP was overly optimistic in its estimation of SCS intrinsic rates of increase and the subsequent levels of fishing mortality that this group can withstand. The final action to cap the SCS quota is selected because of these concerns, because commercial fishery landings statistics may substantially underestimate fishing mortality due to the use of SCS as bait that are not reported as landings, and because it eliminates the potential for excessive growth.

Comment 2: NMFS should require species-specific reporting of all SCS catches, landings, and disposition of the catch to determine the extent and impacts of SCS being used for bait.

Response: NMFS agrees that additional reporting and observer coverage may be necessary to determine

the magnitude of "cryptic mortality" of SCS due to the use of SCS as bait. Charter/headboat logbooks and voluntary observers will help collect data on this issue in recreational fisheries. NMFS may consider additional management measures to address this issue.

Pelagic Sharks

Comment 1: NMFS should keep the status quo for the pelagic shark quota because NMFS should not implement any precautionary caps or get out in front of international management, which will disadvantage any future U.S. allocation and/or influence.

Response: NMFS believes that precautionary measures for pelagic sharks are warranted due to concerns regarding the sustainability of current fishing mortality rates and the potential for increased fishing effort on those species known to have limited capacity to withstand fishing pressure (e.g., porbeagle sharks). The final actions to establish a species-specific quota for porbeagle sharks at 10 percent higher than recent landings, to reduce the pelagic shark quota by the porbeagle quota, to establish a quota for blue sharks, and to reduce the pelagic shark quota by any overage of the blue shark quota, are primarily precautionary and do not substantially alter the status quo for pelagic sharks. Breaking out the porbeagle quota does not reduce overall harvest levels for pelagic sharks and the pelagic shark quota will only be reduced if blue shark landings and dead discards exceed 273 mt dw. Since the majority of blue sharks are released alive and anecdotal evidence indicates that many of the blue sharks released dead could be released alive if fishing practices were altered slightly, NMFS believes that the incentive to maximize blue shark survival may result in the blue shark quota not being exceeded and the pelagic shark quota not being reduced. Therefore, these final actions may not substantially alter the status quo but would still establish mechanisms to address fishing mortality rate and bycatch and bycatch mortality concerns in the future. Regarding comments that the United States is getting ahead of international management and disadvantaging U.S. fishermen, NMFS believes that precautionary steps are appropriate even in the absence of international management because preventing overfishing will help ensure that U.S. fishermen are not disadvantaged due to stock declines. Additionally, by taking initiatives for conservation measures, NMFS will have a stronger position at the international table when discussing rebuilding and

maintaining shark stocks subject to international fishing.

Comment 2: NMFS received several comments on the proposed porbeagle quota including that NMFS should cap the porbeagle quota at the highest landings and not at 10 percent above, and that NMFS should establish a porbeagle quota but reduce it from recent landings to allow rebuilding.

Response: NMFS disagrees. Similar to the rationale for a commercial quota cap for SCS at 10 percent above 1997 levels (the year of highest recorded landings), capping the porbeagle quota at 10 percent above the highest landings level will prevent large expansions in the porbeagle fishery while minimizing social and economic impacts pending additional assessment of porbeagle stock status. NMFS acknowledges that the loss of opportunity for substantial fishery expansion may have negative social and economic impacts. Additionally, NMFS notes that porbeagle sharks, as part of the pelagic shark management group, are considered fully fished and that this measure is precautionary and 1998 fishing levels may have increased (1998 landings data are not yet available).

Comment 3: NMFS' data on porbeagle sharks are incomplete and substantially underestimate landings.

Response: NMFS has updated the reported landings of porbeagle sharks since the proposed rule, and adjusted the porbeagle quota in the final rule, to establish the porbeagle shark quota at 92 mt dw. NMFS intends to investigate further porbeagle shark landings statistics and may adjust the quota in the future as the data warrant.

Comment 4: Establishment of a species-specific quota for porbeagle sharks will create a porbeagle derby.

Response: NMFS disagrees. The selected porbeagle shark quota is 10 percent higher than the highest reported landings such that a derby fishery resulting from restrictive quotas is not expected to develop. Nevertheless, given other restrictions on shark fishing, there may be increased fishing pressure on porbeagle sharks, and if so, NMFS will address this in the future.

Comment 5: NMFS' approach in establishing precautionary quotas is inconsistent because the porbeagle and SCS quotas are 10 percent higher than highest landings and the blue shark dead discard quota is the average of 10 years. NMFS should establish a 500 mt quota on blue shark landings with a 273 mt dw dead discard cap, and a 250 mt dw quota for porbeagle sharks with 30 mt dw allocated for incidental catches.

Response: NMFS did take different approaches in establishing the

precautionary quotas for porbeagle and SCS and for the proposed blue shark dead discard quota due to the differences in the fisheries. For porbeagle and SCS, NMFS proposed and implements quotas that are 10 percent higher than the highest reported landings because the intention of these measures is to prevent excessive fishery expansion pending additional stock assessments. Therefore, NMFS believes that essentially capping effort is appropriate at this time. On the other hand, the proposed blue shark dead discard quota was intended to create an incentive to maximize the survival of all blue sharks caught incidentally to other fishing operations while minimizing social and economic impacts and reducing regulatory discards, consistent with the proposal to count dead discards against quotas. In this case, estimates of blue shark dead discards have ranged from approximately 20 to 98 percent of the pelagic shark quota and establishing a dead discard quota 10 percent higher than the highest year's discards would be ineffective in maximizing blue shark survival. Therefore, NMFS proposed to establish a blue shark dead discard quota equivalent to the average of the last 10 years dead discards as a means to create an effective incentive to maximize blue shark survival since the potential for pelagic shark quota reductions due to excessive blue shark dead discards was real. Note that NMFS' final action regarding blue sharks is different than that proposed.

NMFS believes that separate quotas for blue and porbeagle sharks are appropriate but believes that quotas of 773 mt dw and 280 mt dw for blue and porbeagle sharks, respectively, are too high, pending additional stock assessments. NMFS selected 273 mt dw and 92 mt dw for blue and porbeagle sharks, respectively, based on the average of recent dead discards for blue sharks and updated data for porbeagle sharks.

Comment 6: NMFS received numerous comments on the proposed dead discard quota for blue sharks including that dead discards of blue sharks should be placed under the pelagic shark quota, that the pelagic shark quota should not be increased to allow for dead discards of blue sharks, that a "dead discard quota" goes against the mandates of the Magnuson-Stevens Act and NS 9 to reduce and/or eliminate bycatch and bycatch mortality, that NMFS should encourage full utilization of unavoidable mortality and not require discards, that most blue sharks are released alive anyway, and that NMFS should establish a quota for landings

and dead discards of blue sharks to reduce data degradation and underreporting.

Response: NMFS establishes a quota for blue sharks of 273 mt dw with any overharvests to come off the pelagic shark quota, in part to create an incentive to reduce blue shark discards, especially dead discards. If NMFS were to take all blue shark dead discards off the pelagic shark quota, the magnitude of reductions in the pelagic shark quota might result in a "vicious cycle" in which the entire pelagic shark quota would become regulatory discards, contrary to NS 9. Because blue sharks are caught incidentally in fisheries targeting other species, blue sharks will continue to be caught and some discarded dead. By creating an incentive to reduce blue shark dead discards, this action may result in changes in fishing practices that increase blue shark survival rates. NMFS acknowledges that establishing a quota for blue sharks of 273 mt dw may be interpreted as increasing the pelagic shark quota; however, NMFS notes that the pelagic shark quota established in the original shark FMP was based on landings of pelagic sharks from 1986–1991 and that blue sharks landings have ranged from 1–5 mt dw, such that the original pelagic shark quota did not account for blue shark catches and discards.

Comment 7: NMFS should require all live blue sharks be released with a dehooking device.

Response: NMFS currently requires that all sharks not retained be released in manner that ensures the maximum probability of survival. Further, NMFS intends to encourage use of dehooking devices as part of its outreach and education efforts.

Comment 8: Prohibiting possession of blue sharks in recreational fisheries but allowing commercial fisheries to kill 273 mt dw violates NS 4 and section 304(g) of the Magnuson-Stevens Act.

Response: NMFS agrees that the proposals to prohibit possession of blue sharks in both commercial and recreational fisheries and establish a blue shark dead discard quota may have resulted in perceived inequities among user groups. NMFS proposed the prohibition on possession for all fisheries because of concerns that blue sharks could quickly become overfished if directed markets or fisheries developed for them. NMFS proposed to establish a dead discard quota for blue sharks because, in combination with the alternative to count dead discards against quotas, dead discards of blue sharks alone could reduce the entire pelagic shark quota to regulatory discards, contrary to NS 9. However, in

part due to comments received during the public comment period, NMFS has reconsidered the alternatives for blue sharks and has determined that the combination of withdrawing the proposal to prohibit possession of blue sharks (i.e., allowing retention), establishing a quota of 273 mt dw for blue sharks against which commercial landings and dead discards would be counted, and reducing the recreational retention limit for all sharks with the addition of a minimum size will meet the conservation objectives of preventing overfishing, establish mechanisms to implement management measures consistent with the precautionary approach, reduce regulatory waste and discards consistent with NS 9, and promote fair and equitable allocation of resources among user groups consistent with NS 4 and section 304(g) of the Magnuson-Stevens Act.

Comment 9: NMFS should not establish species-specific quotas for species of concern but should use target catch requirements to control expansions of landings of incidental catches.

Response: NMFS disagrees that species-specific quotas are inappropriate tools to control fishery expansions but may consider target catch requirements in the future.

Shark Recreational Fishery

Comment 1: NMFS received considerable comments on the proposal to establish catch and release fishing only for all LCS and SCS, including that NMFS should stop all shark harvest in both commercial and recreational fisheries if the recreational fishery must be closed, that the numbers in recreational and commercial shark fisheries do not support a zero bag limit for recreational shark fisheries while still allowing commercial harvest, that NMFS should not reward fishermen who did the damage and penalize historic recreational fishermen, that the recreational bag limits for sharks unfairly impact recreational fishermen and are discriminatory against recreational fishermen, which violates NS 4 and section 304(g), and that recreational fishermen are bearing the brunt of shark conservation.

Response: NMFS proposed catch and release only fishing for all LCS and SCS due to the reductions in recreational harvest needed for LCS under the rebuilding program (about 80 percent), the fact that post-release mortality of sharks in recreational fisheries is unknown, and the continued widespread misidentification of juvenile LCS as SCS. However, in part due to

comments received, NMFS has reconsidered the combination of actions analyzed for recreational retention limits and has determined that a recreational retention limit of one shark per vessel per trip with a 4.5 ft (137 cm) minimum size, and an allowance of one Atlantic sharpnose shark per person per trip (no minimum size) should meet NS 1 to rebuild overfished fisheries for LCS and address the difficulties in enforcement and continued widespread misidentification of juvenile LCS and SCS. NMFS believes that the final action provides access fairly and equitably to recreational fishermen (in all geographic regions) and commercial fishermen, consistent with conservation goals and NS 4. Regarding comments that recreational fishermen are bearing the brunt of shark conservation, NMFS notes that numerous final actions will establish substantial additional restrictions and negatively impact commercial fishing sectors.

Comment 2: NMFS received considerable comments regarding recreational retention limits and minimum sizes, ranging from support for the status quo of 2 sharks per trip with an allowance for 2 Atlantic sharpnose sharks per person per trip, 2 sharks per day, 1 pelagic shark per vessel per day regardless of species, 1 LCS per vessel per day, 1 mako shark per angler, 1 shark per vessel per trip and 1 Atlantic sharpnose per person per trip, 1 LCS and 1 pelagic shark per trip with a 4.5 ft (137 cm) minimum size, 2 SCS per trip and 2 Atlantic sharpnose per trip, 1 shark per person with a maximum of 2 sharks per vessel like the Florida regulations, 2 sharks per trip but no more than one shark of any species, 2 sharks per person per day for all species, no limits on retention for blue sharks, as well as 4.5 ft (137 cm), 6 ft (182 cm), and 300 pound (136 kg) minimum sizes for all sharks.

Response: In part due to public comments received, NMFS has reconsidered the proposed recreational shark fishing restrictions and has determined that a recreational retention limit of 1 shark per vessel per trip with a minimum size of 4.5 feet (137 cm) FL and 1 Atlantic sharpnose shark per person per trip (no minimum size) will reduce recreational harvests by the approximately 80 percent necessary to rebuild LCS and prevent overfishing of pelagic and SCS, while also minimizing social and economic impacts.

Comment 3: NMFS should not implement a zero recreational limit for sharks and the proposed recreational limits do not provide access to comparable substitute species for the southeast. Anglers in the Southeast

Atlantic do not target pelagic sharks but target SCS. Pelagic sharks are an unusual catch because they occur too far offshore (about 80 miles to Gulf Stream) and small open boats can't go that far, which may violate NS 10. A lot of anglers cannot safely reach shortfin mako, oceanic whitetip, and threshers. The proposed recreational limits are biased toward the known NE shark fishery, contrary to NS 4.

Response: NMFS agrees that the proposed alternative may have differentially impacted anglers by region in that pelagic sharks are more northern in their distribution, and nearshore anglers who could not expand their fishing into offshore waters where pelagic sharks predominate. In part due to these comments, NMFS has reconsidered the combination of actions analyzed for recreational retention limits and has determined that a recreational retention limit of one shark per vessel per trip with a 4.5 ft (137 cm) minimum size and an allowance of one Atlantic sharpnose shark per person per trip (no minimum size) should meet NS 1 to rebuild overfished fisheries for LCS and prevent overfishing for the fully fished pelagic and SCS. The final action will also address the difficulties in enforcement and continued widespread misidentification of juvenile LCS and SCS by essentially establishing catch and release fishing only for juvenile LCS under the selected minimum size and by allowing retention of Atlantic sharpnose sharks, a SCS species easily identified by white spots on the dorsal side. As many SCS do not reach the selected minimum size, the final action also essentially establishes catch and release only fishing for SCS, except for Atlantic sharpnose. NMFS believes that the final action will provide access to the recreational fishery for anglers in the southeast and Gulf of Mexico regions, consistent with conservation goals and NS 4. NMFS also believes that the final action will provide access to nearshore anglers by allowing retention of species available in these areas, consistent with conservation goals and NS 10.

Comment 4: NMFS received several comments on allocation of shark harvest including that NMFS should restore sharks to historic 98 percent recreational catch, that NMFS should allocate shark harvest for recreational fisherman based upon the average landings occurring during the past 3 years (1995–97), that the total allowable take of sharks should not be increased so the commercial allocation should be diminished by an amount equal to the recreational allocation, that NMFS should allocate shark harvest for recreational fishermen based on the last

18 years of landings by number, which will equal about two-thirds of the allowable harvest, and that NMFS should not base management and rebuilding on a single year but should base allocation on a 10–15 year time period.

Response: NMFS believes that the LCS rebuilding program, with commercial and recreational harvest levels determined by recent harvest as reduced by rebuilding program measures (described in the HMS FMP and based on the 1998 SEW), is appropriate and will meet NS 1 to rebuild the overfished LCS and prevent overfishing of pelagic and SCS. NMFS believes that allocating 98 percent of shark harvests to recreational fisheries would not account for traditional fishing patterns, would not be fair and equitable, and would not provide for the sustained participation of communities associated with commercial fisheries. Regarding the time period on which management and rebuilding should be based, NMFS believes that the final action, which uses 1995 as a reference point for rebuilding, is appropriate. NMFS reduced the quotas and retention limits based on the 1996 stock assessment, consistent with the allocations established in the 1993 Shark FMP which were based on several years of data. The rebuilding program established in the HMS FMP builds on the 1996 assessment and 1997 quota and retention limit reductions. In establishing the rebuilding program, NMFS analyzed the effectiveness of the 1997 reductions and any additional reductions necessary to rebuild LCS consistent with the Magnuson-Stevens Act. Therefore, the allocations of shark harvest in the HMS FMP are appropriate and reasonable. Regarding the allocation of shark harvest between recreational and commercial sectors, the final actions in the HMS FMP will provide access fairly and equitably to both sectors, consistent with conservation goals.

Comment 5: NMFS received several comments on the proposal to require all sharks landed by recreational anglers to have the heads, fins, and tails attached, including support for the proposal, that NMFS should require anglers keep the heads and fins onboard but should not require the fish to be kept whole because of problems with seafood safety from inadequate freezing, that NMFS should allow anglers to fillet sharks at sea as long as the tails and claspers are retained, and that the requirement for recreational fishermen only is unfair and should be applied to both recreational and commercial fishermen.

Response: While these comments warrant further consideration, NMFS adopts the requirement for recreational fishermen to keep sharks intact while not imposing a new requirement for commercial fishermen at this time. When the Shark FMP was implemented in 1993, commercial fishermen were allowed to remove and discard heads, tails, and fins and to fillet the sharks at sea to allow more of the available vessel hold capacity to be used for storing the shark carcasses that eventually would be sold. A prohibition on filleting sharks at sea for commercial fishermen was implemented in 1997 in order to improve species-specific identification of carcasses at the dock. The basis for this provision may have changed, but additional public discussion is needed before the regulations are modified. While NMFS strives for consistent regulations for all user groups, concerns about quality and safety of seafood sold for public consumption resulting from inadequate freezing of shark carcasses preclude a similar regulation for commercial shark fisheries at this time. Because individual recreational shark fishermen harvest smaller quantities of sharks per trip and take shorter fishing trips relative to commercial operations, recreational fishermen should be able to adequately ice shark carcasses so as not to compromise seafood safety. Requiring recreational fishermen to keep sharks intact will address continued widespread problems with species-specific identification of sharks in recreational fisheries, decrease enforcement costs, and facilitate species-specific assessments and management.

Comment 6: NMFS has repeatedly ignored requests to implement conservation measures for mako sharks and NMFS should fully protect shortfin makos because their stocks are down.

Response: NMFS is aware that anecdotal evidence regarding catches and catch rates of shortfin mako sharks indicates that the stock size may be declining. Accordingly, the United States will be participating in the ICCAT SCRS meeting to assess catch rates of pelagic sharks in May 1999. Pending the outcome of that meeting and other assessments of shortfin mako stock size, NMFS believes that the final action to reduce the recreational retention limit to one shark per vessel per trip with a 4.5 ft (137 cm) minimum size will provide additional protection for this species. NMFS may consider additional management measures, including alternative length or weight based minimum sizes or prohibitions on possession, in the future as necessary.

Comment 7: NMFS should consider a 250–300 lb (113–136 kg) minimum size for blue sharks.

Response: Additional management measures for blue sharks, including a species-specific minimum size, may be warranted and NMFS may consider such a measure in the future.

Comment 8: NMFS should reduce the Atlantic sharpnose retention limit pending additional stock assessments.

Response: NMFS agrees.

Comment 9: NMFS should encourage voluntary release of sharks.

Response: NMFS agrees. NMFS supports all voluntary release of sharks and intends to develop a public education and outreach program that will encourage catch and release and tagging of all released sharks as part of the implementation of this HMS FMP.

Comment 10: NMFS should restrict all recreational fishing to catch and release only during the spring pupping seasons.

Response: The final action to establish a recreational retention limit of one shark with a 4.5 ft (137 cm) minimum size is expected to meet NS 1 to rebuild overfished fisheries for LCS, as the minimum size will more effectively address the issue of bycatch of juvenile sharks by affording them protection at all times and areas.

Comment 11: NMFS should reduce the LCS recreational retention limits but allow recreational fishermen to continue to target blacktip and spinner sharks.

Response: The final action allows recreational fishermen to target all but the prohibited species of sharks subject to the retention limit of one shark per vessel per trip and the 4.5 ft (137 cm) FL minimum size.

Comment 12: NMFS should not allow more than 2 hooks per line.

Response: Modifications in fishing practices, including limits on the number of hooks per line, may reduce mortality of released fish. NMFS may consider such management measures in the future through the framework provisions.

Comment 13: NMFS should consider male harvest only to protect mature females. It is easy to tell male from female sharks.

Response: NMFS agrees that male only harvest is a potential management measure that could protect mature females and could be enforced if the male claspers were intact. NMFS may consider additional management measures, including male only harvest, if the final recreational retention limits and restrictions on possession at sea and landing actions do not meet NS 1 to rebuild overfished fisheries for LCS, prevent overfishing for the fully fished

pelagic and SCS, and address the difficulties in enforcement and continued widespread misidentification of juvenile LCS and SCS as expected.

General Comments on Bycatch Reduction

Comment 1: NMFS' plan is not consistent with NS 9 to minimize bycatch and bycatch mortality, to the extent practicable.

Response: NMFS disagrees. Numerous measures in the HMS FMP and Billfish Amendment improve NMFS' ability to monitor, control, and account for bycatch in estimates of total mortality. NMFS is pursuing gear modifications to reduce bycatch and a time/area closure to reduce BFT discards. NMFS is also reducing quotas in directed fisheries, implementing limited access, and planning educational workshops to minimize bycatch mortality. Further, NMFS seeks to count dead discards against the quota, which will create an incentive for fishermen to avoid bycatch species, to the extent that they can. Also, NMFS is developing larger time/area closures in order to protect small swordfish and other bycatch and will present these ongoing analyses to the HMS and Billfish Advisory Panels in June 1999, before publishing a proposed rule in Summer 1999. NMFS has increased reporting requirements in order to collect additional data on bycatch mortality in HMS fisheries. The effectiveness of the bycatch reduction strategy will be assessed annually in the SAFE report and necessary modifications can be made through the framework.

Comment 2: Commercial fishermen should have to retain all fish that are dead when handled. This would be counted against their retention limit or quota.

Response: NMFS adopted minimum size limits for yellowfin, bluefin, and bigeye tunas, and swordfish, and ridgeback large coastal sharks in order to discourage fishermen from targeting small fish. NMFS intends that ultimately all dead discards of each species will be counted against any quotas that may apply.

Comment 3: Bycatch and bycatch mortality in the recreational fishery could never be analyzed and could never be truly known and therefore should not be addressed in this FMP.

Response: NMFS disagrees. NMFS has identified the examination of post-release mortality in all hook and line fisheries, recreational and commercial, as a research priority. Further, NMFS subscribes to the precautionary approach and intends, once it can be quantified, to account for post-release mortality in all HMS fisheries.

Comment 4: Many different comments were submitted regarding workshops and other outreach to fishermen: NMFS should require mandatory attendance of permit holders at vessel education workshops to inform fishery participants of bycatch and bycatch mortality reduction techniques. NMFS has already begun the workshops even though no take reduction plan is in place. If fishermen have to attend workshops, they should be compensated for a missed day of work. Fishermen at the workshops know more about releasing fish, turtles, and mammals than the people presenting the workshop. NMFS should use television fishing shows to promote the bycatch mortality reduction strategy for HMS.

Response: NMFS thinks that outreach may be more useful if the program is voluntary. This will allow NMFS to offer workshops as well as informal meetings with fishermen to share recent information on bycatch reduction strategies and new techniques that may be working in other fisheries and to get feedback from fishermen. NMFS has begun the workshops with several objectives in mind; marine mammal bycatch reduction is only one of those objectives. Other reasons for the workshops have included collection of views on comprehensive management systems for pelagic longline fishery management. NMFS agrees that fishermen have considerable expertise in releasing large animals at sea. However, the presenters at the workshops will also be providing information on successful methods used in other longline fisheries (e.g., the Pacific swordfish fishery) and can convey information about new research results which may help fishermen avoid bycatch species. NMFS appreciates the suggestion of using television and will consider that medium in the future for developing and distributing information about reducing bycatch and bycatch mortality.

Comment 5: NMFS should establish a target and timetable for reducing bycatch (e.g., 25–75 percent reduction in 5 years) and implement that bycatch plan through time/area closures, gear restrictions and counting dead discards against quota.

Response: This FMP implements a number of measures designed to reduce bycatch and bycatch mortality, including gear modification, quota reductions, a time/area closure, and educational outreach programs, as noted above. Limited access to some of the HMS fisheries may also change the nature of these fisheries. NMFS will evaluate bycatch rates once limited access and these bycatch measures, and an upcoming proposed time/area

closure to protect swordfish are implemented in these fisheries before setting targets and timetables that could otherwise be unrealistic.

Comment 6: Take reduction measures designed to reduce marine mammal bycatch should not be implemented in this plan under the authority of the Magnuson-Stevens Act. A future take reduction team for pilot whales would likely include representatives from the trawl and pelagic longline fisheries. Because the HMS Division does not cover the trawl fishery and if changes are needed in regulations, it will be easier to make those changes under the MMPA than to amend multiple fishery management plans.

Response: NMFS disagrees. NMFS needs to consider cumulative impacts of all regulatory measures on fishermen and the ecosystem as required under legislative mandate. Therefore, it is very useful to consider the take reduction measures in the context of other measures in this plan. Some take reduction measure can be amended by framework measure (e.g., gear modifications, time/area closures), instead of an amendment to the plan. Measures that apply to other Federal fisheries, including the squid, mackerel, and butterfish trawl fishery can also be implemented by the appropriate fishery management plan if NMFS sees fit. NMFS seeks to conserve marine resources in an ecosystem approach, including all bycatch species.

Comment 7: Strategies proposed by the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) more than 2 years ago are outdated and ineffective. Rather than publish a plan at this late date, NMFS should reconvene a new team, including other representatives from other fisheries that interact with the same marine mammal stocks.

Response: In this action, NMFS will implement several of the measures recommended by the AOCTRT to reduce incidental mortalities and serious injuries of pilot whales in the pelagic longline fishery. NMFS intends to reconvene the AOCTRT to review updated information regarding pilot whales, and to solicit updated recommendations for the pelagic longline fishery. At that time, recommendations to include other fisheries in the take reduction process will be considered.

Comment 8: AOCTRT measures are unfair. Whales have changed their feeding behavior in response to the number of longlines in the water. They now teach their young to take advantage of the fish on the longline.

Response: If the take reduction team is reconvened, the team might consider available information from fishermen on this feeding behavior. In the interim, fishermen should do all that they can to reduce interactions with whales.

Comment 9: Instead of restricting fishermen, who take relatively few whales, NMFS should shut down shipping and control the actions of the U.S. Navy to reduce interactions with large whales.

Response: NMFS is also concerned about adverse effects to whales caused by the shipping industry and ship operations of other federal agencies, including the U.S. Navy. NMFS has taken a number of actions to reduce the likelihood of ship strikes. NMFS collaborates with the U.S. Coast Guard, U.S. Navy, Army Corps of Engineers, as well as state agencies and other organizations to alert ship traffic in U.S. coastal waters to the presence of whales. Additionally, NMFS is required to provide biological opinions on activities of federal agencies that might adversely affect endangered species. Other actions include: regulations that prohibit all approaches within 500 yards (459 m) of any right whale; work toward the development of cooperative agreements with individual shipping companies to examine voluntary measures ships might take to reduce the possibility of ship strikes; and beginning July 1999, a mandatory right whale ship reporting system that will provide information on right whales directly to mariners as they enter right whale habitat and use incoming reports to assist in identifying measures to reduce future ship strikes.

Comment 10: NMFS chooses a definition of bycatch that is not consistent with the Magnuson-Stevens Act. Specifically, NMFS defines fish that are caught and released by recreational fishermen as bycatch.

Response: NMFS' definition is consistent with the Magnuson-Stevens Act. However, as described in the Billfish Amendment, NMFS does not consider released live billfish to be bycatch because the Amendment establishes a catch and release program for billfish released in the recreational fishery.

Comment 11: Atlantic Billfish released alive by recreational fishermen should not be considered bycatch because bycatch is undesirable and should be eliminated or minimized according to NS 9, while the live release of billfish is an encouraged practice.

Response: NMFS agrees. Recreational anglers have voluntarily reduced landings of Atlantic billfish since the 1988 Atlantic billfish FMP, becoming essentially a catch-and-release fishery.

NMFS realizes that live release of billfish is a beneficial practice and believes that establishing a catch-and-release fishery management program will further foster the already existing catch-and-release practices of recreational billfish fishermen. As a result of the establishment of this Program, all Atlantic billfish that are released alive, regardless of size, are not considered as bycatch, within the constraints of the Magnuson-Stevens Act and the NSGs. This decision is consistent with NS 9, the eleventh objective of this FMP amendment, and the 1997 ICCAT recommendation to promote the voluntary release of Atlantic blue and white marlin. It is also important to note that mortalities associated with all catch-and-release events must still be quantified, with results included in assessment of the stocks.

Comment 12: The draft FMP amendment fails to reduce the most obvious cause of billfish mortality, which is pelagic longline fishing. NMFS should ban the use of pelagic longline gear inside the U.S. EEZ to eliminate billfish bycatch, and the United States should work through ICCAT to ban the use of this gear throughout the Atlantic Ocean.

Response: NMFS disagrees. Following precedents set in other fisheries, the final FMP amendment indicates that billfish bycatch in the pelagic longline fishery is managed by the HMS FMP because the HMS fisheries are the target fisheries for that gear. The FMP amendment also identifies a final action to establish an Atlantic billfish bycatch reduction strategy, using six management measures implemented in the HMS FMP. This bycatch reduction plan takes a holistic approach in complying with NS 9 to reduce, to the extent practicable, all bycatch in the pelagic longline fishery. The effectiveness of the bycatch reduction measures will be evaluated annually as part of the Stock Assessment and Fishery Evaluation (SAFE) report for Atlantic billfish and HMS fisheries. An annual appraisal will include examination of current programs and research to see if Atlantic billfish bycatch can be reduced further, to the extent practicable. Further, banning all U.S. longline fishing in and of itself would not rebuild Atlantic billfish stocks. A much larger reduction in Atlantic-wide landings would be necessary, as discussed under comment 1 in this section. A consequence of a ban of U.S. pelagic longline fishing would likely be an increase in foreign effort to fill the supply of tuna and swordfish historically provided by U.S.

commercial fishermen, who are required to discard all billfish caught. Since foreign vessels retain billfish, an Atlantic-wide increase in billfish landings could be a direct result of increased foreign fishing activities. In addition, NMFS must comply with the Magnuson-Stevens Act, which specifies that NMFS must provide fishing vessels of the United States with a reasonable opportunity to harvest any allocation or quota of an ICCAT species agreed to by the United States.

Comment 13: NMFS needs to examine gear modification as a mechanism to reduce billfish bycatch.

Response: NMFS agrees. Gear modification is part of the billfish bycatch reduction strategy that is based on management tools available in the final HMS FMP. Additional research on the use of gear and gear configurations to specifically address minimizing bycatch and bycatch mortality is needed prior to implementation for the control of bycatch mortality. The HMS FMP will be the regulatory medium to implement gear modification measures, through the framework process, as new information becomes available.

Gear Modifications

Comment 1: NMFS received numerous comments regarding gear modifications in the pelagic longline fishery to reduce bycatch mortality. These comments included support for: (1) reduced soak time, (2) limited length of mainline, (3) limited number of hooks, and (4) mandated circle hooks. Comments also indicated that some of these measures are difficult to enforce and therefore, should be voluntary measures.

Response: NMFS and the AP considered many of these gear modifications in an earlier draft of the HMS FMP. NMFS rejected many of these alternatives in favor of voluntary measures and increased research on gear modifications.

Comment 2: The proposed limit to the length of mainline is not likely to reduce bycatch mortality of mammals if the data indicate that many fishermen already have lines that short.

Response: NMFS is implementing this measure to set an interim cap on the length of mainline until the take reduction team reassesses the need for other measures.

Comment 3: The measure to require longline vessels to haul their gear in the order it was set should not be implemented.

Response: NMFS agrees. This measure is difficult to enforce and observer data are not explicit about how the gear is set and hauled. If the take reduction team

meets again and continues to support this measure, NMFS can do a post-trip interview with observers to get a better idea of how many vessels already do this. Also, NMFS remains concerned about potential safety implications for vessels as this measure may cause them to increase the amount of fuel they carry to accommodate for the extra transit time. Conversely, if vessels do not carry more fuel, this measure may have increased economic impacts as trips would have to be shortened.

Comment 4: NMFS should not require the use of circle hooks in the recreational fishery; NMFS should require all recreational anglers to use circle hooks.

Response: Further research is required on the impacts of circle hooks relative to hook-up rates, post-release mortality, and hook design before the use of circle hooks should be required for the fishery. NMFS is interested in exploring gear modifications that reduce bycatch mortality and is currently funding research on the use of circle hooks vs. "J-hooks" in the pelagic longline fishery. The HMS and Billfish APs discussed the use of circle hooks at a meeting in July 1998. Representatives of the recreational fishing community expressed their support for the use of circle hooks to reduce post-release mortality in non-trolling situations with the reservation that this alternative would be better implemented in a non-regulatory way. Outreach programs for anglers and commercial fishermen will address gear modifications, including circle hooks, that may reduce post-release mortality. The results of ongoing research will be considered when available to address this comment in the future.

Comment 5: NMFS should implement gear marking requirements. Another commenter indicated that gear marking requirements will have no effect on reducing bycatch or bycatch mortality of HMS.

Response: This rule imposes gear marking requirements, because they will assist in enforcement of time/area closures and BFT catch limits, and could provide information on hooked marine mammals. Time/area closures and longline length restrictions are established to reduce bycatch. While vessel monitoring systems can alert enforcement agents to the presence of fishing gear in a closed area, agents need to approach the gear while it is drifting in the water in order to document a violation. Therefore, gear marking requirements will facilitate enforcement of HMS bycatch reduction measures.

Comment 6: NMFS should require vessels to move after one entanglement

with a protected species. Moving after one entanglement is unenforceable without mandatory observer coverage and therefore success will be difficult to measure. This measure will have no effect on reducing bycatch of HMS.

Response: This rule requires fishermen to move after one entanglement. This measure was recommended by the Atlantic Offshore Cetacean Take Reduction Plan and responds to recent research results indicating the clustering of protected species (marine mammals and sea turtles). Some fishermen already move after one entanglement in order to protect their gear, avoid catching protected species, and fish more efficiently. For fishermen who do not currently do this, it may alleviate some of the problems associated with the capture of protected species and predation on their target species. NMFS agrees that this measure is not likely to reduce bycatch of HMS, however, it was not designed to do that. This measure may be difficult to enforce but NMFS received positive feedback at the July 1998 AP meeting that it would help to reduce bycatch by informing fishermen who do not usually follow this procedure.

Comment 7: NMFS should require de-hooking devices on board all vessels. However, NMFS needs to define de-hooking devices and eliminate the use of "crucifiers," a tool reportedly used to release a hook from a fish without having to handle the fish.

Response: NMFS considered this alternative and rejected it due to the difficulty in enforcing it. NMFS is not able, at this time, to approve specific de-hooking devices, although the term "dehooking device" is defined in the final rule. However, NMFS encourages fishermen to use techniques that minimize injury to the fish and to work towards increasing survival of released individuals.

Time/Area Closures

Comment 1: NMFS should close critical right whale habitat to pelagic longline and driftnet fisheries.

Response: NMFS has prohibited the pelagic driftnet fishery for swordfish. Longline fishermen do not currently fish and are not expected to fish in these areas, therefore the only value of this closure would be to prevent expansion of effort into these areas which is unlikely. Parts of these areas are in state waters. For these reasons, NMFS does not close critical right whale habitat to pelagic longline fishermen. If there are fishery interactions with right whales in the future, NMFS may consider closing

these areas to HMS fishermen who interact with this species.

Comment 2: NMFS has received several comments on the proposed pelagic longline time/area closure off the mid-Atlantic and New England coasts, specifically with regard to bycatch and safety, including: Since there is little pelagic longline gear interaction with bluefin tuna in the southern portion of the proposed closed area, NMFS should move the southern boundary to 39° N to provide additional fishing opportunities and minimize safety concerns while still significantly reducing dead discards; NMFS should, in accordance with NS 9, achieve reduction in dead discards by changing the longline target catch requirements; the United States has failed to comply with ICCAT recommendations to develop bluefin tuna discard reduction measures; NMFS should analyze and implement additional restrictions, such as number of hooks used, soak time, and other time/area closures in conjunction with the proposed time/area closure, in order to minimize bycatch; NMFS should allow longline fishermen to fish with other allowed gears in an area closed to pelagic longline gear without having to physically remove their pelagic longline spool from the vessel. NMFS also received comment that participants of each category should be responsible for minimizing discards and, if a category is successful in doing so, should receive any resulting catch quota benefit. There were also requests that NMFS better quantify the 60 percent decrease in discards associated with the proposed time/area closure.

Response: In response to public comment regarding the southern boundary of the proposed closure area, NMFS reanalyzed the logbook data used for selection of the preferred alternative in the FMP addendum. These new analyses show that an equivalent reduction in discards can be achieved by closing a smaller area. Through this FMP, NMFS closes a 1° x 6° block (21,600 square nautical miles), from 39° to 40° N. and from 68° to 74° W., for the month of June, to pelagic longline gear. The modification of the closed area should mitigate some of the safety concerns. This smaller area also responds to concerns raised by pelagic longline fishermen during the comment period about the safety of small vessels crossing the Gulf Stream. NMFS does plan to continue to analyze the impacts of this revised time/area closure and to investigate the potential benefits of other measures. NMFS' analyses continue to indicate that there is no relationship between target catch and bluefin tuna interaction by pelagic

longline gear. NMFS will add any additions to the U.S. landings quota, resulting from unused discard allowance, to the total U.S. quota. NMFS allows fishermen to use fishing gear while a longline is on board provided the longline gear is secured.

Comment 3: NMFS received numerous comments concerning the use of time/area closures for the pelagic longline fishery. A range of comments supported the proposed Florida Straits closure, other nursery areas such as Charleston Bump and areas in the Gulf of Mexico, rotating time/area closures, and a year round ban on longline fishing. Comments also opposed any time/area closure that would have unpredictable results due to redistributed effort. Specific to the proposed area in the Florida Straits, NMFS received many comments, including those of pelagic longline fishermen, that indicated that the proposed area is too small to have the desired conservation effect because fishermen will redistribute effort on the fringe of that closed area. Some commenters found the proposed closure discriminatory because it only targets vessels in a particular area.

Response: In response to comments indicating the ineffectiveness of the Florida Straits closure, as well as updated analyses, NMFS defers the implementation of a time/area closure for protection of small swordfish and billfish until a later date. NMFS is committed to reducing bycatch of undersized swordfish and other bycatch. Areas being analyzed include areas between Charleston Bump south to Key West and areas in the Gulf of Mexico. NMFS has scheduled an advisory panel meeting on June 10 and 11, 1999, to discuss new analyses related to larger closed areas than that proposed in the draft FMP. Analyses will also be conducted with respect to redirected pelagic longline effort in other areas, and the effect on target species and bycatch. NMFS is aware of the social and economic impacts a closure may have on fishing communities and will consider those impacts when analyzing the alternatives. AP members and the public will have an opportunity to comment on the alternatives before NMFS publishes a proposed rule, by Summer 1999. NMFS agrees that rotating time/area closures could reduce bycatch mortality of undersized swordfish if NMFS could identify concentrations of undersized swordfish or bycatch finfish in real time.

Comment 4: Implementation of a time/area closure requires 100 percent coverage with a vessel monitoring

system or 100 percent observer coverage.

Response: NMFS agrees that VMS and 100 percent observer coverage are useful ways to enforce time/area closures. NMFS requires all pelagic longline vessels to carry an operating VMS, which is expected to reduce administrative costs of enforcing a time/area closure in comparison to observer coverage.

Comment 5: NMFS should include all gears in a time/area closure and require VMS on all vessels. Another commenter indicated that having closures to all fishing gears is contrary to the objectives of a time/area closure. The basis for establishing a time/area closure is to reduce bycatch mortality. The development of fair regulations does not imply the same regulations for all fishing sectors.

Response: Regarding time/area closures, NMFS agrees that regulations do not have to be the same across all fishing sectors in order to be fair. Although no-fishing-zones might be appropriate if both the commercial and recreational fishing sectors had similar bycatch mortality impacts on a stock, that is not the case with bycatch mortality of bluefin tuna or swordfish.

Comment 6: NMFS has failed to provide detail on the viability of establishing other closed areas to protect juvenile swordfish.

Response: NMFS is continuing to conduct analyses on closed areas to protect small swordfish and will provide the necessary information on potential closed areas in the near future.

Comment 7: NMFS received many comments, supporting or opposing the use of VMS in the pelagic longline fishery. Some commented that VMS presents a duplicate information collection (parallel to logbook data collection). Others commented that NMFS should provide the VMS to vessel owners because most operations do not have the finances for initial purchase of the units (VMS is economically devastating) and NMFS should pay for future upgrades to the VMS.

Response: VMS is important to the enforcement of time/area closures. NMFS requires VMS for all pelagic longline vessels in this final rule because it provides near real-time and very accurate position reports which can be used to identify fishing activity in a closed area. This accuracy and timeliness of the information collection are not duplicative to the logbook program because current data in logbooks are not submitted immediately to NMFS. Other benefits of VMS, in addition to enforcement of closed areas,

include safety, communication with shoreside contacts, increased access to weather data for fishermen, and the future potential for real-time catch and bycatch reporting from captains and observers. In an effort to minimize costs to fishermen, NMFS has relaxed proposed specifications in order to approve a lower cost unit. NMFS will not be providing VMS hardware or funding communications costs for fishermen in the pelagic longline fishery. NMFS will publish a **Federal Register** notice indicating approved VMS systems for the HMS pelagic longline fishery. Fishermen should work with VMS manufacturing and service companies to determine what other expenses they may accrue in the future. NMFS does not anticipate that any upgrades will be needed.

Comment 8: Neither the draft FMP nor the proposed rule identified the VMS requirement as being subject to Paperwork Reduction Act requirements.

Response: NMFS included the information collection burden information related to compliance with the proposed measure to require VMS in the proposed rule (64 FR 3154, January 20, 1999). The draft FMP did not provide information collection burdens for proposed measures.

Comment 9: Currently, there is only one certified VMS vendor, which means there is no cost-controlling mechanism to protect users from monopoly action by the vendor.

Response: NMFS disagrees. At the time the comment was submitted, there were no VMS units approved yet by NMFS for use in the pelagic longline fishery. INMARSAT-C had been required for a previous pilot program only. NMFS is in the process of approving VMS units and communication service providers. NMFS will publish a notice in the **Federal Register** after the approval process is completed. Fishermen should contact these companies to determine which unit best meets their needs. All of these units comply with NMFS' regulatory standards.

Time/area Closures to Protect Sharks

Comment 1: NMFS received several comments on time/area closures including that NMFS should close important juvenile and subadult EFH areas (such as breeding and nursery areas) to commercial fishing at key times, that NMFS should close juvenile and subadult EFH year round to directed fishing and retention of shark bycatch, that NMFS should close juvenile and subadult shark EFH at least during the spring pupping season, and that NMFS should not implement any

time/area closures but should intensify cooperative efforts with states to protect habitat.

Response: NMFS agrees that additional management measures for important juvenile and subadult EFH areas may be appropriate to facilitate rebuilding of LCS and prevent overfishing of pelagic and SCS. However, numerous final actions in the HMS FMP should meet conservation goals. Given the limited number of nursery and pupping areas in Federal waters, NMFS will continue to work with Atlantic and Gulf coastal states and regional fishery management councils and commissions to coordinate consistent and necessary regulations for sharks in state and Federal waters.

Comment 2: NMFS should implement a time/area closure from January 1 through March 15 between Diamond and Cape Lookout Shoals for one season and then assess its effectiveness in protecting juvenile and subadult sandbar and dusky sharks, reducing waste, and easing enforcement.

Response: As stated in the HMS FMP, NMFS did consider a time/area closure for sandbar and dusky shark juvenile and subadult wintering EFH off Cape Hatteras, NC, which closely coincides with the area suggested. NMFS did not implement such a closure because the State of North Carolina's proclamation prohibiting commercial retention of all sharks is expected to eliminate the juvenile sandbar and dusky shark winter fishery, thereby addressing effectively the need to protect juveniles in this area. However, additional management measures may be necessary in the future and NMFS may consider time and/or area closures at that time.

Comment 3: NMFS should close the juvenile and subadult wintering EFH off North Carolina to directed shark fishing and retention of all shark bycatch.

Response: NMFS disagrees for the reasons stated above.

Comment 4: Counting dead discards against quotas is not a substitute for reducing shark bycatch and NMFS should consider additional management measures to reduce bycatch and bycatch mortality of sharks.

Response: NMFS agrees and does not intend this final action to substitute for other measures. Several final actions will affect bycatch and bycatch mortality rates of sharks in other HMS fisheries as well as bycatch and bycatch rates of other species in shark fisheries. NMFS is not implementing time/area closures of juvenile and subadult EFH because few areas are within NMFS' jurisdiction and because NMFS believes that the combination of final actions in the HMS FMP will reduce effective

fishing mortality sufficiently to allow rebuilding. However, NMFS intends to continue working with regional councils, states, and commissions to address bycatch of sharks in other fisheries and to increase observer coverage in directed shark fisheries, particularly the southeast shark drift gillnet fishery, to determine bycatch and bycatch mortality of other species in shark fisheries. NMFS may consider additional management measures, including time/area closures, to reduce bycatch and bycatch mortality in shark fisheries and in other fisheries in the future.

Safety of Human Life at Sea

Comment 1: A geographically narrow closure area, such as the proposed Florida Straits closure, may entice small vessels to over-extend their range to fish along the fringes of the closed area, in order to avoid incurring costs of re-locating their home ports. Time/area closures, in general, involve a safety risk as fishermen may travel farther from shore in order to fish.

Response: NMFS recognizes the safety implications of time/area closures and seeks to minimize these risks to the extent practicable. However, NMFS reminds all vessel operators to maintain caution when undertaking all fishing activities. NMFS is implementing a VMS requirement, which may mitigate some of the safety risk. Further, NMFS is not finalizing the proposal to close the Florida Straits, but will continue analyzing closure boundaries to develop effective measures and to discourage redistribution of effort around the fringes of the closed area.

Comment 2: NMFS needs to work with the National Weather Service to increase the number of nearshore and offshore weather reporting buoys to support more accurate weather forecasting for fishermen.

Response: NMFS will forward this comment to the National Weather Service.

Comment 3: Restrictive ICCAT quotas encourage unsafe derby fishing conditions; individual transferable quotas (ITQs) may be a practical solution for some HMS fisheries.

Response: Under the authority of the Magnuson-Stevens Act, NMFS may not implement ITQs until October 1, 2000. NMFS may consider ITQs for HMS fisheries after that time.

Comment 4: Filling out logbooks within 24 hours of hauling a set may be dangerous because it takes away from the time fishermen would normally be getting rest or making repairs to equipment. Longline logbook requirements are far ahead of any other

group and further measures are punitive.

Response: NMFS has received comments indicating that there are practicality and safety issues associated with this proposed requirement, which was suggested for improved enforceability and accuracy. The operators indicate that they complete their own captain's books shortly following each set, and use these data when completing their logbooks. In response to concerns about safety at sea, the final action has been modified to require that logbooks be completed within 48 hours of hauling a set and before offloading the fish. NMFS finds logbook data very useful and the ability to inspect up-to-date logbooks is a necessary action for enforcement agents.

Essential Fish Habitat

Comment 1: It is good that NMFS realizes more research needs to be done regarding EFH. NMFS should avoid the temptation of rushing toward assumptions prior to the availability of scientific information throughout the entire range of Atlantic HMS.

Response: NMFS agrees. The EFH portions of the FMP are based on an assessment of the currently available information from published and unpublished fishery-dependent and fishery-independent data (including tag-recapture information), compilations of information from international management bodies, commercial and recreational fishermen, fishery observer data and knowledge of recognized experts. The current descriptions and identifications of EFH for HMS meet the standards of the regulations. NMFS is committed to periodic review of the available information and will revise the EFH sections of the FMP when sufficient new information is available.

Comment 2: NMFS should expand the assessment of EFH to include an evaluation of impacts of EFH by fisheries other than those targeted by the HMS fishermen.

Response: NMFS agrees. At the time the FMP was prepared, spatial information on the distribution of various fisheries, HMS, other Federal or state fisheries was not accessible. This has been identified as a high priority project for NMFS.

Comment 3: NMFS should designate sargassum as EFH for HMS and immediate regulatory action should be taken to protect sargassum from HMS fishing gears and practices, as well as other fishing and non-fishing activities until a complete and thorough study of the impact of removing this EFH is studied and reviewed.

Response: As a result of the input from the APs, sargassum has been identified as an important biological component and an integral part of EFH for many of the HMS. Although many HMS frequently co-occur with sargassum, the degree to which sargassum is utilized by HMS and its exact role relative to HMS production has not been clearly documented in the scientific literature and is a matter of current research. A phase-out of sargassum harvesting is currently proposed under the jurisdiction of the SAFMC.

Comment 4: NMFS should consider monitoring plankton and seaweed as part of the rebuilding plans for HMS.

Response: NMFS agrees that an ecosystem approach is important when managing, and particularly when rebuilding, fisheries. Essential Fish Habitat regulations require that NMFS and the Councils take an ecosystem approach in identifying and conserving habitats that are considered essential to managed fisheries.

Comment 5: The HMS FMP and Billfish Amendment do not present a procedural framework for the process of review and mitigation of fishing and non-fishing threats to EFH.

Response: In accordance with the EFH regulations, NMFS is establishing streamlined procedures to incorporate EFH concerns into existing environmental reviews. Consultations on actions that may adversely affect HMS or Billfish EFH will be conducted at the regional level, as appropriate.

Comment 6: One comment offered specific changes to the broad descriptions of ecological threats associated with oil and gas production based on a more narrow range of industry activities.

Response: The statements in the FMP regarding the ecological threats and conservation measures related to offshore oil and gas operations are meant to be broad and all-encompassing, and not site specific. Through the consultation process established under the EFH regulations, NMFS will consider the potential impacts on HMS EFH from proposed oil and gas activities, and any mitigating (e.g., regulatory) measures already in place, as well as their adequacy in protecting and conserving HMS EFH, on a case-by-case basis.

Comment 7: The habitat section should be updated with more current information.

Response: Recent publications were used in preparing the habitat section. Also, an effort was made to use publications that covered broad geographic areas in a similar, or

consistent, manner so that throughout the various regions the same parameters could be described and compared. The habitat sections will be updated as new material becomes available through the SAFE Report and framework revisions, and EFH amendments to the FMP will be prepared if the information warrants.

Comment 8: The draft amendment to the Billfish FMP lacks an in-depth discussion of mitigating fishing impacts on EFH.

Response: The EFH interim final rule requires that FMPs contain an assessment of adverse impacts from the fishing gears that are used in EFH and that Councils act to minimize adverse impacts to EFH to the extent practicable. Although limited in scope, the best available scientific information on the impacts of HMS fishing gears and practices to habitat is included and discussed in the Atlantic billfish FMP amendment and the HMS FMP. The lack of information is noted in the research and information needs section. As additional information becomes available it will be incorporated in future amendments.

Comment 9: Due to the highly migratory nature of these species and NMFS' definition that "Essential fish habitat means those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity", nearly everywhere the fish can be found could be considered "essential". With many EFH areas outside the U.S. EEZ, the ability to implement any meaningful habitat protection specifically for Atlantic billfish is limited.

Response: NMFS agrees that the ability to directly effect conservation of the habitats of billfish and other HMS may be somewhat limited because much of their range lies outside of US waters. The EFH regulations are clear that EFH can only be designated within the US EEZ, but they do allow for the identification of other important habitats outside the U.S. EEZ. The EFH regulations encourage NMFS to engage in consultations, through the appropriate channels, that can further the conservation and enhancement of the key habitats outside the control of the United States. When activities are identified that are degrading the habitat of billfish, consultations will be initiated through agencies such as the State Department or international fishery management bodies, e.g., ICCAT or FAO.

Permitting, Reporting, and Monitoring

Comment 1: NMFS should require a recreational HMS vessel permit.

Response: NMFS currently requires a permit for recreational tuna vessels, but not for private vessels fishing for sharks, swordfish or billfish. However, many of these private vessels participate in HMS tournaments, which are required to register with NMFS, and all charter boats are required to obtain a permit in order to fish for HMS. The social and economic costs of requiring an HMS permit for all recreational vessels exceed the benefits at this time. While recreational vessel permits, such as those for Atlantic tunas, can be useful in determining the universe of potential participants, in the case of billfish and swordfish, encounters are so rare relative to effort expended, a specific permit may not be applicable to this type of fishery. A recreational vessel permit, e.g., a permit for all HMS recreational fisheries, is included in the framework provisions for future consideration.

Comment 2: NMFS should require the use of a landing tag for recreational HMS fisheries.

Response: A pilot program implemented through state-federal cooperation has been in place for two years in North Carolina to test the use of tags for monitoring the recreational fishery for Atlantic bluefin tuna. Requiring fish to be tagged may be a feasible alternative that could help identify the universe of billfish and swordfish anglers, since anyone who might potentially land a billfish or swordfish would obtain a tag. Further research could shed light on the possibility of designing a viable mechanism can be implemented to identify specific user-groups. A universal HMS recreational landing tag program would require further consideration of self-reporting systems, program design and logistics, as well as obtaining specific public comment on how best to implement an effective tag program. This monitoring tool is included as a framework provision because a landing tag system merits further consideration. AP members noted that landings tags may assist in identification of the universe of Atlantic HMS anglers.

Comment 3: NMFS violates the Magnuson-Stevens Act by not making a reasonable effort to quantify the number of vessels, effort, catches, landings, bycatch, and/or trends of landings for the recreational or charter fishing sectors in HMS fisheries.

Response: The HMS FMP and the Atlantic billfish FMP amendment provide all available information on the commercial and recreational HMS fisheries, including: estimates of the number of recreational vessels involved,

the type and quantity of fishing gear used, the species of fish involved and their location, actual and potential revenues from the fishery. NMFS has quantified, to the extent practicable, the trends in landings of billfish and other HMS by the recreational sector. Information on the number of private boats and charter boats is more problematic, as noted in the FMP amendment, and is part of the rationale for requiring logbooks and permits, voluntary observers for charter-headboats, and notification and reporting for all billfish tournaments. In this final rule, NMFS establishes a number of measures that will improve estimates of recreational statistics, including mandatory permitting and logbook reporting for charter/headboats, observer coverage, and tournament reporting. Additional measures that can be utilized to further improve monitoring of the recreational, charter and commercial fishing sectors are included in the framework section of the HMS FMP and Atlantic billfish FMP amendment.

Comment 4: NMFS should not require mandatory permits and logbooks for charter boats.

Response: NMFS disagrees. The 1997 ICCAT recommendation requires improvements in monitoring, data collection, and reporting from all fisheries that encounter Atlantic billfish. These management measures provide catch and effort data for billfish that are currently not well quantified. Furthermore, NMFS seeks to improve data collection in the recreational sectors of all HMS fisheries.

Comment 5: NMFS should not require observers on charter boats. This measure is impractical, violates the privacy of recreational anglers, will deter business, result in cancellation of trips, and will have a negative economic impact on the charter fleet and associated industries. NMFS should just place observers on the dock for inspections when boats come back to shore. Monitoring of the charter fleet by NMFS is unnecessary, since anglers release most HMS that are caught. Any federal funds spent on observers should be used to expand monitoring of the commercial pelagic longline fleet.

Response: The final FMP establishes a voluntary observer program for charter and headboats, which will minimize the negative economic impact. Observers are a necessary component of fishery management to determine the accuracy of the data collected from logbooks, and will enable NMFS to directly observe recreational catch, hookup and release rates, the condition of released fish, and the species and size composition of the

catch. This type of information cannot be obtained solely by dockside or telephone interviews. If statistically meaningful samples cannot be obtained, a mandatory program may be implemented in the future.

Comment 6: The HMS tournament reporting form, currently used by NMFS for billfish, is difficult to use for reporting effort and other required information.

Response: NMFS has received numerous comments suggesting that the HMS tournament reporting form should be revised. NMFS may consider holding joint workshops with NMFS scientists, representatives of fishing organizations, and interested members of the public to discuss the best format for accurate data reporting.

Comment 7: Many charter/headboat vessels targeting HMS already carry a permit and complete a logbook under programs for other fisheries.

Response: NMFS is requiring that all HMS charter/headboat owners that fish for HMS obtain an HMS permit, in order for NMFS to identify the universe of charter/headboats targeting HMS. However, NMFS does not intend to duplicate any reporting requirements and will therefore allow charter/headboat owners to submit logbooks to NMFS as they have in the past, consistent with other charter permit conditions. NMFS will send logbook forms to charter/headboat owners who do not currently submit logbooks.

Comment 8: NMFS should increase observer coverage of the longline fishery; U.S. has failed to comply with ICCAT recommendations for minimum observer coverage.

Response: NMFS continues to strive for a goal of 5 percent observer coverage in the pelagic longline fishery, under a stratified sampling scheme. This level of coverage is required under the ICCAT recommendation for yellowfin and bigeye tunas, and under the NMFS Biological Opinion to monitor takes of endangered species.

Comment 9: NMFS should not increase the number of reporting requirements unless NMFS can analyze all the information that is collected.

Response: NMFS increases reporting requirements in order to collect more accurate data on all sectors of HMS fisheries, in support of rebuilding programs.

Comment 10: The Large Pelagic Survey (LPS) is not adequate to monitor catch of HMS.

Response: NMFS disagrees. The LPS is a statistical survey designed to estimate catches of bluefin tuna, which is used both for in-season monitoring as well as year-end estimates of catch.

Although it was designed for bluefin, the LPS collects information on other HMS at certain times and in certain areas. The MRFSS is a separate statistical survey designed to provide regional and state-wide estimates of recreational catch for the entire spectrum of marine fish species. Though not designed to account for the unique characteristics of HMS fisheries, the Marine Recreational Fishing Statistics Survey (MRFSS) does collect information on these species. In 1997, NMFS instituted a mandatory Automated Catch Reporting System (ACRS) to supplement monitoring of the recreational bluefin tuna fishery. The LPS is conducted simultaneously in order to provide a measure of comparison for the reported catch estimates. All recreational vessels are required to participate in both the call-in reporting and survey programs. NMFS is also committed to working with the states to develop more effective partnerships for monitoring the recreational bluefin tuna fishery. As part of a pilot program launched in 1998, over 20 reporting stations have been established in North Carolina, and vessels landing recreationally caught bluefin are required to fill out a catch reporting card for each bluefin retained. This program, coordinated by NMFS in cooperation with the North Carolina Division of Marine Fisheries, was continued in 1999. Other mid-Atlantic states, including Maryland and New Jersey, have demonstrated an interest in establishing similar programs. NMFS maintains that a successful tagging program depends upon effective state-federal coordination that takes into account regional differences in the fishery, as well as cooperation with the recreational industry.

NMFS maintains the current system of recreational catch monitoring for HMS, including the LPS, MRFSS, ACRS, and cooperative state tagging programs, combined with the measures implemented in this FMP and the Amendment to the Billfish FMP (charter boat logbooks, mandatory tournament registrations and reporting), are sufficient to monitor recreational catch of HMS. NMFS is committed to improving catch monitoring in both the recreational and commercial fisheries for HMS, and will work with fishery participants, the APs, the Councils, the States, and other interest parties toward this goal.

Regulatory Flexibility Analysis

Comment 1: The alternatives proposed in the draft FMP will have a disproportionate impact on pelagic longline fishermen and the analyses

contained in the IRFA and the draft HMS FMP do not seriously consider the many options to economic devastation that the pelagic longline industry has presented in the HMS AP process and in other submissions in recent years. Both the Regulatory Flexibility Act and NS 8 require NMFS to work diligently to develop alternatives that could permit rebuilding while moderating the economic impact of such conservation measures.

Response: NMFS agrees that many of the final actions will have a significant economic impact on all HMS fishermen, including pelagic longline fishermen. However, NMFS disagrees that it has not seriously considered the many options presented in the HMS AP process or in other submissions. NMFS considered all of the alternatives presented, has considered additional alternatives, and has performed numerous analyses on logbook and observer data in an attempt to minimize economic impacts to the extent practicable on HMS fishermen, including the pelagic longline fishermen. Often times, these analyses indicated to NMFS a more effective method of accomplishing a particular goal while still minimizing economic impacts to the extent practicable. In all cases, NMFS ensures that the public has a chance to participate in the final rulemaking process. NMFS believes that the final actions will achieve the rebuilding goals of the Magnuson-Stevens Act while also minimizing the economic impacts to the extent practicable.

Comment 2: It is not appropriate for NMFS to consider employment as a cost which lowers the net economic benefit.

Response: NMFS realizes that employment is considered a benefit for the employee, but this is not the definition of net economic benefit. Net economic benefit is the difference between the benefits and costs to the owner of a vessel. Thus, because the owner pays the wages of the employees, labor must be considered a cost to the owner.

Comment 3: The FMP fails to include an analysis of the cost of overfishing and depletion of the fishery resources.

Response: NMFS disagrees. Although a quantitative analysis of the cost of overfishing was not performed, NMFS provided numerous discussions and qualitative analyses of the costs of overfishing and depletion of the fishery resources. Throughout the FMP NMFS discusses the benefits to fishermen in the long-term as the stocks rebuild and how the costs of fishing will continue to increase and the benefit to the nation will continue to decrease if HMS stocks

remain overfished. In addition, NMFS repeatedly states that in the long-term, the economic impacts endured now will be less than the economic impacts endured if HMS fisheries continue to decline and the species become commercially extinct.

Comment 4: Pelagic longline fishing should be profitable because it is so diverse. However, the draft FMP concludes that the average annual payout to a vessel owner is only \$53,064. This small payout is due to years of cumulative impacts of ever more stringent fishery management measures, the impact of foreign competition, market gluts, and disparate levels of domestic versus international regulation of pelagic longline fishing. The management measures proposed in the draft FMP will put much of the pelagic longline fleet out of business.

Response: NMFS agrees that the cumulative impact of the final actions in this FMP may put many pelagic and bottom longline fishermen out of business. However, NMFS believes that the many final actions implemented in this FMP both rebuild overfished fish stocks and minimize the economic impacts to the extent practicable. In the long term, the actions in the FMP will build sustainable stocks that are economically viable. At present, many of these stocks are not at economically viable levels. This is evident in the small profits currently available to the pelagic longline fleet.

Comment 5: Requiring pelagic longline vessels to purchase, operate, and maintain a VMS is unfair; the VMS requirement will be economically devastating; the fixed costs of a VMS system fall disproportionately on smaller vessels; NMFS should not force the entire longline fleet to pay for VMS when only 20 vessels fished in the Straits of Florida proposed closure.

Response: Although the initial cost of a VMS could be expensive (\$1,800 to \$5,000), NMFS feels the benefits obtained from such a system justify the costs. Direct benefits to fishermen include: the ability to delay offloading during a closure thus obtaining a better price and allowing pelagic longline fishermen to travel to and from the south Atlantic through the north Atlantic after the closure; the ability to travel across a closed area; additional safety to vessel operators by enabling the Coast Guard to accurately find a vessel in case of an emergency; and in the future, a VMS may allow fishermen to transmit electronic logbooks thus decreasing the time taken to fill out the current logbooks and improving fleet-wide monitoring and predictions of closures. A VMS also allows for

effective enforcement of time/area closures, thus helping to rebuild the stock. This FMP only implements one time/area closure, however NMFS believes time/area closures are an effective method of reducing bycatch and can contribute to rebuilding. NMFS intends to implement additional time/area closures in the future. VMS will be important in enforcing these time/area closures.

Comment 6: The proposed Florida Straits closure will disproportionately impact the smallest and most economically vulnerable vessels in the fleet. The narrow targeting of the devastating economic impact on a handful of fishermen and fishing communities on Florida's East Coast is illegal and discriminatory. The contribution to rebuilding via reduction of dead discards will not be as great as the economic impacts on this small group of fishermen and will not be effective overall. A more productive approach would be to close larger areas for a shorter period of time. Such an approach would limit, if not preclude, the potential for redistribution of effort, while spreading the economic cost of rebuilding across a broader cross-section of the pelagic longline fleet.

Response: NMFS agrees that the proposed Florida Straits time/area closure may not be as effective as a larger time/area closure. However, NMFS does not agree that the proposed time/area closure discriminated against a handful of fishermen. The proposed time/area closure was designed to reduce the bycatch and rebuild the swordfish stocks, as required by the Magnuson-Stevens Act. NMFS did not propose a larger area in an attempt to mitigate the potential negative economic impacts of time/area closures on pelagic longline fishermen. However, the majority of commenters felt that while a time/area closure is necessary, the one proposed would not be effective. Thus, in this FMP NMFS is not implementing the proposed Florida Straits time/area closure. Instead, NMFS will re-examine all the data presented both before and during the comment period and re-analyze the data. A more effective, and probably larger, time/area closure will be proposed shortly after the implementation of this FMP.

Comment 7: If NMFS decides to impose such strict regulations on pelagic longline fishermen, NMFS should develop a buyback program; the possibility of a buyback should not be linked to other conservation methods.

Response: NMFS agrees that a buyback program might offset some of the economic hardships felt by HMS fishermen. Under section 312 (b) of the

Magnuson-Stevens Act, NMFS may implement a fishing capacity reduction program, such as a vessel or permit buyback, only once limited access has been implemented for the fishery. NMFS may consider a buyback program for commercial fishermen in the shark, swordfish, and tuna longline fisheries once limited access is implemented and funding is available.

Comment 8: NMFS' threshold of 50-percent reduction in gross revenues for a vessel to cease fishing operations lacks validity for the pelagic longline fishery. This fishery has already been economically decimated by successive rounds of regulations. A 20-percent reduction would be a more valid threshold.

Response: NMFS disagrees that the 50-percent reduction lacks validity. Based on information received during past comment periods, NMFS has determined that many fishermen remain in the fishery long after their gross revenues have been reduced by over 50 percent. While some fishermen may cease operations after 20 percent, information presented to NMFS does not support this threshold for ceasing fishing operations for the majority of participants.

Comment 9: The average annual earnings in the IRFA are overestimates. The actual economic situation is worse than NMFS is describing.

Response: As discussed in the IRFA, NMFS realizes the need for additional economic data for all HMS fishermen. NMFS has used the best available information and intends to work with the AP to develop a mandatory submission of economic information. There is nothing to preclude any small business from providing voluntarily and on its own initiative any cost data to NMFS for consideration in preparing an IRFA or FRFA. However, no such data have been forthcoming during the entire process of FMP development.

Comment 10: The fact that the draft FMP's preferred alternatives will most likely compel most of the pelagic longline fleet to cease operations vitiates the Agency's rosy long-term prognosis that domestic pelagic longline fishing income should increase once rebuilding, as the agency defines it, is well underway. Simply put, the vessels will not be around to fish, nor can the shoreside infrastructure in pelagic longline dependent communities survive these fishing restrictions.

Response: NMFS agrees that the final actions will have significant impacts on HMS fishermen and that many fishermen may cease to fish. However, current fishing mortality levels are not sustainable. If NMFS does not impose

restrictions now, there may not be any fishery in the future. In addition, the Magnuson-Stevens Act requires NMFS to rebuilding overfished fish stocks to OY and places a time limit for this rebuilding. This FMP will allow NMFS to rebuild HMS.

Comment 11: NMFS does not adequately consider cumulative impacts of its management measures.

Response: NMFS disagrees. The IRFA contained in the draft HMS FMP explains how NMFS considered the impacts, cumulative and specific, of the proposed management measures. The IRFA found that cumulatively, the management measures would have a significant economic impact. The cumulative impact of the final actions will also have a significant economic impact.

Limited Access: General

Comment 1: Access to the Atlantic swordfish and shark fisheries should be limited based on historical participation as shown by permits and landings thresholds. The goal should be to limit participants to those who not only currently have permits, but who are actively participating in the fishery.

Response: NMFS agrees.

Comment 2: NMFS received a range of comments regarding limited access and buyback programs, including: implement the proposed limited access in the swordfish and shark fisheries because both are overcapitalized; the number of vessels permitted to fish must be reduced in order to remove the large amount of latent fishing capacity in these fisheries; implement a permit moratorium first; limited access, as proposed, will maintain the shark derby; reduce the size of the legitimate fishing fleet with a "buyback" program like the one implemented in the New England groundfish fishery; implement a buyout program; require 2 limited access permits be bought to obtain 1 limited access permit; implement the limited access proposal because it is the foundation of managing sharks; and reduce the number of shark permits to the lowest levels possible.

Response: NMFS believes that the limited access system, as a first step, will reduce latent effort and overcapitalization in both the Atlantic swordfish and shark fisheries. A permit moratorium will not address the severe overcapitalization present in both fisheries. Regarding "buyback" programs NMFS recently published a proposed rule on the subject (64 FR 6854). NMFS may consider a buyback program in both fisheries once limited access is established and funding is available.

Comment 3: Most of the FMP relies on setting up a limited access program. However, because the limited access program as proposed is a temporary measure it makes it difficult to comment on the rest of the HMS FMP.

Response: NMFS disagrees. NMFS does not believe that most of the HMS FMP relies on setting up limited access nor does it consider the limited access program a temporary measure. Most of the other measures could be implemented without limited access. However, the effectiveness of these measures may be hindered if the fisheries remain overcapitalized. Limited access is meant to be a starting point for rationalizing the effort in both the swordfish and shark fisheries with the available quotas.

Comment 4: Permit issuance and administration should remain consistent.

Response: In developing this limited access program, NMFS employees from management, permit issuance, and enforcement were consulted to ensure consistency between issuing permits under limited access and the way they were issued in the past. Due to limited personnel and resources, NMFS determined that the initial issuance of limited access permits should be from the Office of Sustainable Fisheries, Highly Migratory Species Division. NMFS agrees that the current administration and issuance of permits should be maintained through the Southeast Regional Office at this time, with the exception of the initial limited access permits.

Comment 5: Most of the limited access system is incomprehensible and it was impossible to decipher how the limited access proposals apply to each fishery. The administration of permits is inconsistent with regard to who or what entity would be eligible for a limited access permit, depending on the fishery in which the vessel operates.

Response: NMFS attempted to make this limited access system as simple as possible to understand, which is difficult given the differences in the current administration of the swordfish and shark fisheries. However, because the rule consolidates regulations for all HMS fisheries, this should become easier over time. In both fisheries, permits will be issued to the current vessel owner. In the shark fishery, if the operator qualified the vessel, the permit is valid only when the operator is on board that vessel and this condition is only required until May 1, 2000, which is the first full year after implementation of limited access. After May 1, 2000, the condition requiring the operator to be on board for limited access permits

issued based on the qualifications of the operator will expire. Through this condition, NMFS intends to ensure that vessel operators, who helped the owner qualify for a shark permit and who may have an investment in the fishery, will not be negatively impacted by limited access.

Comment 6: Taking away permits is unconstitutional and it is alarming that NMFS would take away permits for reasons other than illegal activities.

Response: There is no property interest in nor right to a permit in the HMS fisheries. NMFS may institute limited access in accordance with the Magnuson-Stevens Act and other applicable law as appropriate.

Comment 7: The proposed limited access system has no conservation benefits.

Response: NMFS disagrees. As stated in the HMS FMP, limited access is intended to address overcapitalization and latent effort in the Atlantic swordfish and shark fisheries, which contribute to the existing, as well as potential for increases in, the "race for fish", market gluts, unsafe fishing conditions, and general economic inefficiency. NMFS believes that limited access has conservation benefits including better identification of active fishermen for educational workshops to reduce bycatch and bycatch mortality, reductions in derby fishing conditions, and improved safety at sea. NMFS further notes that reducing fishing capacity in overcapitalized fisheries is one of the strategies highlighted in the NOAA Fisheries Strategic Plan (May 1997) to increase long-term economic and social benefit to the Nation.

Comment 8: NMFS should address the issues surrounding fleet size versus quota availability in the shark fishery.

Response: NMFS is aware that the limited access system contained in the HMS FMP, while an important first step, may not address all the problems in the Atlantic shark fisheries, including derby fishing conditions and excess harvesting capacity of the fleet relative to available quota. NMFS may consider additional management measures to address these issues in the future.

Comment 9: NMFS should include mahi-mahi (dolphin), little tunny, and wahoo in the HMS limited access system.

Response: NMFS disagrees. Management of dolphin and wahoo is currently under development by the South Atlantic Fishery Management Council. Regarding little tunny, the Magnuson-Stevens Act defines "tuna species" under Secretarial management as albacore, bluefin, bigeye, skipjack, and yellowfin tuna. Therefore, little

tunny is also outside the jurisdiction of the Secretarial plan for tuna species, contained in the HMS FMP.

Comment 10: NMFS should allow traditional gears (harpoon, handline, rod and reel) to be used on vessels that also have pelagic longline gear on board and should provide reporting abilities on the logbooks for these gears.

Response: NMFS agrees. NMFS believes that use of secondary gear types is reasonable. NMFS may consider modifications to the pelagic logbook reporting forms as appropriate to accommodate catches and landings using secondary gears.

Comment 11: NMFS should require that boats must earn equal to or more than 50 percent of their income from pelagic longline fishing to qualify for a permit in the following year.

Response: NMFS disagrees that such a requirement is appropriate at this time. However, NMFS may consider additional measures to further reduce the number of limited access permits in the future as necessary to meet conservation goals and increase long-term economic and social benefit to the nation.

Limited Access: Historical Permits

Comment: The preferred eligibility requirement that participants must have had a permit from July 1, 1994 through December 31, 1997, is reasonable, as are the preferred landings eligibility periods of January 1, 1987 to December 31, 1997 for swordfish landings and January 1, 1991 to December 31, 1997 for shark landings.

Response: NMFS agrees.

Limited Access: Landings Thresholds

Comment 1: The numbers proposed for the directed landings threshold preferred alternative for swordfish are too close to incidental bycatch limits. This could push fishermen who are really incidental into the directed category and encourage extra effort. Raising the threshold to 100 swordfish or 408 sharks in any two years would raise the threshold high enough that incidental fishermen would not be given a directed permit. The \$5,000 limit is too low; NMFS should use a \$20,000 threshold from all fishing.

Response: The landings thresholds are based on \$5,000 annual gross revenue from fishing for either swordfish or sharks. NMFS used this level in the past to determine which fishermen are "substantially dependent" on the fishery, and NMFS believes this level of gross revenues from fishing is an appropriate threshold between fishermen who are essentially incidental (land a few fish each year as incidental

catch) versus directed (actually target the fish at some point during the year). Raising the landings threshold to a level of \$20,000 would force fishermen who target and depend on a variety of fish during the year to fish for swordfish or sharks incidentally. The higher threshold could put fishermen who are substantially dependent on the fishery out of business and is contrary to the goal of removing latent effort while allowing participating fishermen to continue to fish.

Comment 2: The Larkin *et al.* (1998) price of \$2.96 / lb (\$6.51 / kg) dressed weight which NMFS used to determine the swordfish landings threshold is wrong. The correct price should be \$2.96 / lb (\$6.51 / kg) whole weight. This would decrease the \$5,000 threshold to 19 swordfish from 25 swordfish.

Response: NMFS agrees. However, NMFS believes that 25 swordfish may be a better proxy for the \$5,000 threshold given the decrease in average swordfish prices over the past few years and maintains the 25 swordfish per year for two years landings criterion. Alternatively, because the ex-vessel price of swordfish or sharks depends on the size and quality of the fish as well as market conditions, NMFS will also accept documentation indicating that the vessel owner landed at least \$5,000 gross revenue worth of swordfish (for a swordfish limited access permit) or shark (for shark limited access permit). This documentation will only be accepted in an application or an appeal.

Comment 3: NMFS should allow swordfish and sharks that were tagged and/or released alive to be counted towards the landings eligibility criteria.

Response: NMFS disagrees. NMFS believes that the eligibility criteria for both sharks and swordfish are lenient enough that fisherman interested in landing sharks or swordfish should be able to qualify for either a directed or an incidental permit without the help of fish that were released alive.

Additionally, while NMFS acknowledges and encourages fishermen to tag and release fish with a minimum of injury, NMFS does not have the ability currently to determine from logbook records which fish were released due to regulatory requirements (minimum size, closed seasons) and therefore would not have been legal landings anyway.

Comment 4: NMFS should consider as an alternate eligibility criteria for shark limited access for a directed permit that, for 2 of the past 3 years, 75 percent of income come from commercial fishing with 50,000 lbs (22.67 mt) dw shark

landings. All other permit holders may be given incidental permits.

Response: NMFS disagrees. The landings thresholds are based on a level of fishing of \$5,000 annual gross revenue from fishing for either swordfish or sharks. NMFS used this level in the past to determine which fishermen are "substantially dependent" on the fishery. Raising the landings threshold to 75 percent of income coming from commercial fishing with 50,000 lbs dw shark landings might force fishermen who target and depend on a variety of fish during the year to fish for sharks incidentally. This might put fishermen who are substantially dependent on the fishery out of business and is contrary to the goal of removing latent effort while allowing participating fishermen to continue to fish.

Comment 5: NMFS should allow owners to transfer catch history to the operator.

Response: The limited access system allows for catch history sales or transfer as long as such sales are documented in a written agreement. NMFS will consider such sales or transfer through the application process.

Comment 6: There should be no eligibility requirements for fishermen who fish only in the South Atlantic at this time.

Response: NMFS disagrees. On October 24, 1997 (62 FR 55357), NMFS extended the U.S. management authority to include U.S. fishermen fishing for swordfish in the South Atlantic and established that South Atlantic fishermen were subject to the same regulations, including limited access, as North Atlantic fishermen. NMFS believes that limited access is important in the South Atlantic to prevent the severe overcapitalization and excess harvest capacity that exist in the North Atlantic. Once limited access is in place, NMFS may consider different management measures, as appropriate, in the South Atlantic to address issues unique to that fishery.

Limited Access: Recent History

Comment: NMFS should consider allowing 1998 landings, especially since people left the shark fishery after the 1997 LCS quota reduction, or allowing directed shark permit holders to exchange their shark permits for directed swordfish permits. NMFS should not penalize fishermen for diversification since that is what NMFS wanted people to do.

Response: NMFS disagrees. While NMFS is aware that shark fishermen may have left the shark fishery and entered other fisheries after the LCS

quota was reduced in 1997, NMFS does not believe that allowing directed shark permit holders to exchange their shark permits for directed swordfish permits is consistent with the goal of limiting access and reducing overcapitalization to the Atlantic swordfish fishery. Regarding 1998 landings, these data are not yet available in usable electronic format and NMFS believes that delaying implementation of limited access for another year will only worsen the overcapitalization that already exists in these fisheries. NMFS regulations allow transfer of limited access permits between private persons/entities.

Limited Access: Incidental Permits

Comment 1: Incidental permits for Atlantic sharks should be given automatically with an Atlantic swordfish directed permit and vice versa.

Response: NMFS agrees that fishermen who initially qualify for an Atlantic swordfish limited access permit (directed or incidental) should be also be provided an incidental shark limited access permit and an Atlantic tunas Longline (formerly incidental) category permit because the gear used to catch swordfish can also catch sharks and tunas incidentally. For the same reasons, NMFS will give fishermen who held an incidental tuna permit in 1998 a shark incidental limited access permit and a swordfish incidental limited access permit. NMFS will not automatically provide directed shark fishermen with incidental swordfish or tuna permits because directed bottom longline shark sets rarely catch swordfish or tunas. Note that NMFS implements the requirement that fishermen who enter the swordfish fishery at a later date are responsible for obtaining all three permits (swordfish limited access, shark limited access, and tuna longline) on their own.

Comment 2: The incidental trip limits for sharks are too low. NMFS should, at a minimum, return to the previous proposal of 4 sharks, any species, per vessel per day although evidence has been presented which could increase the LCS trip limit to 9 LCS per day in some regions. The pelagic shark incidental trip limit is inconsistent with NS 9 because it will increase bycatch and waste. Furthermore, the pelagic shark incidental trip limit should be increased because the pelagic shark quota has not been filled.

Response: NMFS disagrees. NMFS selected a maximum of 5 LCS per vessel per trip and a maximum of 16 pelagic and SCS, all species combined, per vessel per trip because analyses indicated that very few trips caught

numbers of sharks above the these limits. NMFS analyzed the catches (not landings) of LCS, pelagic, and SCS reported in the pelagic logbook for LCS during LCS directed fishery closures and for pelagic sharks when the target species was not reported as sharks. NMFS chose to analyze these trips' catches because NMFS believes that these trips represent truly incidental catches because sharks on these trips either were not the target species or could not be retained. These analyses indicated that during the 1996 LCS closures, over 75 percent of 1,562 trips caught a maximum of one LCS (50 percent of trips did not report catching any LCS), 10 percent of the trips caught a maximum of 9 to 80 LCS (although only one percent of trips caught 80 LCS). Of the 1,631 trips in 1996 where sharks were not targeted, over 75 percent caught a maximum of 5 pelagic sharks (50 percent of trips did not report catching any pelagic sharks), 10 percent caught a maximum of 25 to 286 pelagic sharks (only one percent of trips caught 286 pelagic sharks). Estimates based on 1997 data were similar but slightly lower. NMFS believes that the selected retention limits for incidental shark permit holders are appropriate because very low percentages of trips caught more than these limits.

Additionally, NMFS believes that many of the permits holders who reported large catches of pelagic sharks may qualify for a directed shark permit (if they landed those sharks) such that the incidental retention limits would not apply and the fish could be landed, thus reducing bycatch and waste. If they did not land their catches of pelagic sharks, then receiving an incidental shark permit would not impact their current fishing practices, and bycatch would not be increased although it would also not be reduced. Should such fishermen decide that they would like to land their incidental shark catches above the incidental retention limits, they could obtain a directed limited access permit because the permits are transferable. For LCS caught during LCS closures, NMFS is aware that these fish are regulatory discards and that the final actions in the HMS FMP may increase the duration of LCS closures and the associated regulatory discards. However, NMFS does not believe that increasing the incidental retention limits is appropriate because it would likely result in landings exceeding the allowable limits and delayed rebuilding for these species. For these reasons, NMFS believes that the selected retention limits for incidental shark permit holders are appropriate and that

regulatory discards will be minimized to the extent practicable.

Comment 3: Incidental fisheries should be tightly controlled with quotas.

Response: NMFS agrees.

Limited Access: Swordfish Handgear

Comment 1: The preferred alternative that handgear permits be issued to those who can prove a historical participation in the fishery is reasonable.

Response: NMFS agrees.

Comment 2: The handgear permit should be transferable to ensure the category will not be phased out if the recovery period takes as long as expected or longer.

Response: NMFS agrees and implements transferability of handgear permits for use with handgear only. However, a handgear permit may not be transferred for use with a longline. To further encourage the use of handgear, NMFS may consider allowing incidental or directed permits to be transferred for use with handgear only in the future. This could allow for an increase in the share of the handgear permits in the fishery once the stock recovers.

Comment 3: The preferred alternative for swordfish handgear eligibility is better than previous proposals, but the qualification period does not begin early enough to accommodate traditional fisheries. If limited access for all swordfish gear is necessary, the qualification criteria should also allow crew members on traditional harpoon boats to be eligible for a vessel permit to fish in the harpoon fishery.

Response: NMFS disagrees. The permit qualification period for swordfish begins with the start of mandatory reporting and permitting. At that time, swordfish fishermen could indicate on their permit applications that they were using harpoons but this was not required. In addition, NMFS does not have any records identifying the crew on these traditional harpoon vessels. However, if the crew members are still fishing and own a vessel, they may be able to qualify for a handgear permit based on the earned income requirement.

Comment 4: The harpoon fishery should remain an open access fishery due to the size selectivity of the gear, the high costs of entry into the fishery, and the low likelihood that open access for the harpoon fishery would lead to overcapitalization and overfishing. A moratorium institutionalizes the exclusion of a historic fishery that was driven from the fishery by the longline fishery and the lack of large fish. Harpooning is the most selective gear type in the fishery and encouraging

participation is therefore preferable to institutionalizing participation in a less-selective fishery.

Response: NMFS agrees that the traditional handgear segment should have a place in the fishery. However, NMFS believes that leaving the handgear segment of the swordfish fishery open access would allow for the same potential for overcapitalization that has already occurred in the other segments of the Atlantic swordfish fishery.

Limited Access: BAYS Tunas

Comment 1: Fishermen with a Longline category Atlantic tunas permit (formally Incidental category) should be given a swordfish and shark limited access permit. However, this alternative may need to be modified so that directed tuna permits apply only if used with the same gear that qualified the holder for the swordfish permit.

Response: NMFS agrees and will automatically provide those tuna fishermen who held an Incidental category Atlantic tunas permit in 1998 an incidental shark and swordfish limited access permit for use only with authorized gears (tuna fishermen who meet the directed fishery eligibility criteria will receive directed limited access permits). In both cases, the majority of commercial fishermen would be using pelagic longline gear. Note that NMFS implements the requirement that fishermen who enter the tuna longline fishery at a later date are responsible for obtaining all three permits (swordfish, shark, and tuna longline) on their own.

Comment 2: Bottom longline shark fishermen displaced from their fishery should not be given tuna longline permits. They should be bought out or retrained instead.

Response: NMFS agrees that directed shark fishermen should not automatically be provided a tuna Longline category permit because directed bottom longline shark sets rarely catch tuna. Additionally, similar to the rationale for swordfish limited access permits, NMFS does not believe that automatically providing directed shark permit holders with tuna Longline category permits is consistent with the ICCAT recommendation to limit effective fishing effort for yellowfin tuna to 1992 levels or the goal of limiting access and reducing overcapitalization in the fully to overfished Atlantic tunas fishery.

Limited Access: Appeals Process

Comment 1: The appeals process should not be handled by the Chief of

the HMS Division, but by some other administrative procedure.

Response: The permit process consists of two parts: the applications and the appeals. Due to limited personnel and resources, the applications (the first part of the process) will be handled by the Chief of the HMS Division because all the information and data used to make the initial determinations are available in this Division. NMFS agrees that the appeals (the second part of the process) should be handled by a separate administrative procedure. Therefore, the appeals will be handled by appeals officers who will be NOAA employees, but not employees who work in the HMS Division, in order to separate the two decision-making processes. The final agency decision will be made by the Director of the Office of Sustainable Fisheries.

Comment 2: Hardship cases should be included in the appeals procedure.

Response: NMFS disagrees. In the draft HMS FMP, NMFS did not propose to consider hardship cases because any definition of a "hardship" would make it extremely difficult to ensure consistency between decisions on the appeals, and NMFS believes that not allowing hardship cases will ensure that everyone is treated equally with no extraneous information harming or helping their case. This rationale has not changed.

Comment 3: NMFS should allow oral hearings.

Response: NMFS has not selected to allow oral hearings due to the logistical problems and potential inconsistencies with fairness and equity under NS 4.

Limited Access: Harvest Limits

Comment: The harvest limit for Atlantic swordfish should be increased to 50 percent of the marketable highly migratory species on board, but not to exceed 15 in number per vessel per trip. Other percentages may be acceptable depending on analyses. NMFS should implement directed catch criteria for pelagic sharks to help prevent directed pelagic shark fisheries from developing.

Response: NMFS disagrees. NMFS believes that target catch limit requirements can cause an increase in mortality by requiring fishermen to fish more than they normally would in order to retain the fish they have already caught. As stated in the HMS FMP, NMFS believes a straight retention limit is easier to enforce and understand. Once limited access is in place, NMFS may explore further options for determining optimal bycatch and incidental allowances.

Limited Access: Transferability

Comment 1: The preferred alternatives regarding the transferability of directed and incidental permits are reasonable.

Response: NMFS agrees.

Comment 2: The draft FMP allows for the splitting of permits (4–37), but the basis for limited access is to limit capacity (by allowing a vessel that was issued both swordfish and shark limited access permits to sell one permit while retaining the other, the harvesting capacity of the overall fleet will increase with the addition of a second vessel where there had been only one). This is inconsistent and conflicts with the stated intent of limited access. NMFS should adopt transferability requirements consistent with those in the Multispecies and Scallop FMPs. These plans allow transfers of permits to new owners only with the sale of a vessel or to other replacement vessels, provided that the new vessel complies with certain upgrading restrictions.

Response: NMFS disagrees. NMFS believes that selected transferability restrictions are consistent with the intent of this limited access program of reducing latent effort and rationalizing effort with the available quota. NMFS does not believe that fishermen should have to sell their vessel just because they want to leave the swordfish or shark fisheries. Accordingly, fishermen may transfer their permit with or without the sale of the vessel. However, once they sell their permit, they are out of the fishery. Thus, the capacity and effort in the fishery remain the same.

Comment 3: Non-transferable individual quotas would be the best second step of limited access because any fish not harvested would be conserved, and transferable individual quotas ensure that all fish are harvested.

Response: NMFS may consider transferable and/or non-transferable quotas, as well as other management measures to address fleet size and available quotas, in future rulemaking in conjunction with the HMS AP.

Comment 4: NMFS should allow people who transfer or sell permits without the vessel to keep their permit inactive (not attached to a vessel) for a while so there is sufficient time to find and purchase a sea-worthy vessel. Otherwise, people may have to rush and buy a replacement vessel so they don't lose their permit when they want to sell their current vessel.

Response: NMFS agrees. As is currently allowed in other limited access fisheries, vessel owners may sell their vessel and retain the limited access permits as long as they inform NMFS in

writing that the permit is inactive within 30 days of the vessel sale. The vessel owner may then obtain a replacement vessel to which the limited access permit(s) will be transferred, subject to upgrading and ownership restrictions, as applicable.

Limited Access: Upgrading

Comment 1: NMFS should adopt the New England and Mid-Atlantic Fishery Management Council (NEFMC, MAFMC) upgrading restrictions to address consistency issues across fisheries.

Response: NMFS agrees.

Comment 2: NMFS should not adopt the same upgrading restrictions as the NEFMC and MAFMC. The majority of fishermen affected by the limited access system for the Atlantic swordfish and shark fisheries do not participate extensively in fisheries that are under the jurisdiction of these councils. The vessel length and horsepower upgrading restrictions developed by the Councils, which are appropriate for trawl fisheries, are not appropriate for longline fisheries. Further, increasing vessel length is an important part of increasing safety at sea, especially for vessels fishing further and further offshore due to time/area closures and other regulations.

Response: NMFS believes that regulatory consistency across fisheries is important to reduce confusion and burdens on fishermen that participate in multiple fisheries under multiple jurisdictions. However, NMFS is aware that the upgrading restrictions adopted by the NEFMC and MAFMC may limit fishermen's abilities to address safety at sea issues related to vessel length and that the upgrading restrictions are more tailored to trawl vessels than the longline vessels. Therefore, NMFS implements the restrictions on vessel upgrading as a final measure at this time to prevent substantial increases in the harvesting capacity of HMS vessels but will consider alternative criteria to control the harvesting capacity in ways that minimize safety concerns. NMFS will assemble data on hold capacity, consider requesting hold capacity information on permit applications, and work with the AP and affected public to consider proposing HMS-specific vessel upgrading restrictions that account for necessary upgrades in horsepower and vessel length to address safety concerns.

Limited Access: Ownership Limits

Comment: None of the ownership restrictions proposed (restricting the number of vessels that any entity could own to no more than five percent of the

permitted vessels or no restrictions on ownership) are reasonable.

Response: NMFS disagrees. NMFS believes that ownership restrictions are an effective tool for preserving the historical small owner/operator nature of the fishery. As such, NMFS will restrict the number of Atlantic swordfish or shark vessels any one entity can own to no more than five percent of the directed swordfish or shark permitted vessels in the directed fisheries.

Issues for Future Consideration

There are issues that were not changed from the proposed rule that NMFS intends to consider further. These issues include the purse seine quota cap, prohibiting certain shark species, the practice of strikenetting in the shark drift gillnet fishery, commercial shark landing condition, use of fishing gears and gear definitions, etc. As explained above, NMFS will request the HMS AP to reconsider the purse seine cap in the context of the ICCAT Rebuilding Program. As to prohibited shark species, under the SAFE process, NMFS will annually evaluate the list of species for which possession is authorized under the management policy that only allows possession of those shark species known or expected to be able to withstand fishing mortality. NMFS is currently considering the implications of several regulations that affect the practice of strikenetting in the shark drift gillnet fishery. NMFS received comments that requiring recreational anglers to keep sharks intact while allowing commercial fishermen to head and fin sharks is unfair. While NMFS strives for consistent regulations among user groups, concerns about quality and safety of seafood sold for public consumption resulting from inadequate freezing of shark carcasses preclude the same regulation for both user groups. However, these comments warrant further consideration. NMFS will continue to consult with the public and the HMS and Billfish Advisory Panels on these issues.

Changes From the Proposed Rule

NMFS made numerous technical and substantive changes from the proposed rule in response to the comments received, to incorporate relevant final rules issued after the proposed rule was published, and to achieve consistency with regulations in other CFR parts.

Changes to incorporate other rulemakings included the supplemental rule to implement the addendum to the HMS FMP (64 FR 9298, February 25, 1999), the final rule to prohibit the use

of driftnet gear (64 FR 4055, January 27, 1999), and the final rule to restrict imports of undersized Atlantic swordfish (64 FR 12903, March 16, 1999).

Several technical corrections were made to clarify the regulations and to remove obsolete regulatory text. Regarding BFT dealer reports, NMFS no longer uses an interactive voice response system for daily landing reports. Clarification for the reporting of BFT not sold to a licensed dealer includes requiring a licensed dealer to tag and report a fish not sold to it upon the request of the person who landed the fish. Also the regulations pertaining to angling reports of BFT landings for states with tagging systems in place were clarified. A clarification was made to indicate that no BSD is required for southern bluefin tuna imports. The annual landings quota for the north Atlantic swordfish stock was changed to reflect values previously published for the 1999 fishing year. Clarifications were made pertaining to the installation and operation of vessel monitoring systems. Obsolete references regarding the ICCAT port inspection scheme were removed. Notice provisions for changing the commencement dates of tuna fishing seasons were removed because such changes would now be accomplished by framework action under the FMP. The regulations pertaining to the use and possession on board of authorized gear for the Atlantic tunas fisheries were revised to make clear that the category specific gear restrictions apply only to the taking of BFT.

Several changes were made to achieve consistency with regulations contained in other parts of the Code of Federal Regulations. The listing of approved information collections at 15 CFR part 902 was updated to account for the consolidation of HMS regulations into 50 CFR part 635. Given the restructuring of permit categories and clarifications on allowable fishing gear, the authorized gear listing at 50 CFR 600.725(v) was updated. Cross references to 50 CFR part 285 were updated to 50 CFR part 635 for the trade documentation requirements for Pacific bluefin tuna at 50 CFR part 300.

A number of changes to the regulations were made in response to comments received on the proposed rule. To reduce the reporting burden given that FAX/OCR technology has been installed, NMFS has removed the requirement for BFT dealers to mail daily landing reports of BFT and extended the reporting deadline for the HMS bi-weekly report to 10 days after the close of the reporting period. NMFS changed the requirement for attendance

at educational workshops for all longline operators to establish a voluntary program for both recreational and commercial fishermen. In the billfish fishery, NMFS is not implementing retention limits but will make adjustments to the minimum size limits as necessary to ensure that landings do not exceed authorized levels. These adjustments would be made via interim emergency rule or proposed and final rule under framework measures in the amendment. Additionally, the proposed prohibition on the use of multiple hooks when fishing for billfish is not implemented.

On a trial basis, the proposed observer program for private/charter recreational fishing trips is being implemented as a voluntary rather than mandatory program. However, observers are required for all shark drift gillnet trips.

Another change is removal of the proposed exemption of the requirement to obtain a HMS Charter/Headboat permit for vessels having a Charter/Headboat permit issued under any northeast or southeast regional FMP. However, this permit requirement will not be made effective until OMB approval for the increased reporting burden is obtained.

The proposed time/area closure for the Florida Straits to protect small swordfish is not implemented. A more effective closure is needed to reduce small swordfish bycatch. NMFS will convene a meeting of the HMS AP to address this issue and will publish a proposed rule by September 1999. The northeastern United States time/area closure designed to reduce incidental take of BFT by pelagic longlines has been reduced in size from that initially proposed due to public comment regarding safety and economic impact, as well as revisions in the analyses conducted regarding this closure. NMFS will not close the proposed areas to protect northern right whales at this time because pelagic longline fishermen have not fished in those areas in the past and are not expected to in the future. If interactions between pelagic longline gear and right whales in these areas become likely to occur, NMFS will seek appropriate action under the authority of the Marine Mammal Protection Act.

The prohibition on the retention of blue sharks, as proposed for both the commercial and recreational fishing sectors, is not implemented. The shark recreational catch limit is changed to one shark of any allowed species per vessel per trip, with a minimum size of 4.5 ft (137 cm). In addition, one Atlantic sharpnose per angler per trip is allowed, with no minimum size.

Classification

These final regulations are published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator has determined that these regulations are necessary to implement the recommendations of ICCAT and are necessary for the management of the Atlantic tunas, swordfish, shark and billfish fisheries.

NMFS prepared an initial regulatory flexibility analysis to assess the impacts on small entities of the provisions of the proposed rule that would implement the HMS FMP. Based on public comments, as described above, NMFS changed certain provisions for the final rule to mitigate the impacts on small entities and prepared a FRFA.

Logbook data indicate that fishermen routinely enter and exit HMS fisheries and this dynamic participation suggests that the universe should not be limited only to "active" participants; i.e., those who landed HMS in a given year. For example, NMFS found that of the over 2,000 permitted shark fishermen in 1995 and 1996, only 352 landed at least one large coastal sharks in both years. However, in both years over 500 fishermen landed at least one large coastal sharks; additional fishermen landed pelagic and small coastal sharks. Limiting the universe to the 352 permit holders who participated in the large coastal sharks fishery in both years would ignore the potential loss of opportunity experienced by permit holders who did participate in only one of those two years but who are regularly "active" in the fishery. Logbooks also show the multi-species nature of HMS fisheries. Few fishermen rely solely on one species of HMS or even on multiple species of HMS. Instead, fishermen fish for, and rely on, other species in addition to HMS including but not limited to mackerel, snapper-grouper, reef fish, dolphin, and oilfish. Previous studies in the area of natural resource valuation have shown that people, including fishermen, value the mere existence of opportunities regardless of whether they actually make use of them or not, and are willing to pay for the existence of options, which is separate from the profit that they could earn from exercising those options.

In the HMS FMP, the proposed rule and supplement, specific economic concerns for small entities included the time/area closure for pelagic longline fishermen in the Florida Straits and the northeastern United States, the non-ridgeback LCS quota reduction, and limited access measures for the swordfish and shark fisheries. Based on comments received, NMFS has not

implemented the Florida Straits closure and will convene a meeting of the HMS and Billfish APs to address time/area closures more effectively. Additionally, NMFS reduced the size of the northeastern United States closed area. NMFS concluded that alternative time/area closures could have less severe economic impacts on the pelagic longline fishery participants while addressing the bycatch concerns for BFT, undersized swordfish, and billfish.

NMFS concluded that separation of the LCS management group into ridgeback and non-ridgeback LCS and reduction of the quota for non-ridgeback LCS was the best alternative to rebuild overfished LCS stocks while minimizing adverse economic impacts on LCS fishermen because it allows higher harvest levels than those maintained if the LCS management group were kept as a single group. This measure should rebuild ridgeback LCS stocks consistent with the Magnuson-Stevens Act requirements to rebuild overfished fisheries and to consider the impacts of fishery resources on communities. NMFS estimates that some participants may cease business operations due to this action, but that more may cease operations under other alternatives that would not minimize economic impacts to this extent.

The limited access system implemented in this final rule affects all current permit holders in the Atlantic swordfish and shark fisheries and those vessels fishing for Atlantic tunas with longlines. The intent of limited access is to exclude only those fishermen whose logbook records indicate they are neither active nor dependent on the swordfish and shark fisheries, except that current tuna longline fishermen would automatically receive a swordfish or shark limited access permit to authorize landing of incidental catch. Based on comments received, NMFS adjusted the qualifying criteria to further reduce the likelihood of removing any active entity dependent on the fishery.

In summary, the final regulatory flexibility analyses found that, overall, the final actions for bluefin tuna and swordfish rebuilding and the bluefin tuna time/area closure may have some negative economic impact. In addition, the combination of final actions for sharks (quota reductions, minimum sizes, retention limits, and counting dead discards and state landings after Federal closures against Federal quotas) may result in the elimination of the directed commercial fisheries for large coastal sharks, and may substantially impact commercial fisheries for pelagic sharks and small coastal sharks in the

U.S. exclusive economic zone. In addition, because these regulations will have a significant impact on commercial fishermen, the HMS FMP will likely also impact related parties and communities such as processors and bait/gear suppliers. Some of the final actions (the mid-Atlantic time/area closure, vessel monitoring system) may increase costs.

However, as a group, the final actions in the HMS FMP were specifically chosen both to minimize any economic impacts to the extent practicable and to meet the goals of the HMS FMP and the Magnuson-Stevens Act, namely to prevent overfishing and rebuild overfished stocks. In the long term, the economic impacts endured now will be less than the economic impacts endured if HMS fisheries continue to decline and become commercially extinct.

The RIR/FRFA for the HMS FMP provides further discussion of the economic effects of all the alternatives considered in the final HMS FMP. A copy of the FRFA is available from NMFS (see ADDRESSES).

To ensure that the impacts of the Amendment 1 to the Atlantic Billfish FMP were fully analyzed, NMFS prepared an IRFA pursuant to 5 U.S.C. 603 without regard to whether the proposed action would have a significant economic impact on a substantial number of small entities. Aspects of the proposed rule that could have affected small entities in the billfish fisheries included a retention limit of one Atlantic billfish per vessel per trip and a provision that would reduce the retention limit for blue and/or white marlin to zero if landing limits were reached. NMFS received comments that tournaments may be canceled or may experience a significant reduction in participation if fishermen are not allowed to land a billfish that meets the legal size constraints. NMFS concluded that the alternative of minimum size limits with the possibility of increased size limits through framework regulatory adjustments could restrict landings to the allowable level without undue economic impacts.

The RIR/FRFA for Amendment 1 to the Atlantic Billfish FMP provides further discussion of the economic impacts of all the alternatives considered. A copy of the RIR/FRFA is available from NMFS (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that

collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains new and revised collection-of-information requirements, subject to review and approval by OMB under the PRA, and restates several previously approved requirements. In particular, five new reporting requirements would include position reports from a vessel-monitoring system for all pelagic longline vessels; gear marking and vessel identification requirements for longline and shark gillnet gear, and for handgear and harpoon floats; permits for all HMS Charter/Headboat vessels; logbooks for all Atlantic tuna vessels and HMS Charter/Headboat vessels; and revised reporting procedures for exempted fishing permits. The following specific reporting and recordkeeping requirements have been approved by OMB or are pending OMB approval (as noted):

1. Requirement for HMS Charter/Headboat permits in § 635.4, estimated at 30 minutes per initial permit application and 6 minutes per renewal, will be submitted for OMB clearance. NMFS reserves the effective date of the requirement until OMB approval is obtained.

2. Atlantic tunas vessel permits in § 635.4 (approved under OMB control number 0648-0327), estimated at 30 minutes per initial permit application and 6 minutes per renewal; and Atlantic tunas dealer permits in § 635.4 (approved under OMB control number 0648-0202), estimated at 5 minutes per permit action.

3. Shark and swordfish vessel permits in § 635.4 (approved under OMB control number 0648-0205), estimated at 20 minutes per permit action; and shark and swordfish dealer permits in § 635.4 (approved under OMB control number 0648-0205), estimated at 5 minutes per permit action. Importer permitting requirements for swordfish in § 635.4, estimated at 5 minutes per application, have been approved by OMB under 0648-0205.

4. Dealer reporting and recordkeeping requirements for Atlantic bluefin tuna in § 635.5 (approved under OMB control number 0648-0239), estimated at 3 minutes for daily reports, 14 minutes per bi-weekly report of fish purchases, and 1 minute to affix tags and label containers.

5. Dealer reporting and recordkeeping requirements for Atlantic swordfish and sharks in § 635.5 (approved under OMB control numbers 0648-0013) estimated at 15 minutes per bi-weekly report of fish purchases and 3 minutes per negative report. Importer reporting

requirements for swordfish in § 635.5, estimated at 15 minutes per bi-weekly report, have been approved by OMB under 0648-0013.

6. Vessel reporting and recordkeeping requirements for swordfish and sharks in § 635.5 (currently approved under OMB control number 0648-0016) estimated at 10 minutes per logbook entry, including the attachment of tally sheets, and 2 minutes for a negative catch report or a no-fishing report. OMB has approved (0648-0371) a request from NMFS to consolidate the swordfish and shark logbooks with new vessel reporting requirements for Atlantic tunas and HMS charter/headboats in § 630.5 estimated at 12 minutes per logbook entry and 2 minutes for a negative catch report. NMFS intends to randomly select 10 percent of the tuna vessels and all HMS charter/headboats on an annual basis. While NMFS intends to consolidate HMS logbooks under a new information collection, there will be an initial trial period for tuna vessels and HMS charter/headboats with the pelagic logbook forms currently approved under 0648-0016. After evaluation of the program, NMFS will request OMB approval to issue logbooks tailored to the specific reporting requirements of individual fishery segments.

7. Fishing tournament registration and selective reporting in § 635.5 (approved under OMB control number 0648-0323) estimated at 10 minutes per report.

8. Swordfish and shark limited access permit documentation requirements in § 635.16 (approved under OMB control number 0648-0325) estimated at 1.5 hours per response.

9. Vessel identification requirements for permitted HMS vessels in § 635.6 estimated at 45 minutes per vessel, have been approved by OMB under control number 0648-0373.

10. HMS gear marking requirements in § 635.6, estimated at 15 minutes per action and pertaining to longline gear (terminal floats and hi-flyers), shark nets (terminal floats) and harpoon and handgear floats, have been approved by OMB under control number 0648-0373.

11. Notification for at-sea observer requirements for Atlantic tuna, swordfish, and shark vessels in § 635.7, estimated at 2 minutes per response, has been approved by OMB under control number 0648-0374.

12. Position reporting and communication from a vessel monitoring system in § 635.69, estimated at 0.033 seconds per position report or 5 minutes per vessel per year, 4 hours for installation, and 2 hours for annual maintenance, has been approved

by OMB under control number 0648-0372.

13. BFT purse seine inspection requests in § 635.21 (approved under OMB control number 0648-0202) estimated at 5 minutes per request.

14. Angler reporting of trophy BFT and reporting by commercial vessels of large medium and giant BFT that are not sold to dealers as required in § 635.5 (approved under OMB control number 0648-0239) are estimated at 3 minutes per report, and Angler reporting of school and medium tuna in § 635.5 (approved under OMB control number 0648-0328) is estimated at 5 minutes per response.

15. HMS catch and release program requirements in § 635.26 (approved under OMB control number 0648-0247) estimated at 2 minutes per tagging card.

16. Documentation requirements for sale of billfish in § 635.31 (approved under OMB control number 0648-0216) estimated at 20 minutes for dealers purchasing from vessels and 2 minutes for subsequent purchasers.

17. Swordfish Certificate of Eligibility in § 635.46, estimated at 60 minutes per document, has been approved under OMB control number 0648-0363. Bluefin tuna statistical documents in § 635.42, estimated at 20 minutes per fish import report, and government validation of BSDs in § 635.44, estimated at 2 hours per occurrence, have been approved by OMB under control number 0648-0040.

18. Revised application and reporting requirements for EFPs in § 635.32, estimated at 30 minutes per application, 5 minutes per fish collection report, and 30 minutes per annual summary report, have been approved by OMB under control number 0648-0309.

19. Archival tag reporting requirements in § 635.33, estimated at 1.5 hours for implantation reports and 30 minutes per fish catch report, have been approved by OMB under control number 0648-0338.

Written requests for purse seine allocations for Atlantic tunas as required under § 635.27 are not currently approved by OMB. Requests for purse seine allocations are not subject to the PRA because, under current regulations, a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the information collection is exempt from the PRA clearance requirement.

Certificate of eligibility requirements for imports of fish subject to trade restrictions under § 635.40 are not currently approved by OMB. These regulations were required under ATCA

and were originally issued prior to the enactment of the PRA. NMFS will consult with OMB prior to implementing any trade restrictions under this section. While ATCA and the implementing regulations at § 635.40 authorize unilateral trade action by the United States, it is more likely that multilateral action would be taken upon a recommendation of ICCAT. In such case, notice and comment rulemaking procedures under ATCA would apply and OMB clearance for information collections would be requested prior to issuance of a proposed rule.

The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the billfish minimum size limits, the pelagic longline time/area closure, and the bluefin tuna quota and effort control specifications for 30 days. The AA finds that these measures are necessary to initiate rebuilding of overfished stocks, to manage fisheries that are currently active, and to comply with international obligations.

Given NMFS' ability to rapidly communicate these regulations to fishing interests through the FAX network, NOAA weather radio, and HMS Infoline, the AA has determined there is good cause for a waiver of the 30-day delay in the effective date because such delay would be contrary to the public good. The AA is delaying the effective dates of the VMS and charter boat and headboat permit requirements, and the effective dates of these requirements are listed above.

NMFS requested a formal consultation under section 7 of the ESA on the HMS fisheries as managed under the HMS FMP and Billfish Amendment. The consultation request concerned the possible effects of management measures in the Amendment 1 to the Billfish FMP and the HMS FMP, including implementation of AOCTRP measures for the pelagic longline fishery and ALWTRP measures for the southeast shark gillnet fishery. In a BO issued on April 23, 1999, NMFS concluded that: (1) continued operation of the shark gillnet fishery may adversely affect, but with management measures previously implemented under the ALWTRP and contained in the HMS FMP, is not likely to jeopardize the continued existence of the north Atlantic right whale; (2) continued operation of the shark gillnet fishery may adversely affect, but is not likely to jeopardize the continued existence of humpback, fin or sperm whales, or Kemp's ridley, green, loggerhead, hawksbill or leatherback sea turtles; (3) continued operation of the pelagic longline and purse seine

fisheries may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction; and (4) continued operation of the HMS handgear fisheries may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction.

NMFS also concluded that no component of the HMS fisheries would result in adverse modification of critical habitat designated for the northern right whale. These conclusions are based upon the effectiveness of measures implemented in this final rule, the attainment of adequate observer coverage in applicable fisheries, and full implementation of the requirements of the May 29, 1997 BO as amended on August 5 and 29, 1997, and July 10, 1998.

NMFS has determined that the final actions in these plans are consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. The draft HMS FMP, draft Billfish Amendment, and draft Addendum to the HMS FMP were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. The States of New York, Virginia, North Carolina, South Carolina, Mississippi, and Louisiana certified that the HMS FMP and Billfish Amendment concur with their applicable CZMA regulations. The States of Rhode Island and Delaware certified that the HMS FMP concurs with their applicable CZMA regulations. The States of Massachusetts, Connecticut, Pennsylvania, New Jersey, Georgia, and Texas certified that the Billfish Amendment concurs with their applicable CZMA regulations. The States of Pennsylvania, Virginia, and Georgia certified that the Addendum to the HMS FMP concurs with their applicable CZMA regulations. NMFS presumes that the remaining states that did not respond also concur.

The State of Georgia objected to the HMS FMP based on the continuing operation of the southeast shark drift gillnet fishery in Federal waters off its state waters. NMFS shares the State of Georgia's concern regarding bycatch and bycatch mortality rates in this fishery and is gathering information on the effect of drift gillnets in Atlantic shark fisheries on protected species, juvenile sharks, and other finfish. However, because the limited data available at this time do not indicate high bycatch and

bycatch mortality of protected species, juvenile sharks, and other finfish in the shark drift gillnet fishery, and because bycatch of endangered species in this fishery is regulated under the Endangered Species Act already, NMFS is not prohibiting use of this gear in shark fisheries at this time, consistent with National Standard 2 which requires that management measures be based on the best scientific information available. In the HMS FMP, NMFS requires 100-percent observer coverage in the southeast shark drift gillnet fishery at all times to increase data on catch, effort, bycatch and bycatch mortality rates in this fishery. Thus, the final action is consistent with Georgia's Coastal Zone Plan to the maximum extent practicable. NMFS encourages the State of Georgia to submit any data collected through state activities and will continue to work with the State to address the issues with this fishery.

This final rule has been determined to be significant for purposes of E.O. 12866.

NMFS prepared a FEIS for the HMS FMP and an FEIS for the Billfish FMP Amendment. The Environmental Protection Agency published the notice of availability of the FEIS for the HMS FMP on March 19, 1999, and the notice of availability of the FSEIS for the Atlantic billfish FMP amendment on March 26, 1999. Although the FMP and amendment discuss concerns with safety at sea, the final actions are not expected to have any substantial adverse impacts on public health or safety. The cumulative long-term impact of the final actions is to establish sustainable fisheries for Atlantic tunas, swordfish, sharks, and billfish. In the case of overfished stocks (west Atlantic bluefin tuna, bigeye tuna, north Atlantic swordfish, large coastal sharks, blue marlin, white marlin and sailfish), achievement of this long-term goal is dependent upon rebuilding the stocks. The final actions will not jeopardize the productive capacity of the target species. Although in some cases the final actions may cause an increase in fishing pressure on non-target stocks, such as dolphin and wahoo, these effects have been considered and are not expected to jeopardize the productive capacity of the non-target fish species. Furthermore, the final actions are not expected to have any adverse effects on ocean and coastal habitats. The measures established in this final rule are expected to reduce the rate of serious injury and mortality caused to marine mammals by the pelagic longline and shark drift gillnet fisheries and are not expected to result in cumulative adverse impacts that might have a

substantial effect on endangered and threatened species. In fact, the overarching goal of the FMP and the Atlantic billfish FMP amendment is to implement rebuilding plans to reduce directed and bycatch mortality rates for overfished stocks Atlantic-wide and to manage healthy stocks for the optimum yield. As no significant negative environmental impacts are expected to result from the final actions, no mitigating measures are adopted.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 300

Exports, Fish, Fisheries, Fishing, Imports, Labeling, Marine resources, Penalties, Reporting and recordkeeping requirements, Transportation, Treaties, and Wildlife.

50 CFR Parts 600, 630, 635, 644, and 678

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 18, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapters II, III, and VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Effective July 1, 1999, in § 902.1, paragraph (b), the table is amended by removing, in the left column under 50 CFR, all of the entries for parts 285, 630, 644, and 678, and, in the right column in corresponding positions, the control numbers, and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648-)
* * *	* * *
50 CFR	
* * *	* * *
300.27	-0040
* * *	* * *
635.4(d)	-0327 and -0205
635.4(g)	-0202 and -0205
635.5(a)	-0371 and -0328
635.5(b)	-0013 and -0239
635.5(c)	-0339
635.5(d)	-0328
635.5(e)	-0323
635.6(c)	-0373
635.7(c)	-0374
635.16	-0325
635.21(d)	-0202
635.26	-0247
635.31(b)	-0216
635.32	-0309
635.33	-0338
635.42	-0040
635.43	-0040
635.44	-0040
635.46(b)	-0363
635.69(a)	-0372
* * *	* * *

50 CFR Chapter II**PART 285—ATLANTIC TUNAS FISHERIES [REMOVED]**

3. Under the authority of 16 U.S.C. 971 *et seq.*, part 285 is removed effective July 1, 1999 except that § 285.22 is removed and reserved effective May 24, 1999.

50 CFR Chapter III**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

4. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951-961 and 971 *et seq.*; 16 U.S.C. 973-973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371-3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*

5. Effective July 1, 1999, in § 300.21, the definition for “tag” is revised to read as follows:

§ 300.21 Definitions.

* * *

Tag means the dealer tag, a flexible self-locking ribbon issued by NMFS for the identification of bluefin tuna under § 300.26, or the BSD tag specified under § 635.42 (a)(2) of this title.

* * *

§§ 300.24, 300.25, and 300.26 [Amended]

6. Effective July 1, 1999, in §§ 300.24, 300.25 and 300.26, the term “the Regional Director”, wherever it appears, is replaced by “NMFS”.

7. Effective July 1, 1999, in § 300.25, paragraph (a)(1) is revised to read as follows:

§ 300.25 Pacific bluefin tuna—Dealer recordkeeping and reporting.

* * *

(a) * * *

(1) The report required to be submitted under this paragraph (a) must be postmarked within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The bi-weekly reporting periods are defined as the first day to the 15th day of each month and the 16th day to the last day of the month.

* * *

8. Effective July 1, 1999, in § 300.26, paragraph (d) is revised to read as follows:

§ 300.26 Pacific bluefin tuna—Tags.

* * *

(d) *Removal.* A NMFS-issued numbered tag affixed to any Pacific bluefin tuna at the option of any permitted dealer under paragraph (c) of this section or any tag affixed to any Pacific bluefin tuna to meet the requirements of § 635.42(a)(2) of this title must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number on each tag attached to each tuna or its parts must be written legibly and indelibly on the outside of any package or container.

* * *

9. Effective July 1, 1999, § 300.27 is revised to read as follows:

§ 300.27 Pacific bluefin tuna—Documentation requirements.

Bluefin tuna imported into, or exported or re-exported from the customs territory of the United States is subject to the documentation requirements specified in §§ 635.41 through 635.44 of this title.

10. Effective July 1, 1999, in § 300.28, paragraphs (b) and (c) are revised to read as follows:

§ 300.28 Pacific bluefin tuna—Prohibitions.

* * *

(b) Remove any NMFS-issued numbered tag affixed to any Pacific bluefin tuna at the option of any permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 635.42(a)(2) of this

title, before removal is allowed under § 300.26, or fail to write the tag number on the shipping package or container as specified in § 300.26.

(c) Reuse any NMFS-issued numbered tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 635.42(a)(2) of this title or reuse any tag number previously written on a shipping package or container as prescribed by § 300.26.

50 CFR Chapter VI**PART 600—MAGNUSON-STEVENSON ACT PROVISIONS**

11. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

12. Effective July 1, 1999, in § 600.10, the definition for “Drift gillnet” is removed and the definitions for “Albacore”, “Angling”, “Atlantic tunas”, “Atlantic Tunas Convention Act”, “Bigeye tuna”, “Billfish”, “Bluefin tuna”, “Blue marlin”, “Carcass”, “Catch limit”, “Charter boat”, “Fillet”, “Fish weir”, “Headboat”, “Land”, “Longbill spearfish”, “Postmark”, “Purchase”, “Round”, “Sailfish”, “Sale or sell”, “Skipjack tuna”, “Swordfish”, “Trip”, “White marlin”, and “Yellowfin tuna” are added in alphabetical order to read as follows:

§ 600.10 Definitions.

* * *

Albacore means the species *Thunnus alalunga*, or a part thereof.

* * *

Angling means fishing for, attempting to fish for, catching or attempting to catch fish by any person (angler) with a hook attached to a line that is hand-held or by rod and reel made for this purpose.

* * *

Atlantic tunas means bluefin, albacore, bigeye, skipjack, and yellowfin tunas found in the Atlantic Ocean.

Atlantic Tunas Convention Act means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971h.

* * *

Bigeye tuna means the species *Thunnus obesus*, or a part thereof.

Billfish means blue marlin, longbill spearfish, sailfish, or white marlin.

Bluefin tuna means the species *Thunnus thynnus*, or a part thereof.

Blue marlin means the species *Makaira nigricans*, or a part thereof.

* * *

Carcass means a fish in whole condition or that portion of a fish that has been gilled and/or gutted and the head and some or all fins have been removed, but that is otherwise in whole condition.

* * * * *

Catch limit means the total allowable harvest or take from a single fishing trip or day, as defined in this section.

* * * * *

Charter boat means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire.

* * * * *

Fillet means to remove slices of fish flesh from the carcass by cuts made parallel to the backbone.

* * * * *

Fish weir means a large catching arrangement with a collecting chamber that is made of non-textile material (wood, wicker) instead of netting as in a pound net.

* * * * *

Headboat means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire.

* * * * *

Land means to begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp.

Longbill spearfish means the species *Tetrapturus pfluegeri*, or a part thereof.

* * * * *

Postmark means independently verifiable evidence of the date of

mailing, such as a U.S. Postal Service postmark, or other private carrier postmark, certified mail receipt, overnight mail receipt, or a receipt issued upon hand delivery to a representative of NMFS authorized to collect fishery statistics.

* * * * *

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

* * * * *

Round means a whole fish—one that has not been gilled, gutted, beheaded, or defined.

* * * * *

Sailfish means the species *Istiophorus platypterus*, or a part thereof.

Sale or sell means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

* * * * *

Skipjack tuna means the species *Katsuwonus pelamis*, or a part thereof.

* * * * *

Swordfish means the species *Xiphias gladius*, or a part thereof.

* * * * *

Trip means the time period that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp, or port to carry out fishing operations and that terminates with a return to a dock, berth, beach, seawall, ramp, or port.

* * * * *

White marlin means the species *Tetrapturus albidus*, or a part thereof.

Yellowfin tuna means the species *Thunnus albacares*, or a part thereof.

13. Effective July 1, 1999, § 600.15 is amended by redesignating paragraphs (a)(7) through (a)(11) as paragraphs (a)(11) through (a)(15), respectively, by redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(5) through (a)(9), respectively, and by adding paragraphs (a)(2) through (a)(4) and paragraph (a)(10) to read as follows:

§ 600.15 Other acronyms.

(a) * * *

(2) *ATCA*—Atlantic Tunas Convention Act

(3) *BFT* (Atlantic bluefin tuna) means the subspecies of bluefin tuna, *Thunnus thynnus thynnus*, or a part thereof, that occurs in the Atlantic Ocean.

(4) *BSD* means the ICCAT bluefin tuna statistical document.

* * * * *

(10) *ICCAT* means the International Commission for the Conservation of Atlantic Tunas.

* * * * *

14. Effective July 26, 1999, in § 600.725, paragraph (v), the table is amended by revising all entries under the last subheading “Secretary of Commerce” to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Allowable gear types
* * * *	*

Secretary of Commerce

Atlantic Tunas, Swordfish and Sharks FMP:	
A. Swordfish handgear fishery	A. Rod and reel, harpoon, handline, bandit gear.
B. Pelagic longline fishery	B. Longline.
C. Shark drift gillnet fishery	C. Gillnet.
D. Shark bottom longline fishery	D. Longline.
E. Shark handgear fishery	E. Rod and reel, handline, bandit gear.
F. Tuna purse seine fishery	F. Purse seine.
G. Tuna recreational fishery	G. Rod and reel, handline.
H. Tuna handgear fishery	H. Rod and reel, harpoon, handline, bandit gear.
I. Tuna harpoon fishery	I. Harpoon.
Atlantic Billfish FMP:	
Recreational fishery	Rod and reel.

PART 630—ATLANTIC SWORDFISH FISHERY [REMOVED]

15. Under the authority of 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*,

part 630 is removed effective July 1, 1999.

16. Part 635 is added and is effective July 1, 1999, except that § 635.25 is effective May 24, 1999, § 635.69 is

effective September 1, 1999, and § 635.4(b) will be effective on a date to be announced and published after OMB approves the information collection requirements, to read as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**Subpart A—General**

- Sec.
 635.1 Purpose and scope.
 635.2 Definitions.
 635.3 Relation to other laws.
 635.4 Permits and fees.
 635.5 Recordkeeping and reporting.
 635.6 Vessel and gear identification.
 635.7 At-sea observer coverage.

Subpart B—Limited Access

- 635.16 Limited access permits.

Subpart C—Management Measures

- 635.20 Size limits.
 635.21 Gear operation and deployment restrictions.
 635.22 Recreational retention limits.
 635.23 Retention limits for BFT.
 635.24 Commercial retention limits for sharks and swordfish.
 635.25 Interim Provisions.
 635.26 Catch and release.
 635.27 Quotas.
 635.28 Closures.
 635.29 Transfer at sea.
 635.30 Possession at sea and landing.
 635.31 Restrictions on sale and purchase.
 635.32 Specifically authorized activities.
 635.33 Archival tags.
 635.34 Adjustment of management measures.

Subpart D—Restrictions on Imports

- 635.40 Restrictions to enhance conservation.
 635.41 Species subject to documentation requirements.
 635.42 Documentation requirements.
 635.43 Contents of documentation.
 635.44 Validation requirements.
 635.45 Import restrictions for Belize, Honduras, and Panama.
 635.46 Import restrictions on swordfish.
 635.47 Ports of entry.

Subpart E—International Port Inspection

- 635.50 Basis and purpose.
 635.51 Authorized officer.
 635.52 Vessels subject to inspection.
 635.53 Reports.

Subpart F—Enforcement

- 635.69 Vessel monitoring systems.
 635.70 Penalties.
 635.71 Prohibitions.

Appendix A to Part 635—Species Tables

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Subpart A—General**§ 635.1 Purpose and scope.**

(a) The regulations in this part govern the conservation and management of Atlantic tunas, Atlantic billfish, Atlantic sharks, and Atlantic swordfish under the authority of the Magnuson-Stevens Act and ATCA. They implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, and the

Fishery Management Plan for Atlantic Billfishes. The Atlantic tunas regulations govern conservation and management of Atlantic tunas in the management unit. The Atlantic billfish regulations govern conservation and management of Atlantic billfish in the management unit. The Atlantic swordfish regulations govern conservation and management of North and South Atlantic swordfish in the management unit. North Atlantic swordfish are managed under the authority of both ATCA and the Magnuson-Stevens Act. South Atlantic swordfish are managed under the sole authority of ATCA. The shark regulations govern conservation and management of sharks in the management unit, solely under the authority of the Magnuson-Stevens Act. Sharks are managed under the authority of the Magnuson-Stevens Act.

(b) Under section 9(d) of ATCA, NMFS has determined that the regulations contained in this part with respect to Atlantic tunas are applicable within the territorial sea of the United States adjacent to, and within the boundaries of, the States of New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana and Texas, and the Commonwealths of Puerto Rico and the Virgin Islands. NMFS will undertake a continuing review of State regulations to determine if regulations applicable to Atlantic tunas, swordfish or billfish are at least as restrictive as regulations contained in this part and if such regulations are effectively enforced. In such case, NMFS will file with the Office of the Federal Register for publication notification of the basis for the determination and of the specific regulations that shall or shall not apply in the territorial sea of the identified State.

§ 635.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, ATCA, and § 600.10 of this chapter, the terms used in this part have following meanings. If applicable, the terms used in this part supercede those used in § 600.10:

Archival tag means a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish.

ATCA Certificate of Eligibility (COE) means the certificate that must accompany any applicable shipment of fish pursuant to a finding under 16 U.S.C. 971d (c)(4) or (c)(5).

Atlantic HMS means Atlantic tunas, billfish, sharks, and swordfish.

Atlantic Ocean, as used in this part, includes the North and South Atlantic Oceans, the Gulf of Mexico, and the Caribbean Sea.

BFT landings quota means the portion of the ICCAT BFT catch quota allocated to the United States against which landings of BFT are counted.

Billfish Certificate of Eligibility (COE) means a certificate that accompanies a shipment of billfish indicating that the billfish or related species, or parts thereof, are not from the respective Atlantic Ocean management units.

BSD tag means a numbered tag affixed to a BFT issued by any country in conjunction with a catch statistics information program and recorded on a BSD.

Caudal keel means the horizontal ridges along each side of a fish at the base of the tail fin.

CFL (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

CK means the length of a fish measured along the body contour, i.e., a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Conventional tag means a numbered, flexible ribbon that is implanted or affixed to a fish that is released back into the ocean that allows for the identification of that fish in the event it is recaptured.

Dealer tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of BFT sold to a permitted dealer as required under § 635.5(b)(2)(ii).

Dehooking device means a device intended to remove a hook embedded in a fish in order to release the fish with minimum damage.

Designated by NMFS means the address or location indicated in a letter to permit holders or in a letter accompanying reporting forms.

Division Chief means the Chief, Highly Migratory Species Management Division, NMFS (F/SF1), 1315 East-West

Highway, Silver Spring, MD, 20910; (301) 713-2347.

Downrigger means a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. The downrigger has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line gear.

Dress means to process a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

Dressed weight (dw) means the weight of a fish after it has been dressed.

EFP means an exempted fishing permit issued pursuant to § 600.745 of this chapter or to § 635.32.

Eviscerated means a fish that has only the alimentary organs removed.

Export means a shipment to a destination outside the customs territory of the United States for which a Shipper's Export Declaration (Customs Form 7525) is required. Atlantic HMS destined from one foreign country to another, which transits the United States and for which a Shipper's Export Declaration is not required to be filed, is not an export under this definition.

Exporter means the principal party responsible for effecting export from the United States as listed on the Shipper's Export Declaration (Customs Form 7525) or any authorized electronic medium available from U.S. Customs.

Finlet means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

First transaction in the United States means the time and place at which a fish is filleted, cut into steaks, or processed in any way that physically alters it after being landed in or imported into the United States.

Fishing record means all records of navigation and operations of a fishing vessel, as well as all records of catching, harvesting, transporting, landing, purchasing, or selling a fish.

Fishing vessel means any vessel engaged in fishing, processing, or transporting fish loaded on the high seas, or any vessel outfitted for such activities.

Fishing year means—

(1) For Atlantic tunas, billfish, and swordfish—June 1 through May 31 of the following year; and

(2) For sharks—January 1 through December 31.

FL (fork length) means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The

measurement is not made along the curve of the body.

Giant BFT means an Atlantic BFT measuring 81 inches (206 cm) CFL or greater.

Handgear means handline, harpoon, rod and reel or bandit gear.

High-flyer means a flag, radar reflector, or radio beacon transmitter attached to a longline.

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Appendix A to this part); white marlin; blue marlin; sailfish; and longbill spearfish.

ILAP means an initial limited access permit issued pursuant to § 635.4.

Import means the release of HMS from a nation's Customs' custody and entry into the territory of that nation. HMS are imported into the United States upon release from U.S. Customs' custody pursuant to filing an entry summary document (Customs Form 7501) or filing by any authorized electronic medium. HMS destined from one foreign country to another, which transit the United States and for which an entry summary is not required to be filed, are not an import under this definition.

Importer, for the purpose of HMS imported into the United States, means the importer of record as declared on U.S. Customs Form 7501 or by any authorized electronic medium.

Intermediate country means a country that exports to another country HMS previously imported by that nation. Shipments of HMS through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

LAP means a limited access permit issued pursuant to § 635.4.

Large coastal shark (LCS) means one of the species, or a part thereof, listed in paragraph (a) of Table 1 in Appendix A to this part.

Large medium BFT means a BFT measuring at least 73 inches (185 cm) and less than 81 inches (206 cm) CFL.

Large school BFT means a BFT measuring at least 47 inches (119 cm) and less than 59 inches (150 cm) CFL.

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

Management unit means in this part:

(1) For Atlantic tunas, longbill spearfish, blue marlin and white marlin, means all fish of these species in the Atlantic Ocean;

(2) For sailfish, means all fish of this species in the Atlantic Ocean west of 30° W. long.;

(3) For North Atlantic swordfish, means all fish of this species in the Atlantic Ocean north of 5° N. lat.;

(4) For South Atlantic swordfish, means all fish of this species in the Atlantic Ocean south of 5° N. lat.; and

(5) For sharks, means all fish of these species in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

Mid-Atlantic Bight means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

Non-ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(2) of Table 1 in Appendix A to this part.

North Atlantic swordfish or North Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean north of 5° N. lat.

Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00' N. lat., 74°00' W. long.; 40°00' N. lat., 68°00' W. long.; 39°00' N. lat., 68°00' W. long.; and 39°00' N. lat., 74°00' W. long.

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Pectoral fin means the fin located behind the gill cover on either side of a fish.

Pelagic shark means one of the species, or a part thereof, listed in paragraph (c) of Table 1 in Appendix A to this part.

PFCFL (pectoral fin curved fork length) means the length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

Prohibited shark means one of the species, or a part thereof, listed in paragraph (d) of Table 1 in Appendix A to this part.

Restricted-fishing day (RFD) means a day, beginning at 0000 hours and ending at 2400 hours local time, during which a person aboard a vessel for which a General category permit for Atlantic Tunas has been issued may not fish for, possess, or retain a BFT.

Ridgeback large coastal shark means one of the species, or a part thereof, listed in paragraph (a)(1) of Table 1 in Appendix A to this part.

School BFT means a BFT measuring at least 27 inches (69 cm) and less than 47 inches (119 cm) CFL.

Shark means one of the oceanic species, or a part thereof, listed in Tables 1 and 2 in Appendix A to this part.

Small coastal shark (SCS) means one of the species, or a part thereof, listed in paragraph (b) of Table 1 in Appendix A to this part.

Small medium BFT means a BFT measuring at least 59 inches (150 cm) and less than 73 inches (185 cm) CFL.

South Atlantic swordfish or south Atlantic swordfish stock means those swordfish occurring in the Atlantic Ocean south of 5° N. lat.

Swordfish Certificate of Eligibility (COE) means the certificate that accompanies a shipment of imported swordfish indicating that the swordfish or swordfish parts are not from the Atlantic Ocean or, if they are, are derived from a swordfish weighing more than 33 lb (15 kg) dw.

Tournament means any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching or landing such fish.

Tournament operator means a person or entity responsible for maintaining records of participants and results used for awarding tournament points or prizes, regardless of whether fish are retained.

Trip limit means the total allowable take from a single trip as defined in § 600.10 of this chapter.

Weightout slip means a document provided to the owner or operator of the vessel by a person who weighs fish or parts thereof that are landed from a fishing vessel. A document, such as a "tally sheet," "trip ticket," or "sales receipt," that contains such information is considered a weightout slip.

Young school BFT means an Atlantic BFT measuring less than 27 inches (69 cm) CFL.

§ 635.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and in paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in fisheries for HMS in the Atlantic Ocean, unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and § 600.740 of this chapter, respectively.

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 635.32.

§ 635.4 Permits and fees.

Information on permits and permit requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *General.* (1) *Authorized activities.* Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part.

(2) *Vessel permit inspection.* The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic tunas, when engaged in commercial or recreational fishing, and to fish for, take, retain or possess Atlantic swordfish or sharks when engaged in commercial fishing. The vessel operator and must make such permit available for inspection upon request by NMFS or a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

(3) *Property rights.* Limited access vessel permits or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, limited access vessel permits represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

(4) *Dealer permit inspection.* A dealer permit issued under this section, or a copy thereof, must be available at each of the dealer's places of business. A dealer must present the permit or a copy for inspection upon the request of a NMFS-authorized officer.

(5) *Display upon offloading.* Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's Atlantic tunas, shark, or swordfish permit to the receiving dealer. The

permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2) and (b)(2)(i).

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(7) *Alteration.* A vessel or dealer permit that is altered, erased, mutilated, or otherwise modified is invalid.

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (b) of this section, may be charged for issuance of the replacement permit.

(9) *Fees.* NMFS may charge a fee for each application for a permit or for each transfer or replacement of a permit. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified in the instructions provided with each application form. Each applicant must include the appropriate fee with each application or request for transfer or replacement. A permit will not be issued to anyone who fails to pay the fee.

(b) *HMS Charter/Headboat Permits.*

(1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) [Reserved.]

(d) *Atlantic Tunas vessel permits.* (1) The owner of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, a permit in one and only one of the following categories: Angling, Charter/Headboat, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas vessel permit or a valid HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel's valid permit is in the General, Harpoon, Charter/Headboat, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or is a valid HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued a permit in the Angling category.

(3) Except for purse seine vessels for which that permit has been issued under this section, a vessel owner may change the category of the vessel's permit no more than once each year and only from January 1 through May 15. From May 16 through December 31, the vessel's permit category may not be changed, regardless of a change in the vessel's ownership.

(4) A person can obtain an Atlantic Tunas Longline category permit for a vessel only if the owner of the vessel has both a limited access permit for shark and a limited access permit for swordfish.

(5) An owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns. In either case, the owner must submit a written request for transfer to NMFS, to an address designated by NMFS, and attach an application for the new vessel and the existing permit. NMFS will issue no more than 5 Atlantic Tunas Purse Seine category permits.

(e) *Shark vessel LAPs.* (1) As of July 1, 1999, the only valid Federal commercial vessel permits for shark are those that have been issued under the limited access criteria specified in § 635.16.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. See § 635.16 regarding the initial issuance of these two types of permits. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

(3) A commercial limited access permit for sharks is not required if the vessel is recreational fishing and retains no more sharks than the recreational retention limit, is operating pursuant to the conditions of a shark EFP, or that fishes exclusively within state waters.

(4) An owner issued a permit pursuant to this part must agree, as a condition of such permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such shark or gear are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

(f) *Swordfish vessel LAPs.*

(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. See § 635.16 regarding the initial issuance of these three types of permits.

(2) As of July 1, 1999, the only valid commercial Federal vessel permits for swordfish are those that have been issued under the limited access criteria specified in § 635.16.

(3) A commercial Federal permit for swordfish is not required if the vessel is recreational fishing.

(4) Unless the owner has been issued a swordfish handgear permit, a limited access permit for swordfish is valid only when the vessel has on board a valid commercial limited access permit for shark and a valid Atlantic Tunas Longline category permit for such vessel.

(g) *Dealer permits*—(1) *Atlantic tunas.* A person that receives, purchases, trades for, or barter for Atlantic tunas from a fishing vessel of the United States or who imports or exports bluefin tuna, regardless of ocean area of origin, must possess a valid dealer permit.

(2) *Shark.* A person that receives, purchases, trades for, or barter for Atlantic sharks from a fishing vessel of the United States must possess a valid dealer permit.

(3) *Swordfish.* A person that receives, purchases, trades for, or barter for Atlantic swordfish from a fishing vessel of the United States or who imports

swordfish, regardless of origin, must possess a valid dealer permit. Importation of swordfish by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(h) *Applications for permits.* An owner of a vessel or a dealer must submit to NMFS, at an address designated by NMFS, a complete application and required supporting documents at least 30 days before the date on which the permit is to be made effective. Application forms and instructions for their completion are available from NMFS.

(1) *Atlantic tunas vessel permits.* (i) An applicant must provide all information concerning his or her identification, vessel, gear used, fishing areas, fisheries participated in, the corporation or partnership owning the vessel, and income requirements requested by NMFS and included on the application form.

(ii) An applicant must also submit a copy of the vessel's valid U.S. Coast Guard documentation or, if not documented, a copy of its valid state registration and any other information that may be necessary for the issuance or administration of the permit as requested by NMFS. The owner must submit such information to an address designated by NMFS.

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(7) of this section.

(2) *Limited access permits for swordfish and shark.* See § 635.16 for the issuance of ILAPs for shark and swordfish. See paragraph (l) of this section for transfers of ILAPs and LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

(3) *Dealer permits.* (i) An applicant for a dealer permit must provide all the information requested on the application form necessary to identify the company, its principal place of business, and mechanisms by which the company can be contacted.

(ii) An applicant must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents requested on the application form.

(iii) An applicant must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(i) *Change in application information.* A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in writing to NMFS, to an address designated by NMFS with the issuance of each permit. In the case of a vessel permit for Atlantic tunas or an HMS Charter/Headboat permit, the vessel owner or operator must report the change by phone or internet to a number or website designated by NMFS. A new permit will be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. For certain information changes, NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

(j) *Permit issuance.* (1) NMFS will issue a permit within 30 days of receipt of a complete and qualifying application. An application is complete when all requested forms, information, and documentation have been received, including all reports and fishing or catch information required to be submitted under this part.

(2) NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(3) For issuance of ILAPs for shark and swordfish, see § 635.16.

(k) *Duration.* A permit issued under this section will be valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904, the vessel or dealership is sold, or any other information previously submitted on the application changes, as specified in paragraph (i) of this section.

(l) *Transfer*—(1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel and owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section; or, if the acquired vessel is permitted in either the shark or swordfish fishery, in accordance with paragraph (l)(2) of this section. If the acquired vessel or dealership is currently permitted, an application

must be accompanied by the original permit and by a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Shark and swordfish LAPs.* (i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish ILAP or LAP to another vessel that he or she owns or to another person. Directed handgear ILAPs and LAPs may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section. Incidental catch ILAPs and LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.

(ii) An owner may upgrade a vessel with a commercial swordfish or shark limited access permit, or transfer the limited access permit to another vessel, and be eligible to retain or renew a limited access permit only if the upgrade or transfer does not result in an increase in horsepower of more than 20 percent or an increase of more than 10 percent in length overall, gross registered tonnage, or net tonnage from the vessel baseline specifications.

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the vessel that was issued an initial limited access permit.

(B) The vessel's horsepower may be increased only once throughout the validity of each permit, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(C) The vessel's length overall, gross registered tonnage, and net tonnage may be increased only once throughout the validity of each permit, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person may own or control more than 5 percent of the vessels for which swordfish directed commercial permits have been issued or more than 5 percent of the vessels for which shark directed commercial permits have been issued.

(iv) In order to transfer an ILAP or LAP to a replacement vessel, the owner of the vessel issued the ILAP or LAP pursuant to this part must request NMFS, at an address designated by NMFS, to transfer the ILAP or LAP to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid ILAP or LAP to NMFS with a complete application for a LAP, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For ILAP or LAP transfers to a different person, the transferee of an ILAP or LAP must request NMFS, at an address designated by NMFS, to transfer the original ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties to the transaction on the back of the permit, the bill of sale of the ILAP or LAP. A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for ILAP or LAP transfers involving vessels.

(vi) For ILAP or LAP transfers with the sale of the permitted vessel, the transferee of the vessel and ILAP or LAP issued to that vessel must request NMFS, at an address designated by NMFS, to transfer the ILAP or LAP, subject to requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section, if applicable. The following must accompany the completed application: The original ILAP or LAP with signatures of both parties to the transaction on the back of the permit, the bill of sale of the ILAP or LAP and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued an ILAP or LAP who sells the permitted vessel, but retains the ILAP or LAP, must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the ILAP or LAP to a replacement vessel, he/she must apply and follow the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic tunas Longline category permit are required to retain swordfish. Accordingly, a LAP for swordfish obtained by transfer without

either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental ILAP or LAP for swordfish, a directed or an incidental catch ILAP or LAP for shark, and an Atlantic tunas Longline category permit are required to retain Atlantic tunas. Accordingly, an Atlantic tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use a vessel to fish in the Atlantic tunas fishery.

(m) *Renewal*—(1) *General*. Persons must apply annually for a vessel or dealer permit for Atlantic tunas, sharks and swordfish, and HMS Charter/Headboats. Persons must apply annually for an Atlantic tunas or HMS Charter/headboat vessel permit. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in § 635.4 (l)(2), all reports required under the Magnuson-Stevens Act have been submitted, including those described in § 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

(2) *Shark and swordfish LAPs*. As of June 1, 2000, the owner of a vessel of the United States that fishes for, possesses, lands, or sells shark or swordfish from the management unit, or takes or possesses such shark or swordfish as incidental catch, must have a LAP issued pursuant to the requirements in § 635.4(e) and (f). However, any ILAP that expires on June 30, 2000, is valid through June 29, 2000. Only valid ILAP or LAP holders in the preceding year are eligible for renewal of a LAP. ILAP and LAP holders who have transferred their permits are not eligible for renewal.

§ 635.5 Recordkeeping and reporting.

Information on HMS vessel and dealer reporting requirements may be obtained from the Division Chief or where otherwise stated in this part.

(a) *Vessels*—(1) *Logbooks*. If an owner of an HMS Charter/Headboat vessel, an Atlantic Tunas vessel, or a commercial shark or swordfish vessel, for which a permit has been issued under § 635.4(c), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing

record on a logbook specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the form within 48 hours of completing that day's activities and, for a 1-day trip, before offloading. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS.

(2) *Weighout slips*. If an owner of a permitted vessel is required to maintain and submit logbooks under paragraph (a)(1) of this section, and Atlantic HMS harvested on a trip are sold, the owner or operator must obtain and submit copies of weighout slips for those fish. Each weighout slip must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual weights are normally recorded. For fish that are not individually weighed, a weighout slip must record total weights by species and market category. A weighout slip for sharks prior to or as part of a commercial transaction involving shark carcasses or fins must record the weights of carcasses and any detached fins. The owner or operator must also submit copies of weighout slips with the logbook forms required to be submitted under paragraph (a)(1) of this section.

(3) *BFT not sold*. If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, at a number designated by NMFS, at the time of landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. All BFT landed but not sold will be applied to the quota category according to the permit category of the vessel from which it was landed.

(b) *Dealers*. Persons who have been issued a dealer permit under § 635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS*. (i) Dealers that receive Atlantic swordfish and Atlantic sharks from U.S. vessels must report all Atlantic tunas (including BFT), Atlantic swordfish and Atlantic sharks received from U.S. vessels on a form available from NMFS. (ii) Dealers must report all imports of BFT and swordfish on forms available from NMFS.

(iii) Reports of Atlantic swordfish and shark dealers, including reports of imported swordfish and bluefin tuna, received on the first through the 15th of each month must be postmarked no later than the 25th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. For swordfish imports, a dealer must attach a copy of each certificate of eligibility to the report required under paragraph (b)(1)(i) of this section. If a dealer has not received Atlantic swordfish or Atlantic sharks from U.S. vessels, during a reporting period, he or she must submit a report to NMFS, to an address designated by NMFS so stating, and the report must be postmarked as specified for the reporting period. A negative report is not necessary for Atlantic swordfish imports.

(iv) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by a dealer if he or she provides a copy of each appropriate weighout slip or sales record, provided such weighout slip or sales record by itself or combined with the form available from NMFS includes all of the required information and identifies each fish by species.

(v) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, a dealer must deliver such report no later than the prescribed postmark date for the reporting period.

(2) *Requirements for BFT*—(i) *Reports of BFT*. Each dealer must submit a completed landing report on each BFT received, to NMFS, at an address designated by NMFS, by electronic facsimile (fax) not later than 24 hours from receipt of the fish. The landing report must be signed by the permitted vessel's owner or operator immediately upon transfer of the fish and must indicate the name and permit number of the vessel that landed the fish. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report. The dealer must also submit a bi-weekly report on forms

supplied by NMFS for transfers from U.S. vessels and for imports of BFT. For BFT received on the first through the 15th of each month, the dealer must submit the bi-weekly report forms to NMFS postmarked no later than the 25th of that month. Reports of receipt of such BFT received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month.

(ii) *Dealer Tags.* NMFS will issue numbered dealer tags to each person issued a dealer permit for Atlantic tunas under § 635.4. A dealer tag is not transferable and is usable only by the dealer to whom it is issued. Dealer tags may not be reused once affixed to a tuna or recorded on a package, container, or report.

(A) *Affixing dealer tags.* A dealer or a dealer's agent must affix a dealer tag to each BFT purchased or received immediately upon its offloading from a vessel. The dealer or dealer's agent must affix the tag to the tuna between the fifth dorsal finlet and the caudal keel.

(B) *Removal of dealer tags.* A dealer tag affixed to any BFT under paragraph (b)(2)(ii)(A) of this section or a BSD tag affixed to an imported BFT must remain on the tuna until the tuna is cut into portions. If the BFT or BFT parts subsequently are packaged for transport for domestic commercial use or for export, the dealer or the BSD tag number must be written legibly and indelibly on the outside of any package or container. Such tag number must be recorded on any document accompanying shipment of BFT for commercial use or export.

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each written report required under paragraphs (b)(1)(i) through (b)(1)(iii) and paragraph (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) *Anglers.* The owner of a vessel permitted in the Atlantic tunas Angling or Atlantic tunas or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1-888-USA-TUNA. Alternative BFT reporting procedures may be established by NMFS in cooperation with states and may include such methodologies as telephone, dockside or mail surveys, mail in or phone-in reports, tagging programs, or mandatory check-in stations. A census or a statistical sample of persons fishing under the Angling category may be used for these alternative reporting programs, and owners of selected vessels will be

notified by NMFS or by the cooperating state agency of the requirements and procedures for reporting BFT. Each person so notified must comply with those requirements and procedures. Additionally, NMFS may determine that BFT landings reporting systems implemented by the states, if mandatory, at least as restrictive, and effectively enforced, are sufficient for Angling category quota monitoring. In such case, NMFS will file with the Office of the Federal Register for publication notification indicating that compliance with the state system satisfies the reporting requirement of this paragraph (c).

(d) *Tournament operators.* A tournament operator must notify NMFS of the purpose, dates, and location of the tournament conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament. NMFS will notify a tournament operator in writing, when his or her tournament has been selected for reporting. The tournament operator that is selected must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament and must attach a copy of the tournament rules.

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a vessel or dealer permit under this part, or anyone responsible for offloading, storing packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

(f) *Additional data and inspection.* Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, regardless of whether retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. A person issued a

permit under § 635.4 is required to provide requested information about fishing activity, and a person, regardless of whether issued a permit under § 635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS or its designees upon request.

§ 635.6 Vessel and gear identification.

(a) *Vessel number.* For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.

(b) *Vessel identification.* (1) An owner or operator of a vessel for which a permit has been issued under § 635.4 must display the vessel's number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) in height for all other vessels.

(2) The owner or operator of a vessel for which a permit has been issued under § 635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

(3) In addition to gear marking requirements in this paragraph (c)(1), provisions on gear marking for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(b) of this title.

§ 635.7 At-sea observer coverage.

(a) *Applicability.* NMFS may select for observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4. Vessels permitted in the HMS Charter/Headboat and Atlantic Tunas Angling and Charter/Headboat categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 are required to take observers on a mandatory basis.

(b) *Selection of vessels.* NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples.

(c) *Notification of trips.* The owner or operator of a vessel that is selected under paragraph (b) of this section must notify NMFS, at an address designated by NMFS, before commencing any fishing trip that may result in the incidental catch or harvest of Atlantic HMS. Notification procedures and information requirements such as expected gear deployment, trip duration and fishing area will be specified in a selection letter sent by NMFS.

(d) *Assignment of observers.* Once notified of a trip, NMFS will assign an observer for that trip based on current information needs relative to the expected catch and bycatch likely to be associated with the indicated gear deployment, trip duration and fishing area. If an observer is not assigned for a fishing trip, NMFS will issue a waiver for that trip to the owner or operator of the selected vessel. If an observer is assigned for a trip, the operator of the selected vessel must arrange to embark the observer and shall not fish for or retain any Atlantic HMS unless the NMFS-assigned observer is aboard. At no time shall a person aboard a vessel fish for Atlantic sharks with a gillnet or possess sharks on board a vessel with a gillnet on board unless a NMFS-approved observer is aboard the vessel.

(e) *Requirements.* The owner or operator of a vessel on which a NMFS-approved observer is embarked, regardless of whether required to carry the observer, must comply with §§ 600.725 and 600.746 of this chapter and—

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

Subpart B—Limited Access**§ 635.16 Limited access permits.**

As of July 1, 1999, the only valid commercial vessel permits for shark and swordfish are those that have been issued under the limited access criteria specified in this section. If the Federal commercial shark permit issued to the vessel owner prior to July 1, 1999, was based on the qualifications of the operator, then a shark limited access permit will be issued to the qualifying vessel owner, subject to the provisions in this part, with the requirement that the operator must be on board the vessel to fish for, take, retain, or possess Atlantic sharks in state or Federal waters. This requirement expires May 30, 2000.

(a) *Eligibility requirements for ILAPs—(1) Directed permits.* To be eligible for a directed ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997.

(ii) Documented shark or swordfish landings from the respective federally permitted vessel that he or she owned, of at least \$5,000 per year in value or in number per year as follows—

(A) One hundred and two sharks per year for any 2 calendar years, from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid, or

(B) Twenty-five swordfish per year for any 2 calendar years, from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid.

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) *Incidental catch permits.* To be eligible for an incidental ILAP in the shark or swordfish fishery, a vessel owner must demonstrate past participation in the respective fishery by having—

(i) Been the owner of a vessel that was issued a valid permit for the respective fishery at any time from July 1, 1994, through December 31, 1997; and

(ii) Documented landings from the respective federally permitted vessel that he or she owned of at least—

(A) Seven sharks from January 1, 1991, through December 31, 1997, provided the landings after July 1, 1993, occurred when the permit was valid; or

(B) Eleven swordfish from January 1, 1987, through December 31, 1997, provided the landings occurred when the permit was valid; and

(iii) Been the owner of a vessel in the respective fishery that—

(A) Had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or

(B) Had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998; and

(iv) Met either the gross income from fishing or the gross sales of fish requirement specified in paragraph (a)(3)(i) or (ii) of this section; or

(v) Been the owner of a vessel that had a permit for Atlantic tuna in the Incidental category at any time from January 1, 1998, through December 31, 1998; or

(vi) Been the owner of a vessel that is eligible for a directed or incidental ILAP for swordfish (incidental shark ILAPs only).

(3) *Handgear permits.* To be eligible for a swordfish handgear ILAP—

(i) The owner's gross income from commercial fishing (i.e., harvest and first sale of fish) or from charter/headboat fishing must be more than 50 percent of his or her earned income, during one of the 3 calendar years preceding the application, or

(ii) The owner's gross sales of fish harvested from his or her vessel must have been more than \$20,000, during one of the 3 calendar years preceding the application, or

(iii) The owner must provide documentation of having been issued a swordfish permit for use with harpoon gear, or

(iv) The owner must document his or her historical landings of swordfish with handgear through logbook records, verifiable sales slips or receipts from registered dealers or state landings records.

(b) *Landings histories.* For the purposes of the landings history criteria in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section:

(1) The owner of a permitted vessel at the time of a landing retains credit for the landing unless ownership of the vessel and the landings history has been transferred and there is a written agreement signed by both parties to the transfer, or there is other credible written evidence that the original owner transferred the landings history to the new owner.

(2) A vessel's landings history may not be divided among owners. A transfer of credit for landings history must be for the entire record of landings under the previous owner.

(3) Vessel landings histories may not be consolidated among vessels. Owners may not pool landings histories to meet the eligibility requirements.

(c) *Alternative eligibility requirements for initial permits.* (1) Persons who acquired ownership of a vessel and its landings history after December 31, 1997, are exempt from the requirement to have owned a federally permitted shark or swordfish vessel at any time during the period July 1, 1994, through December 31, 1997. The acquired landings history must meet the criteria for a directed or incidental catch permit specified in paragraph (a)(1)(ii)(A), (a)(1)(ii)(B), (a)(2)(ii)(A) or paragraph (a)(2)(ii)(B) of this section, and such persons must have had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, or a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998.

(2) If a person first obtained a shark or swordfish permit in 1997, the required landings for a directed or incidental catch permit specified in paragraphs (a)(1)(ii) and (a)(2)(ii) are modified as follows:

(i) To qualify for a directed shark or swordfish ILAP, respectively, such persons must document landings from a federally permitted vessel of at least:

(A) One hundred and two sharks in calendar year 1997, provided such landings occurred when the permit was valid, or

(B) Twenty-five swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(ii) To qualify for an incidental shark or swordfish catch ILAP, respectively, such persons must document landings from a federally permitted vessel of at least one shark or swordfish in calendar year 1997, provided such landings occurred when the permit was valid.

(d) *Procedures for initial issuance of LAPs—(1) Notification of status.* NMFS will send all written correspondence regarding limited access permits by certified mail.

(i) Shortly after the final rule is published, the Division Chief will notify each owner of a vessel who had a valid Federal shark permit at any time from January 1, 1998, through December 31, 1998, each owner of a vessel who had a valid Federal swordfish permit at any time from June 1, 1998, through November 30, 1998, and each owner of a vessel that had a valid Atlantic tuna Incidental category permit at any time from January 1, 1998, through December 31, 1998, of the initial determination of the owner's eligibility for a directed or incidental catch ILAP. The Division Chief will make the initial determination based on the criteria in paragraphs (a)(1), (a)(2), and (c)(2) of this section and on records available to NMFS and mail the appropriate permit. The Division Chief will not make initial determinations of eligibility for a vessel permit under the alternative eligibility requirements specified in paragraph (a)(3) or (c)(1) of this section; persons that believe they qualify for a LAP under these criteria must apply to the Division Chief.

(ii) If NMFS determines that all qualifications for a directed or incidental catch ILAP have been met and that no further action is required, the appropriate permit for the vessel will be included with the notification. An ILAP issued by NMFS will be valid through the expiration date indicated on the permit.

(iii) A person must apply to the Division Chief for the appropriate permit if—

(A) He or she does not agree with the initial determination;

(B) He or she believes that he or she qualifies for a directed or incidental catch ILAP but did not receive a letter from the Division Chief regarding eligibility status; or

(C) He or she believes that he or she qualifies for a swordfish handgear permit.

(2) *Applications for ILAPs.* (i) Applicants may obtain application forms and instructions from the Division Chief. The vessel owner must submit a completed signed application form and all required supporting documents.

(ii) An application for a directed or incidental catch ILAP must be submitted to the Division Chief postmarked no later than September 1, 1999. An application for an initial swordfish handgear permit must be submitted to the Division Chief postmarked no later than December 1, 1999. Any application received by the Division Chief after these dates will not be considered.

(iii) Each application must be accompanied by documentation showing that the criteria for the requested permit have been met. Vessel landings of sharks in numbers of fish or value through June 30, 1993, may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. Vessel landings of sharks in numbers of fish after July 1, 1993, and all vessel landings of swordfish in numbers of fish may be documented only by fishing vessel logbook records that NMFS received before March 2, 1998. Vessel landings of sharks or swordfish in value may be documented by verifiable sales slips or receipts from registered dealers or by state landings records. NMFS will not apply any landing of fish by number of fish or value that occurred when the vessel did not have a valid Federal permit.

(iv) Information submitted on an application and documentation in support of an application is subject to verification by comparison with Federal, state, and other records and information. Submission of false information or documentation may result in disqualification from initial participation in the shark, swordfish, or tunas fisheries and may result in Federal prosecution.

(v) If the Division Chief receives an incomplete application in a timely manner, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of receipt of the Division Chief's notification, the application will be considered abandoned.

(3) *Actions on applications.* Within 30 days of receipt of a complete application, the Division Chief will take one of the following actions:

(i) If the eligibility requirements are met, the Division Chief will issue the appropriate ILAP which will be valid through the marked expiration date.

(ii) If, based on the information and documentation supplied with the application, the Division Chief determines that the applicant does not meet the eligibility criteria for the requested vessel permit, the Division Chief will deny the application in a letter to the applicant. If, based on the documentation supplied, the Division Chief believes the applicant is qualified for an incidental catch vessel permit instead of the requested directed ILAP, he or she will notify the applicant of the denial of the requested directed ILAP but will issue the incidental catch ILAP.

(4) *Appeals.* (i) If an application for an ILAP is denied or if an incidental catch ILAP is issued instead of the requested directed ILAP, the applicant may appeal

the denial to the Director. The sole grounds for appeal will be that the original denial by the Division Chief was based on incorrect or incomplete information. No other grounds will be considered. An appeal must be in writing, must be submitted to the Director postmarked no later than 90 days after receipt of the notice of denial, must specify the grounds for the appeal, and must include documentation supporting the grounds for the appeal. Documentation of vessel landings that the Director may consider in support of an appeal is described in paragraph (d)(2)(iii) of this section. Photocopies of documentation (e.g., permits, logbook reports) will be acceptable for initial submission. The Director may request originals at a later date, which would be returned to the appellant.

(ii) Upon receipt of a complete written appeal with supporting documentation, the Director may issue a provisional ILAP that is valid for the period during the appeal. This provisional permit will be valid only for use with the specified gear and will be subject to all regulations contained in this part.

(iii) The Director will appoint an appeals officer who will review the appeal documentation and other available records. If the information and documentation presented in the appeal are insufficient, inconsistent with vessel ownership, landings history, and other information available from NMFS' records, or cannot be verified, the appeals officer may notify the appellant that the information supplied is not adequate to warrant issuance of the requested permit. The appellant will have 30 days from the date of receipt of the notification to submit to the appeals officer corroborating documents in support of the appeal or to submit a revised appeal. After the written appeal documentation is complete, the appeals officer will make findings and a recommendation, which shall be advisory only, to the Director within 60 days of receipt of the appeal.

(iv) The Director will make a final decision on the appeal and send the appellant notice of the decision. The Director's decision is the final administrative action of the Department of Commerce on the application.

(v) If the appeal is denied, the provisional permit will become invalid 5 days after receipt of the notice of denial. If the appeal is accepted, NMFS will issue an appropriate permit.

(e) *Transfer of LAPs.* For provisions on transfer of limited access permits, see § 635.4(l).

(f) *Renewal of LAPs.* For provisions on renewal of limited access permits, see § 635.4(m).

Subpart C—Management Measures

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas.

(b) *BFT size classes.* The size class of a BFT found with the head removed shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing with the Office of the Federal Register for publication notification of the adjustment.

(c) *BFT, bigeye tuna, and yellowfin tuna.* (1) No person shall take, retain, or possess a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches (69 cm) CFL;

(2) Applying the conversion factor from PFCFL to CFL for a beheaded BFT in § 635.20(b) means that no person shall retain or possess a BFT, with the head removed, that is less than 20 inches (51 cm) PFCFL.

(3) No person shall remove the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the tail to the forward edge of the cut.

(d) *Billfish.* (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(e) *Sharks.* (1) No person shall take, retain, or possess shoreward of the outer boundary of the EEZ any species classified as a ridgeback LCS shark, taken from its management unit that is less than 54 inches (137 cm), fork length, or, if the head and fins have been removed, 30 inches (76 cm) as a straight line from the first dorsal fin ray to the precaudal pit. If the precaudal pit has been removed, such measurement will be to the posterior edge of the carcass. For the purposes of enforcing the minimum size, it is a rebuttable presumption that any ridgeback shark from which the head and fins have been removed is a ridgeback LCS shark.

(2) All sharks landed under the recreational retention limits specified at § 635.22(c), other than Atlantic sharpnose sharks, must have the head, tail, and fins attached and be at least 54 inches (137 cm), FL. There is no minimum size limit for Atlantic sharpnose sharks.

(f) *Swordfish.* (1) No person shall take, retain, or possess a north or south Atlantic swordfish taken from its management unit that is less than 29 inches (73 cm), CK, or 33 lb (15 kg) dressed weight. A swordfish that is damaged by shark bites may be retained only if the remainder of the carcass is at least 29 inches (73 cm) CK, or 33 lb (15 kg) dw. No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(2) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a certificate of eligibility attesting that the swordfish was lawfully imported. Refer to § 635.46(b) for the requirements related to the certificate of eligibility.

(3) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

§ 635.21 Gear operation and deployment restrictions.

(a) *All Atlantic HMS fishing gears.* (1) An Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(2) If a billfish is caught by a hook, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

(b) *General.* No person shall use any gear to fish for Atlantic HMS other than those gears specifically authorized in this part. A vessel using or having on board in the Atlantic Ocean any unauthorized gear may not have on board an Atlantic HMS.

(c) *Pelagic longlines.* Pelagic longlines include any longline placed or

occurring in water depths greater than 50 fathoms (91 m).

(1) From July 1, 1999, through June 30, 2000, no person may deploy a pelagic longline that is more than 24 nautical miles (44.5 km) in length in the Mid-Atlantic Bight.

(2) In the Northeastern United States closed area from June 1 through June 30 each year, no person may deploy a pelagic longline. In this area, during this time, no person shall retain an Atlantic tuna or swordfish on board a vessel that has a pelagic longline on board, unless the mainline, hooks, and floats are secured.

(3) When a marine mammal or sea turtle is hooked or entangled by pelagic longline gear, the operator of the vessel must immediately release the animal, retrieve the pelagic longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(d) *Authorized gear*—(1) *Atlantic tunas*. A person that retains or possesses an Atlantic bluefin tuna may not have on board or use any gear other than that authorized for the category for which the Atlantic tunas or HMS permit has been issued for the harvesting vessel. When fishing for Atlantic tunas other than BFT, fishing gear authorized for any permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category. When fishing for BFT, a person must use only the gear types authorized for the Atlantic tunas or HMS permit category of the fishing vessel:

(i) *Angling*. Rod and reel (including downriggers) and handline.

(ii) *Charter/Headboat*. Rod and reel (including downriggers), bandit gear, and handline.

(iii) *General*. Rod and reel (including downriggers), handline, harpoon, and bandit gear.

(iv) *Harpoon*. Harpoon.

(v) *Longline*. Longline.

(vi) *Purse Seine*. Purse seine.

(A) *Mesh size*. A purse seine used in directed fishing for BFT must have a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and must have at least 24-count thread throughout the net.

(B) *Inspection of purse seine vessels*. Persons that own or operate a purse seine vessel conducting a directed fishery for Atlantic tunas must have their fishing gear inspected for mesh size by an enforcement agent of NMFS prior to commencing fishing for the

season in any fishery that may result in the harvest of Atlantic tunas. Such persons must request such inspection at least 24 hours before commencement of the first fishing trip of the season. If NMFS does not inspect the vessel within 24 hours of such notification, the inspection requirement is waived. In addition, at least 24 hours before commencement of offloading any BFT after a fishing trip, such persons must request an inspection of the vessel and catch by notifying NMFS. If, after notification by the vessel, NMFS does not arrange to inspect the vessel and catch at offloading, the inspection requirement is waived.

(vii) *Trap*. Pound net and fish weir.

(2) *Billfish*. (i) Persons may possess a blue marlin or white marlin or take a blue marlin or a white marlin from its management unit only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a blue marlin or a white marlin from its management unit on board a vessel using or having on board a pelagic longline.

(ii) Persons may possess a sailfish in or take a sailfish shoreward of the outer boundary of the U.S. EEZ only if it is harvested by rod and reel. Regardless of how taken, persons may not possess a sailfish in, or take a sailfish, shoreward of the outer boundary of the U.S. EEZ on board a vessel using or having on board a pelagic longline.

(3) *Sharks*. (i) No person may possess a shark shoreward of the outer boundary of the EEZ if the shark was taken from its management unit by any gear other than handgear, longline or gillnet.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark drift gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(f) of this title.

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to the vessel at one end.

(4) *Swordfish*. (i) No person may possess north Atlantic swordfish taken from its management unit by any gear other than handgear or longline, except that such swordfish taken incidentally while fishing with a squid trawl may be retained, subject to restrictions specified in § 635.24(b)(2). No person may possess south Atlantic swordfish taken from its management unit by any gear other than longline.

(ii) An Atlantic swordfish may not be retained or possessed on board a vessel

with a gillnet. A swordfish will be deemed to have been harvested by gillnet when it is onboard, or offloaded from a vessel using or having on board a gillnet.

(iii) A person aboard a vessel issued a directed handgear ILAP or LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when it is on board, or offloaded from a vessel using or having on board longline gear.

§ 635.22 Recreational retention limits.

(a) *General*. Recreational retention limits apply to a longbill spearfish taken from or possessed in the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. The retention limits apply to a person who fishes in any manner, except to a person aboard a vessel who has been issued a commercial vessel permit under § 635.4 for the appropriate species/species group. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

(b) *Billfish*. No longbill spearfish from the management unit may be possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks*. One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(d), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in Table 1(d) of Appendix A to this part may be retained.

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel.

§ 635.23 Retention limits for BFT.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *General category*. (1) No person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the

school, large school, or small medium size class.

(2) On an RFD, no person aboard a vessel that has a General category Atlantic Tunas permit may possess, retain, land, or sell a BFT in the large medium or giant size class. On days other than RFDs, when the General category is open, one large medium or giant BFT may be caught and landed from such vessel per day. NMFS will annually publish a schedule of RFDs in the **Federal Register**. An RFD applies only when the General category fishery is open.

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has a General category Atlantic Tunas permit. On days other than RFDs, when the General category is open, no person aboard such vessel may continue to fish, and the vessel must immediately proceed to port once the applicable limit for large medium or giant BFT is retained.

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication.

(b) *Angling category*. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels permitted in Atlantic tunas Angling category as follows:

(1) *Large medium and giant BFT*. (i) No large medium or giant BFT may be retained, possessed, landed, or sold in the Gulf of Mexico, except one per vessel per year may be landed if caught incidentally to fishing for other species.

(ii) One per vessel per year may be retained, possessed, and landed outside the Gulf of Mexico.

(iii) When a large medium or giant BFT has been caught and retained under this paragraph (b)(1), no person aboard the vessel may continue to fish, the vessel must immediately proceed to port, and no such BFT may be sold or transferred to any person for a commercial purpose.

(2) *School, large school, or small medium BFT*. One per vessel per day may be retained, possessed, or landed. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained.

(3) *Changes to retention limits*. To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing with the Office of the Federal Register for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the Federal Register for publication.

(c) *HMS or Tunas Charter/Headboat*. Persons aboard a vessels permitted in Atlantic HMS or Tunas Charter/Headboat category may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

(1) When fishing in the Gulf of Mexico, the restrictions applicable to the Angling category specified in paragraph (b)(1) of this section apply.

(2) When fishing other than in the Gulf of Mexico when the fishery for the General category is closed, the restrictions applicable to the Angling category specified in paragraphs (b)(1) through (b)(3) of this section apply.

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has an HMS or Atlantic Tunas Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

(d) *Harpoon category*. Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land multiple giant BFTs per day. An incidental catch of only one large medium BFT per vessel per day may be retained, possessed, or landed.

(e) *Purse Seine category*. Persons aboard a vessel permitted in the Atlantic Tunas Purse Seine category,

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the giant BFT landed on that trip, provided that the total amount of large medium BFT landed by that vessel during the fishing year does not exceed 10 percent, by weight, of the total amount of giant BFT allocated to that vessel for that fishing year.

(2) May retain, possess or land BFT smaller than the large medium size class that are taken incidentally when fishing for skipjack tuna or yellowfin tuna in an amount not exceeding 1 percent, by weight, of the skipjack tuna and yellowfin tuna landed on that trip. Landings of BFT smaller than the large medium size class may not be sold and are counted against the Purse Seine category BFT quota allocated to that vessel.

(f) *Longline category*. Persons aboard a vessel permitted in the Atlantic Tunas Longline category may retain, possess, land, and sell large medium and giant BFT taken incidentally in fishing for other species. Limits on such retention/possession/landing/sale are as follows:

(1) For landings south of 34°00' N. lat., one large medium or giant BFT per vessel per trip may be landed, provided that, for the months of January through April, at least 1,500 lb (680 kg) and for the months of May through December, at least 3,500 lb (1,588 kg), either dw or round weight, of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

(2) For landings north of 34°00' N. lat., landings per vessel per trip of large medium and giant BFT may not exceed 2 percent by weight, either dw or round weight, of all other fish which are legally caught, retained, and offloaded from the same trip and which are recorded on the dealer weighout slip as sold.

(g) *Trap category*. Persons aboard a vessel permitted in the Atlantic Tunas Trap category may retain, possess, land, and sell each fishing year only one large medium or giant BFT that is taken incidentally while fishing for other species with a pound net or fish weir. No other Atlantic tunas caught in a pound net or fish weir may be retained.

§ 635.24 Commercial retention limits for sharks and swordfish.

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28.

(a) *Sharks*. (1) Persons who own or operate a vessel that has been issued a directed ILAP or LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg), dw, of LCS per trip.

(2) Persons who own or operate a vessel that has been issued an incidental catch ILAP or LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

(b) *Swordfish*. (1) Persons aboard a vessel that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental ILAP or LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. A vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawls on board and when squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

§ 635.25 Interim provisions.

(a) *Billfish size limits*. (1) No person shall take, retain or possess a blue marlin taken from its management unit that is less than 99 inches (251 cm), LJFL.

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL.

(3) No person shall take, retain or possess shoreward of the outer boundary of the EEZ a sailfish taken from its management unit that is less than 63 inches (160 cm), LJFL.

(b) *Pelagic longline closed area*. (1) Pelagic longlines include any longline placed or occurring in water depths greater than 50 fathoms (91 m).

(2) The Northeastern United States closed area means the area bounded by straight lines connecting the following coordinates in the order stated: 40°00' N. lat., 74°00' W. long.; 40°00' N. lat., 68°00' W. long.; 39°00' N. lat., 68°00' W. long.; and 39°00' N. lat., 74°00' W. long.

(3) In the Northeastern United States closed area from June 1 through June 30 each year, no person may deploy a pelagic longline. In this area, during this time, no person shall retain an Atlantic tuna or swordfish on board a vessel that has a pelagic longline on board, unless the mainline, hooks, and floats are secured.

(c) *Bluefin tuna (BFT) quota specifications*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from

the fishing year's (June 1-May 31) total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. In such case that the total annual landings quota when applied to the percentage allocation for the purse seine category exceeds 250 mt, the amount over 250 mt shall be allocated to the reserve. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

(1) *General category landings quota*. Prior to each fishing year (June 1-May 31), NMFS will set the General category effort control schedule, including time-period subquotas and restricted-fishing days, through proposed and final specifications published in the **Federal Register**.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS or Atlantic tunas Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3) regarding landings by vessels with an HMS or Atlantic tunas Charter/Headboat permit that are counted against the General category landings quota. The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category landings quota is 47.1 percent of the overall U.S. BFT landings quota, less 10 mt which is set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°

27' W. long (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. as specified in § 635.27(a)(1)(iii). This 47.1 percent, less the 10 mt set aside as specified in § 635.27(a)(1)(iii), is apportioned as follows:

(A) June 1 through August 31—60 percent;

(B) September 1 through September 30—30 percent; and

(C) October 1 through May 31—10 percent.

(ii) NMFS will adjust each period's apportionment based on overharvest or underharvest in the prior period.

(iii) When the coastwide General category fishery has been closed in any quota period under § 637.28(a)(1), NMFS may publish notification in the **Federal Register** to make available all or part of the 10 mt landings quota set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W. long. (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. lat. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1)(i) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

(2) *Angling category landings quota*. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an Angling category Atlantic Tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. No more than 2.3 percent of the annual Angling category landings quota may be large medium or giant BFT and, over each 4-consecutive-year period, no more than 8 percent of the overall U.S. BFT landings quota may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 47.2 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(ii) An amount equal to 47.2 percent of the large school/small medium BFT Angling category quota, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(iii) An amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. No more than 78.9 percent of the Longline category quota may be caught, retained, possessed, or landed in the area south of 34°00' N. lat.

(4) *Purse Seine category quota.* (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. The purse seine fishery under this quota commences on August 15 each year.

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on August 15.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. An owner of a purse seine vessel intending to fish for more than one allocation in any fishing season must provide written notice of such intent to NMFS at an address designated by NMFS, 15 days before commencing fishing. An owner of a purse seine vessel who transfers his or her allocation to another purse seine vessel may not use his or her vessel in any fishery in which BFT might be caught for the remainder of the fishing year after his or her allocation is transferred.

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine

Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap category Atlantic Tunas permits have been issued is 0.1 percent of the overall U.S. BFT quota.

(7) *Reserve.* (i) The total amount of BFT that is held in reserve for inseason adjustments and fishery-independent research using quotas or subquotas other than the Angling category school BFT subquota, is 2.5 percent of the overall U.S. BFT quota. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of this reserve for inseason adjustments to any category quota in the fishery, other than the Angling category school BFT subquota.

(ii) The total amount of school BFT that is held in reserve for inseason adjustments and fishery independent research is 18.5 percent of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section, which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason adjustments to the Angling category.

(iii) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment. Before making any such adjustment, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(B) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount

of BFT before the end of the fishing year.

(D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(E) Effects of the transfer on BFT rebuilding and overfishing.

(F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

(d) *Prohibitions.* In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person or vessel subject to the jurisdiction of the United States to violate any provision of this section, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

§ 635.26 Catch and release.

(a) *BFT.* (1) Notwithstanding the other provisions of this part, an angler may fish for BFT under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging and, if the BFT was previously tagged, the information on the previous tag. If NMFS-issued or NMFS-approved conventional tags are not on board a vessel, all anglers aboard that vessel are ineligible to fish under the tag-and-release program.

(2) Persons may obtain NMFS-issued conventional tags, reporting cards, and detailed instructions for their use from the NMFS Cooperative Tagging Center. Persons may use a conventional tag obtained from a source other than NMFS to tag BFT, provided the use of such tags is registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of a conventional tag from that source. An angler using an alternative source of tags wishing to tag BFT may contact the NMFS Cooperative Tagging Center at the Southeast Fishery Science Center.

(3) An angler registering for the HMS tagging program is required to provide his or her name, address, phone number and, if applicable, the identity of the alternate source of tags.

(b) *Billfish.* NMFS is encouraging further catch and release of Atlantic billfish by establishing a recreational catch-and-release fishery management program, consistent with the guidance of § 600.350(c).

(c) *Sharks.* Notwithstanding the other provisions of this part, a person may fish for white sharks (*Carcharodon carcharias*) with rod and reel, provided

the person releases such fish to the sea immediately with a minimum of injury, and that such fish may not be removed from the water.

§ 635.27 Quotas.

(a) *BFT*. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits or HMS Charter/Headboat permits. Allocations of the BFT landings quota will be made according to the following percentages: General - 47.1 percent; Angling - 19.7 percent, which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent; Purse Seine - 18.6 percent or 250 mt, whichever is less; Longline - 8.1 percent; and Trap - 0.1 percent. The remaining 2.5 percent of the BFT landings quota will be held in reserve for inseason adjustments, to compensate for overharvest in any category other than the Angling category school BFT subquota or for fishery independent research. In such case that the total annual landings quota when applied to the percentage allocation for the purse seine category exceeds 250 mt, the amount over 250 mt shall be allocated to the reserve. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas. BFT landings quotas are specified in whole weight.

(1) *General category landings quota*. Prior to each fishing year, NMFS will set the General category effort control schedule, including time-period subquotas and restricted-fishing days, through proposed and final specifications published in the **Federal Register**.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS or Atlantic tunas Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3) regarding landings by vessels with an HMS or Atlantic tunas Charter/Headboat permit that are counted against the General category landings quota. The total amount of large medium and giant BFT that may

be caught, retained, possessed, landed, or sold under the General category landings quota is 47.1 percent of the overall U.S. BFT landings quota, less 10 mt which is set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72° 27' W. long (Shinnecock Inlet) and running SSE 150° true, and north of 38° 47' N. lat. as specified in § 635.27(a)(1)(iii). This 47.1 percent, less the 10 mt set aside as specified in § 635.27(a)(1)(iii), is apportioned as follows:

(A) June 1 through August 31—60 percent;

(B) September 1 through September 30—30 percent; and

(C) October 1 through May 31—10 percent.

(ii) NMFS will adjust each period's apportionment based on overharvest or underharvest in the prior period.

(iii) When the coastwide General category fishery has been closed in any quota period under § 637.28(a)(1), NMFS may publish notification in the **Federal Register** to make available all or part of the 10 mt landings quota set aside for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72° 27' W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38° 47' N. lat. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period established under paragraph (a)(1)(i) of this section may be carried over for the purpose of renewing the set-aside fishery at a later date.

(2) *Angling category landings quota*. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an Angling category Atlantic Tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. No more than 2.3 percent of the annual Angling category landings quota may be large medium or giant BFT and, over each 4-consecutive-year period, no more than 8 percent of the overall U.S. BFT landings quota may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve as specified under paragraph (a)(7)(ii) of this section.

The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 47.2 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(ii) an amount equal to 47.2 percent of the large school/small medium BFT Angling category quota, may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(iii) an amount equal to 66.7 percent of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 38° 47' N. lat.

(3) *Longline category quota*. The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels for which Longline category Atlantic tunas permits have been issued is 8.1 percent of the overall U.S. BFT quota. No more than 78.9 percent of the Longline category quota may be caught, retained, possessed, or landed in the area south of 34° 00' N. lat.

(4) *Purse Seine category quota*. (i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota, or 250 mt, whichever is less. The purse seine fishery under this quota commences on August 15 each year.

(ii) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued must apply in writing to NMFS at an address designated by NMFS, for an allocation of BFT from the Purse Seine category quota. The application must be postmarked no later than April 15 for an allocation of the quota that becomes available on August 15.

(iii) On or about May 1, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic Tunas permits. An owner of a purse seine vessel intending to fish for more than one allocation in any fishing season must provide written notice of such intent to NMFS at an address designated by NMFS, 15 days before commencing fishing. An owner of a purse seine vessel who transfers his or her allocation to another purse seine vessel may not use his or her vessel in any fishery in which BFT might be caught for the remainder of the fishing

year after his or her allocation is transferred.

(iv) An owner of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued may apply to NMFS to permanently consolidate Purse Seine category vessel permits issued under § 635.4. Upon written approval of consolidation by NMFS, the Purse Seine Category Atlantic Tunas Permit of a transferring vessel will be canceled, and the receiving owner may apply for allocations of BFT commensurate with the number of consolidated permits. An owner of a purse seine vessel whose permit is canceled through consolidation may not use his or her vessel in any purse seine fishery in which BFT might be caught.

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Trap category Atlantic Tunas permits have been issued is 0.1 percent of the overall U.S. BFT quota.

(7) *Reserve.* (i) The total amount of BFT that is held in reserve for inseason adjustments and fishery-independent research using quotas or subquotas other than the Angling category school BFT subquota, is 2.5 percent of the overall U.S. BFT quota. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of this reserve for inseason adjustments to any category quota in the fishery, other than the Angling category school BFT subquota.

(ii) The total amount of school BFT that is held in reserve for inseason adjustments and fishery independent research is 18.5 percent of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section, which is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(7)(iii) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason adjustments to the Angling category.

(iii) NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment. Before making any such adjustment, NMFS will consider the following factors:

(A) The usefulness of information obtained from catches in the particular

category for biological sampling and monitoring of the status of the stock.

(B) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(C) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(D) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(E) Effects of the transfer on BFT rebuilding and overfishing.

(F) Effects of the transfer on accomplishing the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

(8) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories. If it is determined, based on the factors in paragraphs (a)(7)(iii)(A) through (a)(7)(iii)(F) of this section and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the reserve as specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this section. NMFS will file with the Office of the Federal Register for publication notification of any inseason adjustment.

(9) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to account for overharvest in any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(7)(iii) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4-consecutive-year period beginning in the 1999 fishing year does not exceed 8 percent by weight of the total U.S. BFT quota for that period.

(iv) If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the amount of BFT that can be landed in the subsequent fishing year. Such amount may be allocated to individual fishing categories or to the Reserve.

(v) NMFS will file with the Office of the Federal Register for publication notification of the amount subtracted or added and the basis for the quota reductions or increases made pursuant to paragraphs (a)(9)(i) through (a)(9)(iv) of this section.

(b) *Sharks*—(1) *Commercial quotas.* The commercial quotas for shark specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks.

(i) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 816 mt dw, apportioned between ridgeback and non-ridgeback shark and divided between two equal semiannual fishing seasons, January 1 through June 30, and July 1 through December 31. The length of each season will be determined based on the projected catch rates, available quota, and other relevant factors. NMFS will file with the Office of the Federal Register for publication notification of each season's length at least 30 days prior to the beginning of the season. The quotas for each fishing season (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section are as follows:

(A) Ridgeback shark—310 mt dw.

(B) Non-ridgeback shark—98 mt dw.

(ii) *Small coastal sharks.* The annual commercial quota for small coastal shark is 359 mt dw, (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(iv) of this section) divided between two equal semiannual seasons, January 1 through June 30, and July 1 through December 31. The quota for each semiannual season is 179.5 mt, dw.

(iii) *Pelagic sharks.* The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks and 488 mt dw for all other pelagic sharks (unless otherwise specified in the

Federal Register as provided in paragraph (b)(1)(iv) of this section). These quotas are divided between two equal semiannual periods, January 1 through June 30, and July 1 through December 31. The quotas for each semiannual period are as follows:

(A) Porbeagle sharks—46 mt dw.

(B) Pelagic sharks, other than porbeagle sharks—244 mt dw.

(C) Blue sharks—136.5 mt dw.

(iv) *Annual adjustments.* (A) NMFS will adjust the next year's semiannual quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any semiannual period. For example, a commercial quota underage or overage in the season that begins January 1 will result in an equivalent increase or decrease in the following year's quota for the season that begins January 1, provided that the annual quotas are not exceeded. NMFS will file with the Office of the Federal Register for publication notification of any adjustment at least 30 days prior to the start of the next fishing season.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded at least 30 days prior to the start of the next fishing season.

(C) Sharks discarded dead are counted against the applicable directed fishery quota. Sharks taken and landed from state waters are counted against the applicable directed fishery quota.

(2) *Public display quota.* The annual quota for persons who collect sharks from any of the management groups under an EFP is 60 mt whole weight (43 mt dw). All sharks collected under the authority of an EFP, subject to restrictions at § 635.32, will be counted against this quota.

(c) *Swordfish.* (1) Consistent with ICCAT recommendations, the fishing year's total amount of swordfish that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction is divided into quotas for the North Atlantic swordfish stock and the South Atlantic swordfish stock. The quota for the North Atlantic swordfish stock is further divided into semi-annual directed fishery quotas and an incidental catch quota for fishermen targeting other species. A swordfish from the North Atlantic swordfish stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the directed fishery quota. A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental catch permit for swordfish has been issued, landed consequent to recreational fishing, or

caught after the effective date of a closure of the directed fishery from a vessel for which a directed fishery permit or a handgear permit for swordfish has been issued is counted against the incidental catch quota. The entire quota for the South Atlantic swordfish stock is reserved for longline vessels for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities is prohibited in the Atlantic Ocean south of 5° N. lat.

(i) *North Atlantic swordfish stock.* (A) The annual directed fishery quota for the North Atlantic swordfish stock is 2033.2 mt dw, divided into two equal semiannual quotas of 1016.6 mt dw, one for June 1 through November 30, and the other for December 1 through May 31 of the following year.

(B) The annual incidental catch quota for the North Atlantic swordfish stock is 300 mt dw.

(ii) *South Atlantic swordfish stock.* The annual directed fishery quota for the South Atlantic swordfish stock is 289 mt dw. Incidental harvest of swordfish is prohibited in the Atlantic Ocean south of 5° N. lat.

(2) *Inseason adjustments.* (i) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota to reflect actual catches during the June 1 through November 30 semiannual period, provided that the fishing year's directed fishery quota is not exceeded.

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quota.

(iii) If NMFS determines that it is necessary to close the directed swordfish fishery prior to the scheduled end of a semi-annual fishing season, any estimated overharvest or underharvest of the directed fishery quota for that semi-annual season will be used to adjust the annual incidental catch quota accordingly.

(iv) NMFS will file with the Office of the Federal Register for publication notification of any inseason swordfish quota adjustment and its apportionment made under this paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraph (c)(3)(ii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tuna, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota shall be subtracted from, or added to, the following year's quota for that area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication notification of any adjustment or apportionment made under this paragraph (c)(3)(ii).

§ 635.28 Closures.

(a) *BFT.* (1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) From August 15 through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season (i.e., August 15 through December 31). Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes anglers in another area from a reasonable opportunity to harvest a portion of the Angling category quota, NMFS may close all or part of the fishery under that category and may reopen it at a later date if NMFS determines that BFT have migrated into the other area. In determining the need for any such interim closure or area closure, NMFS will consider:

(i) The usefulness of information obtained from catches of a particular geographic area of the fishery for

biological sampling and for monitoring the status of the stock;

(ii) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding 4 years;

(iii) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no interim closure or area closure is effected; and

(iv) The projected ability of the entire category to harvest the remaining amount of BFT before the anticipated end of the fishing season.

(b) *Sharks.* (1) The commercial fishery for large coastal sharks will remain open for fixed semiannual fishing seasons, as specified at § 635.27(b)(1)(i). From the effective date and time of a season closure until additional quota becomes available, the fishery for large coastal sharks is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(2) When a semiannual quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1)(ii) and (b)(1)(iii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4.

(3) When the fishery for a shark species group is closed, a fishing vessel issued a commercial permit pursuant to § 635.4 may not possess or sell a shark of that species group, and a permitted shark dealer may not purchase from a fishing vessel a shark of that species group, whether or not the fishing vessel has a commercial permit for shark, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

(c) *Swordfish*—(1) *Directed fishery closure.* When the annual or semiannual directed fishery quota specified in § 635.27(c)(1)(i) or (ii) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure at least 14 days before the effective date. From the effective date and time of the closure until additional directed fishery quota becomes available, the directed fishery for the appropriate stock is

closed and the following catch limits apply:

(i) When the directed fishery for the North Atlantic swordfish stock is closed,

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a longline. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline provided the harvesting vessel does no fishing on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the Federal Register for publication notification of the change at least 14 days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of catch by vessels fishing under the incidental catch quota.

(B) No more than 2 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel that has been issued a handgear permit under § 635.4(f)(1) provided that such swordfish were not taken with a harpoon.

(ii) When the directed fishery for the South Atlantic swordfish stock is closed, swordfish from that stock taken incidental to fishing for other species may not be retained.

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until an additional incidental catch quota becomes available, no swordfish may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state, and a swordfish in or from the Atlantic Ocean north of 5° N. lat. may not be sold. However, legally taken swordfish from the South Atlantic swordfish stock may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline, provided the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat. and reports positions with a vessel monitoring system, as specified in § 635.69.

§ 635.29 Transfer at sea.

(a) Persons may not transfer an Atlantic tuna, blue marlin, white marlin, or swordfish at sea in the Atlantic Ocean, regardless of where the fish was harvested. However, an owner or operator of a vessel for which a Purse Seine category Atlantic Tunas permit has been issued under § 635.4 may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which a Purse Seine category Atlantic Tunas permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

(b) Persons may not transfer a shark or a sailfish at sea shoreward of the outer boundary of the EEZ, regardless of where the shark was harvested, and persons may not transfer at sea a shark or a sailfish taken shoreward of the outer boundary of the EEZ, regardless of where the transfer takes place.

§ 635.30 Possession at sea and landing.

(a) *Atlantic tunas.* Persons that own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(b) *Billfish.* Any person that possesses a blue marlin or a white marlin taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin or a white marlin in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole.

(c) *Shark.* (1) No person shall fin any shark, i.e., remove only the fins and return the remainder of the shark to the sea, shoreward of the outer boundary of the EEZ and on board a vessel for which a commercial vessel permit for shark has been issued. No person shall possess a shark fin on board a fishing vessel after the vessel's first point of landing. No person shall possess or offload wet shark fins in a quantity that exceeds 5 percent of the weight of the shark carcasses. The prohibition on finning applies to all species of sharks in the management unit. For a list of species in the management unit, refer to Tables 1 and 2 of Appendix A to this part.

(2) Persons that own or operate a vessel that has been issued a

commercial permit for shark may not fillet a shark at sea. Persons may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, the wet shark fins may not exceed 5 percent of the weight of the shark carcasses.

(3) Persons that own or operate a vessel that has been issued a commercial permit that lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the weighout slips specified in § 635.5(a)(2). Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the weight of the carcasses.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing—the head, tail, or fins may not be removed. The shark may be bled.

(d) *Swordfish*. Persons that own or operate a fishing vessel that possesses a swordfish in the Atlantic Ocean or lands a swordfish in an Atlantic coastal port must maintain such swordfish in round or dressed form through off-loading.

§ 635.31 Restrictions on sale and purchase.

(a) *Atlantic tunas*. (1) Persons that own or operate a vessel that possesses an Atlantic tuna may sell such Atlantic tuna only if that vessel has a valid HMS or Atlantic Tunas Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an HMS or Atlantic Tunas Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (see § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

(2) Dealers may purchase Atlantic tunas only from a vessel that has a valid commercial permit for Atlantic tunas issued under this part in the appropriate category.

(3) Dealers or seafood processors may not purchase or sell a BFT smaller than the large medium size class unless it is lawfully imported and is accompanied by a BSD, as specified in § 635.42(a).

(4) A BFT in the possession of a dealer or seafood processor is deemed to be from the Atlantic Ocean. However, a BFT will not be deemed to be from the Atlantic Ocean if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a BSD, as specified in § 635.42(a).

(b) *Billfish*. (1) Persons may not sell or purchase a billfish taken from its management unit.

(2) A billfish or a closely related species, namely, black marlin, *Makaira indica*, striped marlin, *Tetrapturus audax*, or shortbill spearfish, *Tetrapturus angustirostris*, or a part thereof, in the possession of a dealer or seafood processor is considered, for purposes of this part, to be a billfish from the Atlantic Ocean management unit. However, a billfish or a closely related species will not be considered to be from the Atlantic Ocean management unit if—

(i) It was landed in a Pacific state and remains in the state of landing, or

(ii) It is accompanied by a Billfish Certificate of Eligibility that documents that it was harvested from other than the Atlantic Ocean management unit.

(c) *Shark*. (1) Persons that own or operate a vessel that possesses a shark from the management unit may sell such shark only if the vessel has a valid commercial permit for shark issued under this part. Persons may possess and sell a shark only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(2) Persons that own or operate a vessel for which a valid commercial shark permit has been issued and on which a shark from the management unit is possessed, may sell such shark only to a dealer that has a valid permit for shark issued under this part.

(3) Persons that own or operate a vessel for which a valid commercial shark permit has been issued may not sell fins from a shark harvested from the management unit, or harvested in the Atlantic Ocean by a vessel for which a commercial permit for shark has been issued, that are disproportionate to the weight of shark carcasses landed (the wet fins may not exceed 5 percent of the weight of the carcasses).

(4) Only dealers that have a valid permit for shark may purchase a shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a vessel who has a valid commercial permit for shark issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes

exclusively in state waters. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group has not been closed, as specified in § 635.28(b)(3).

(5) Dealers may not purchase from an owner or operator of a fishing vessel shark fins that are disproportionate to the weight of shark carcasses landed (the wet fins may not exceed 5 percent of the weight of the carcasses).

(d) *Swordfish*. (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may sell such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Dealers may purchase a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part.

§ 635.32 Specifically authorized activities.

(a) *General*. Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit or scientific research permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be

counted against the quota category as specified in the written authorization.

(b) *Scientific research activities.* For the purposes of all species covered under this part regulated under the authority of ATCA, the provisions for research plans under § 600.745(a) and reports under § 600.745(c)(1) of this chapter are mandatory. In such cases of authorized scientific research activities, NMFS shall issue scientific research permits. For scientific research activities involving the capture of Atlantic sharks, research plans and reports are requested; letters of acknowledgment shall be issued by NMFS as indicated under § 600.745(a) of this chapter.

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark EFP is required to fish for, take, retain, or possess a shark in or from the Atlantic EEZ for the purposes of public display under the shark public display quota specified in § 635.27(b)(2). A valid shark EFP must be on board the harvesting vessel, must be available when the shark is landed, must be available when the shark is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A shark EFP is valid for the specific time, area, gear, and species specified on it.

(3) To be eligible for a shark EFP, a person must provide all information concerning his or her identification, numbers by species of sharks to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Written reports on fishing activities and disposition of catch must be submitted to NMFS at an address designated by NMFS, for each fish collected within 5 days of the

collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks in the EFP.

§ 635.33 Archival tags.

(a) *Implantation report.* Any person affixing or implanting an archival tag into a regulated species must obtain written authorization from NMFS pursuant to § 635.32. Persons so authorized to conduct archival tag implantation must provide a written report to NMFS at an address designated by NMFS, indicating the type and number of tags, the species and approximate size of the fish as well as any additional information requested in the authorization.

(b) *Landing.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been implanted or affixed, provided such persons comply with the requirements of paragraph (c) of this section.

(c) *Landing report.* Persons that retain an Atlantic HMS that has an archival tag must contact NMFS, prior to or at the time of landing; furnish all requested information regarding the location and method of capture; and, as instructed, remove the archival tag and return it to NMFS or make the fish available for inspection and recovery of the tag by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

(d) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (b) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve quota established for that species.

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23, and the quotas for BFT, shark, and swordfish, as specified in § 635.27.

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may

establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; species in the management unit and the specification of the species groups to which they belong; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

Subpart D—Restrictions on Imports

§ 635.40 Restrictions to enhance conservation.

(a) *Determinations.* Upon a determination by NMFS that species of fish subject to regulation or under investigation by ICCAT are ineligible for entry into the United States under 16 U.S.C. 971d (c)(4) or (c)(5), NMFS, with the concurrence of the Secretary of State, will file with the Office of the Federal Register for publication a finding to that effect. Effective upon the date of filing of such finding, all shipments of fish in any form of the species found to be ineligible will be denied entry unless, with respect to a particular shipment, it is established by satisfactory proof pursuant to paragraph (b) of this section that the particular shipment of fish is eligible for entry. Entry will not be denied and no such proof will be required for any such shipment that, on the date of filing was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility.* (1) For the purposes of paragraph (a) of this section and section 6(c) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed ATCA COE attached to the invoice certifying that the fish in the shipment:

(i) Are not of the species specified in the finding;

(ii) Are of the species named in the finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the finding, but are products of an American fishery and were lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the finding solely for transshipment.

(2) If the fish are offered for entry under paragraph (b)(1)(i) or (b)(1)(ii) of this section, the ATCA COE must be executed by a duly authorized official of the country named in the finding and the ATCA COE must be validated by a consular officer or consular agent of the United States. Such validation must be attached to the ATCA COE.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the ATCA COE must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The "Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries" required by 19 CFR 10.79 must contain a further statement as follows: "We further declare that the said fish were caught by us in full compliance with part 635, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress."

(c) *Removal of import restrictions.* Upon a determination by NMFS that the conditions no longer exist that warranted the the finding under paragraph (a) of this section, NMFS will remove the import restriction by filing with the Office of the Federal Register for publication notification of removal effective on the date of filing. However, for 1 year from the date of filing every shipment of fish in any form that was subject to the finding under paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States certifying that no portion of the shipment is composed of fish taken prior to or during the import restriction.

§ 635.41 Species subject to documentation requirements.

Imports into the United States and exports or re-exports from the United States of all BFT or BFT products, regardless of ocean area of catch, are subject to the documentation requirements of this subpart.

(a) Documentation is required for BFT identified by the following item

numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled BFT, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen BFT, excluding fillets, No. 0303.49.00.20.

(b) In addition, BFT products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

(c) Southern bluefin tuna (*Thunnus maccoyii*) may be allowed entry without the statistical documentation required under this section.

§ 635.42 Documentation requirements.

(a) *BFT imports.* (1) Imports of all BFT products into the United States must be accompanied at the time of entry (filing of Customs Form 7501 or electronic equivalent) by an original completed approved BSD with the information and exporter's certification specified in § 635.43(a). Customs Form 7501 can be obtained by contacting U.S. Customs at <http://www.customs.treas.gov/order.htm>. Such information must be validated as specified in § 635.44(a) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed).

(2) BFT imported into the United States from a country requiring a BSD tag on all such tuna available for sale must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the BSD tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) A dealer who sells BFT that was previously imported into the United States for domestic commercial use must provide on the original BSD that accompanied the import shipment the correct information and importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. The original of the completed BSD must be postmarked and mailed, or faxed, by said dealer to NMFS at an address designated by NMFS within 24 hours of

the time the tuna was imported into the United States.

(b) *BFT exports.* (1) A dealer who exports BFT that was harvested by U.S. vessels and first landed in the United States must complete an original numbered BSD issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific export shipment. A dealer must provide on the BSD the correct information and exporter certification specified in § 635.43(a). The BSD must be validated as specified in § 635.44(b). A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. Government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) A dealer who re-exports BFT that was previously imported into the United States through filing an entry summary (Customs Form 7501 or electronic equivalent) must provide on the original BSD that accompanied the import shipment the correct information and intermediate importer's certification specified in § 635.43(a)(13) and must note on the top of the BSD the entry number assigned at the time of filing the entry summary. This requirement does not apply to BFT destined from one foreign country to another which transits the United States and for which an entry summary (Customs Form 7501 or electronic equivalent) is not filed and for which a Shipper's Export Declaration for in-transit merchandise (Customs Form 7513 or electronic equivalent) is filed. Customs Form 7513 can be obtained by contacting U.S. Customs at <http://www.customs.treas.gov/order.htm>.

(3) A dealer must submit the original of the completed BSD to accompany the shipment of BFT to its export or re-export destination. A copy of the BSD completed as specified under paragraph (b)(1) or (b)(2) of this section must be postmarked and mailed by said dealer to NMFS, at an address designated by NMFS, within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* A dealer must retain at his or her principal place of business a copy of each BSD required to be submitted to NMFS pursuant to this section for a period of 2 years from the date on which it was submitted to NMFS.

§ 635.43 Contents of documentation.

(a) A BSD, to be deemed complete, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the BFT, regardless of where the tuna is first landed.

(3) The name of the vessel that caught the fish and the vessel's registration number, if applicable.

(4) The name of the owner of the trap that caught the fish, if applicable.

(5) The point of export, which is the city, state or province, and country from which the BFT is first exported.

(6) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet, or other).

(7) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(8) The ocean area from which the fish was harvested (i.e., western Atlantic, eastern Atlantic, Mediterranean, or Pacific).

(9) The weight of each fish (in kilograms for the same product form previously specified).

(10) The identifying BSD tag number, if landed by vessels from countries with tagging programs.

(11) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(12) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the BSD.

(13) As applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(b) An approved BSD may be obtained from NMFS to accompany exports of BFT from the United States. A BFT dealer in a country that does not provide an approved BSD to exporters may obtain an approved BSD from NMFS to accompany exports to the United States.

(c) A dealer who exports bluefin tuna to the United States may use the approved BSD obtainable from NMFS or a document developed by the country of export, if that country submits a copy to

the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS will provide a list of countries for which BSDs are approved, with examples of approved documents, to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of BFT or BFT products offered for importation from said country(ies) may be accompanied by either that country's approved BSD or by the BSD provided to the foreign country exporter by NMFS.

§ 635.44 Validation requirements.

(a) *Imports.* The approved BSD accompanying any import of BFT, regardless of whether the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless NMFS waives this requirement for that country following a recommendation to do so by the ICCAT Secretariat. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate BSDs for that country.

(b) *Exports.* The approved BSD accompanying any export of BFT from the United States must be validated by a U.S. Government official, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Any waiver of government validation will be consistent with ICCAT recommendations concerning validation of BSDs. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual BSD tags affixed pursuant to § 300.26 of this title or § 635.5(b)(2)(ii); or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation.* An institution or association seeking authorization to validate BSDs accompanying exports from the United States must apply in writing to the Director for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform

validation, and provide an example of the stamp or seal to be applied to the BSD. NMFS, upon finding the institution or association capable of verifying the information required on the BSD, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate BSDs accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate BSDs.

§ 635.45 Import restrictions for Belize, Honduras, and Panama.

All shipments of BFT or BFT products in any form harvested by a vessel of Belize, Honduras, or Panama will be denied entry into the United States.

§ 635.46 Import restrictions on swordfish.

(a) *General.* To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 635.20(e) may not be imported, or attempted to be imported, into the United States unless it is accompanied by the swordfish certificate of eligibility as specified in paragraph (b) of this section attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish, harvested from the Atlantic Ocean, that weighed at least 33 lb (15 kg) dw at harvest.

(b) *Swordfish COE.* (1) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a swordfish COE. A swordfish COE is required for swordfish identified by any item number from the Harmonized Tariff Schedule including but not limited to the following:

(i) Fresh or chilled swordfish steaks, No. 0302.69.20.41.

(ii) Fresh or chilled swordfish, excluding steaks, No. 0302.69.20.49.

(iii) Frozen swordfish steaks, No. 0302.79.20.41.

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(v) Frozen swordfish, fillets, No. 0304.20.60.92.

(2) The swordfish COE required under this section must indicate, in English, the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or parts thereof less than the minimum size specified at § 635.20(e), the reason such swordfish is eligible for entry, as

specified in paragraph (a) of this section. The swordfish COE shall be attached to the invoice accompanying the swordfish shipment from the point of original export up to and including the point of first transaction in the United States.

(3) The swordfish COE required under this section must include, in English, the date, the name, the title of the governmental official or other authorized person, and the name of the authorizing government agency of the country exporting the swordfish to the United States. The swordfish COE must be signed and dated by that governmental official or authorized person with an official government seal affixed, thus validating the information on the COE. (4) A swordfish COE may refer to swordfish taken from only one ocean area of harvest (i.e., Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate swordfish COE must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(5) A model swordfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all the information required under this section.

(6) The importer must write the Customs Form 7501 entry number on each swordfish COE and attach to the dealer report form all swordfish COEs from shipments that are recorded on the bi-weekly dealer report form.

§ 635.47 Ports of entry.

NMFS shall monitor the importation of BFT and swordfish into the United States. If NMFS determines that the diversity of handling practices at certain ports at which BFT or swordfish is being imported into the United States allows for circumvention of the BSD or swordfish COE requirement, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna or swordfish from any source may be imported into the United States. NMFS shall announce through filing with the Office of the Federal Register for publication the names of ports so designated and the effective dates of entry restrictions.

Subpart E—International Port Inspection

§ 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection

scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

§ 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to serve as an authorized inspector for ICCAT, and who possesses identification issued by the authorized officer's national government.

§ 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

§ 635.53 Reports.

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. Flag states will consider and act on reports of apparent violations by foreign

inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

Subpart F—Enforcement

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board.

(b) *Hardware specifications.* The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) *Communications specifications.* The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) *Installation and service activation.* When installing and activating the NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist. Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the checklist and submit such certification to NMFS as indicated on the checklist.

Vessels fishing prior to submission of the certification will be in violation of the VMS requirement.

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic longline gear on board, must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(f) *Interruption.* When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) *Repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider shall be in accordance with the checklist provided by NMFS and require the same certification.

§ 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

§ 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, or EFP on board the vessel, as specified in §§ 635.4 and 635.32.

(3) Purchase, receive, or transfer for commercial purposes any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer for commercial purposes any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell, offer for sale, or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(5) Fail to possess and make available for inspection a vessel permit on board the permitted vessel or upon transfer of HMS to a dealer or a dealer permit at the dealer's place of business, or to alter any such permit as specified in § 635.4(a).

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5.

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(f).

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(g).

(9) Fail to report the catching of any Atlantic HMS to which a conventional tag has been affixed under a tag and release program.

(10) Falsify or fail to display and maintain vessel and gear identification, as specified in § 635.6.

(11) Fail to comply with the requirements for at-sea observer coverage, as specified in § 635.7 and § 600.746.

(12) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay, or prevent, by any means, any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(13) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

(14) Fail to install, activate, repair or replace a vessel monitoring system prior to leaving port with pelagic longline gear on board the vessel as specified in § 635.69.

(15) Tamper with, or fail to operate and maintain a vessel monitoring system as specified in § 635.69.

(16) Fail to contact NMFS or follow NMFS instructions when automatic position reporting has been interrupted as specified in § 635.69.

(17) Fish for Atlantic tunas or swordfish with a gillnet for or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.21 (b), (d)(1), and (d)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21(c)(4).

(19) Fail to release an Atlantic HMS in the manner specified in § 635.21(a).

(20) Fail to report the retention of an Atlantic HMS that has an archival tag, as specified in § 635.33.

(21) Fail to maintain an Atlantic HMS in the form specified in § 635.30.

(22) Fish for, catch, retain, or possess an Atlantic HMS that is less than its minimum size limit specified in § 635.20.

(23) Fail to comply with the restrictions on use of a pelagic longline or shark gillnet as specified in § 635.21 (c) and (d)(3)(ii) and (iii).

(24) Import any BFT or swordfish in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 635.47.

(25) Dispose of fish or parts thereof or other matter in any manner after any communication or signal from an authorized officer, or after the approach of an authorized officer.

(26) Violate the terms and conditions or any provision of an exempted fishing permit or scientific research permit issued under the authority of § 635.32.

(27) Operate a charterboat or headboat without a valid U.S. Coast Guard merchant marine or uninspected passenger vessel license on board the vessel when fishing for or possessing Atlantic HMS as specified at § 635.4(c)(2).

(28) Violate any provision of this part, the Magnuson-Stevens Act, ATCA, or any regulations or permits issued under the Magnuson-Stevens Act or ATCA.

(29) Fail to comply with the restrictions on importing HMS as specified at §§ 635.40, 635.41 and 635.46.

(b) *Atlantic tunas*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Engage in fishing with a vessel that has a permit for Atlantic tuna under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel or on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

(2) Import or export bluefin tuna without a dealer permit, as specified in § 635.4(a)(4) and (g)(1).

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a vessel other than one that has on board an Angling category Atlantic tunas permit, an HMS or Atlantic Tunas Charter/Headboat permit, or a Purse Seine category Atlantic tunas permit as authorized under § 635.23 (b), (c), and (e)(2).

(4) Fail to inspect a vessel's permit, fail to affix a dealer tag to a large medium or giant BFT, or fail to use such tag as specified in § 635.5(b)(2).

(5) Fail to report a large medium or giant BFT that is not sold, as specified in § 635.5(a)(3) and § 635.5(c).

(6) As an angler, fail to report a BFT, as specified in § 635.5(a)(3).

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in § 635.21(d)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(d)(1)(vi)(B).

(9) Fish for or catch BFT in a directed fishery with purse seine nets without an allocation made under § 635.27(a)(4).

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets from August 15 through December 31 if there is no remaining BFT allocation made under § 635.27(a)(4).

(11) Exceed the recreational catch limit for yellowfin tuna, as specified in § 635.22(d).

(12) Exceed a catch limit for BFT specified for the appropriate permit category, as specified in § 635.23.

(13) As a vessel with a General category Atlantic tuna permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT on a commercial fishing day, as specified in § 635.23(a)(3).

(14) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a vessel with an Angling category Atlantic tunas permit or an HMS or Atlantic Tunas Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT after fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (3).

(16) Retain a BFT caught under the catch and release program specified in § 635.26.

(17) As a vessel with a Purse Seine category Atlantic tuna permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to August 15, as specified in § 635.27(a)(4).

(18) As a vessel with a Purse Seine category Atlantic tunas permit, land BFT smaller than the large medium size class except as specified under § 635.23(e)(2).

(19) Fish for, retain, possess, or land a BFT when the fishery is closed, as specified in § 635.28(a), except as may be authorized for catch and release under § 635.26.

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Purse Seine category Atlantic tuna permits may approach closer to each other.

(21) Transfer at sea an Atlantic tuna, except as may be authorized for the transfer of BFT between purse seine vessels, as specified in § 635.29(a).

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirements for weighing, measuring, and information collection specified in § 635.30(a)(2).

(23) Fish for, catch, possess, or retain a BFT from the Gulf of Mexico except as specified under § 635.23(f)(1), or if taken incidental to recreational fishing for other species and retained in accordance with § 635.23(b) and (c).

(24) Fail to comply with the restrictions on sale and purchase of an Atlantic tuna, as specified in §§ 635.5(b), 635.23, and 635.31(a).

(25) Fail to comply with the documentation requirements for

imported or exported BFT or BFT products, as specified in § 635.42.

(26) Import a BFT or BFT product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.45.

(27) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of Atlantic tunas.

(c) *Billfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(d)(2).

(2) Transfer a billfish at sea, as specified in § 635.29(a).

(3) Fail to maintain a billfish in the form specified in § 635.30(b).

(4) Sell or purchase a billfish, as specified in § 635.31(b).

(5) Retain on board a vessel a longbill spearfish, or a blue marlin, white marlin or sailfish that is less than the minimum size specified in § 635.20(d).

(d) *Shark*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Exceed a recreational retention limit for shark, as specified in § 635.22(c).

(2) Exceed a commercial retention limit for shark, as specified in § 635.24(a).

(3) Retain, possess, or land a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(1) and (b)(2).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b)(3).

(5) Transfer a shark at sea, as specified in § 635.29(b).

(6) Remove the fins from a shark listed in Tables 1 and 2 in Appendix A to this part, and discard the remainder, or otherwise fail to maintain a shark in its proper form, as specified in § 635.30(c)(1) through (c)(4).

(7) Have on board a fishing vessel, sell, or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3).

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c)(3).

(9) Fail to comply with the restrictions on sale and purchase of a shark, as specified in § 635.31(c).

(10) Retain, possess, sell, or purchase a prohibited shark.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support

of an application for an ILAP or an appeal of NMFS's denial of an ILAP for shark.

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(d)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(d)(3).

(e) *Swordfish*. It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock or import a swordfish harvested from any ocean area without a dealer permit, as specified in § 635.4(g)(3).

(2) Fail to comply with the restrictions on use of a pelagic longline specified in § 635.21(b) and (c).

(3) When the directed fishery for swordfish is closed, exceed the limits specified in § 635.28(c)(1)(i) and (c)(1)(ii).

(4) When the incidental catch fishery for swordfish is closed, possess, land, sell, or purchase a swordfish, as specified in § 635.28(c)(2).

(5) Transfer at sea a swordfish, as specified in § 635.29(a).

(6) Fail to maintain a swordfish in the form specified in § 635.30(d).

(7) Fail to comply with the restrictions on sale and purchase of a swordfish, as specified in § 635.31(d).

(8) Fish for North Atlantic swordfish from, or possess or land North Atlantic swordfish on board a vessel, using or having on board gear other than pelagic longline, harpoon, rod and reel, or handline.

(9) Fish for swordfish from the South Atlantic swordfish stock using any gear other than pelagic longline.

(10) Fail to comply with the documentation requirements for the importation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 635.46.

(11) Falsify information submitted under § 635.16(d)(2) or (d)(4) in support of an application for an ILAP or an appeal of NMFS's denial of an initial limited access permit for swordfish.

(12) Falsify information submitted under § 635.46(b) in support of entry of imported swordfish.

(13) Exceed the incidental catch retention limits specified at § 635.24(b).

Appendix A to Part 635—Species Tables

Table 1 of Appendix A to Part 635—Oceanic Sharks

A. Large coastal sharks:
1. Ridgeback sharks:
Sandbar, <i>Carcharhinus plumbeus</i>
Silky, <i>Carcharhinus falciformis</i>
Tiger, <i>Galeocerdo cuvieri</i>
2. Non-ridgeback sharks:
Blacktip, <i>Carcharhinus limbatus</i>
Bull, <i>Carcharhinus leucas</i>
Great hammerhead, <i>Sphyrna mokarran</i>
Lemon, <i>Negaprion brevirostris</i>
Nurse, <i>Ginglymostoma cirratum</i>
Scalloped hammerhead, <i>Sphyrna lewini</i>
Smooth hammerhead, <i>Sphyrna zygaena</i>
Spinner, <i>Carcharhinus brevipinna</i>
B. Small coastal sharks:
Atlantic sharpnose, <i>Rhizoprionodon terraenovae</i>
Blacknose, <i>Carcharhinus acronotus</i>
Bonnethead, <i>Sphyrna tiburo</i>
Finetooth, <i>Carcharhinus isodon</i>
C. Pelagic sharks:
Blue, <i>Prionace glauca</i>
Oceanic whitetip, <i>Carcharhinus longimanus</i>
Porbeagle, <i>Lamna nasus</i>
Shortfin mako, <i>Isurus oxyrinchus</i>
Thresher, <i>Alopias vulpinus</i> .
D. Prohibited sharks:
Atlantic angel, <i>Squatina dumerili</i>
Basking, <i>Cetorhinus maximus</i>
Bigeye sand tiger, <i>Odontaspis noronhai</i>
Bigeye sixgill, <i>Hexanchus vitulus</i>
Bigeye thresher, <i>Alopias superciliosus</i>
Bignose, <i>Carcharhinus altimus</i>
Caribbean reef, <i>Carcharhinus perezi</i>
Caribbean sharpnose, <i>Rhizoprionodon porosus</i>
Dusky, <i>Carcharhinus obscurus</i>
Galapagos, <i>Carcharhinus galapagensis</i>
Longfin mako, <i>Isurus paucus</i>
Narrowtooth, <i>Carcharhinus brachyurus</i>
Night, <i>Carcharhinus signatus</i>
Sand tiger, <i>Odontaspis taurus</i>
Sevengill, <i>Heptranchias perlo</i>
Sixgill, <i>Hexanchus griseus</i>
Smalltail, <i>Carcharhinus porosus</i>
Whale, <i>Rhincodon typus</i>
White, <i>Carcharodon carcharias</i>

Table 2 of Appendix A to Part 635—Deepwater/Other Shark Species

Blotched catshark, <i>Scyliorhinus meadi</i>
Broadgill catshark, <i>Apristurus riveri</i>
Chain dogfish, <i>Scyliorhinus retifer</i>
Deepwater catshark, <i>Apristurus profundorum</i>

Dwarf catshark, <i>Scyliorhinus torrei</i>
Iceland catshark, <i>Apristurus laurussoni</i>
Marbled catshark, <i>Galeus arae</i>
Smallfin catshark, <i>Apristurus parvipinnis</i>
Bigtooth cookiecutter, <i>Isistius plutodus</i>
Blainville's dogfish, <i>Squalus blainvillei</i>
Bramble shark, <i>Echinorhinus brucus</i>
Broadband dogfish, <i>Etmopterus gracilispinnis</i>
Caribbean lanternshark, <i>Etmopterus hillianus</i>
Cookiecutter shark, <i>Isistius brasiliensis</i>
Cuban dogfish, <i>Squalus cubensis</i>
Flatnose gulper shark, <i>Deania profundorum</i>
Fringefin lanternshark, <i>Etmopterus schultzi</i>
Great lanternshark, <i>Etmopterus princeps</i>
Green lanternshark, <i>Etmopterus virens</i>
Greenland shark, <i>Somniosus microcephalus</i>
Gulper shark, <i>Centrophorus granulosus</i>
Japanese gulper shark, <i>Centrophorus acurus</i>
Kitefin shark, <i>Dalatias licha</i>
Lined lanternshark, <i>Etmopterus bullisi</i>
Little gulper shark, <i>Centrophorus uyato</i>
Portuguese shark, <i>Cetoroscymnus coelolepis</i>
Pygmy shark, <i>Squaliolus laticaudus</i>
Roughskin spiny dogfish, <i>Squalus asper</i>
Smallmouth velvet dogfish, <i>Scymnodon obscurus</i>
Smooth lanternshark, <i>Etmopterus pusillus</i>
American sawshark, <i>Pristiophorus schroederi</i>
Florida smoothhound, <i>Mustelus norrisi</i>
Smooth dogfish, <i>Mustelus canis</i>

PART 644—ATLANTIC BILLFISHES [REMOVED]

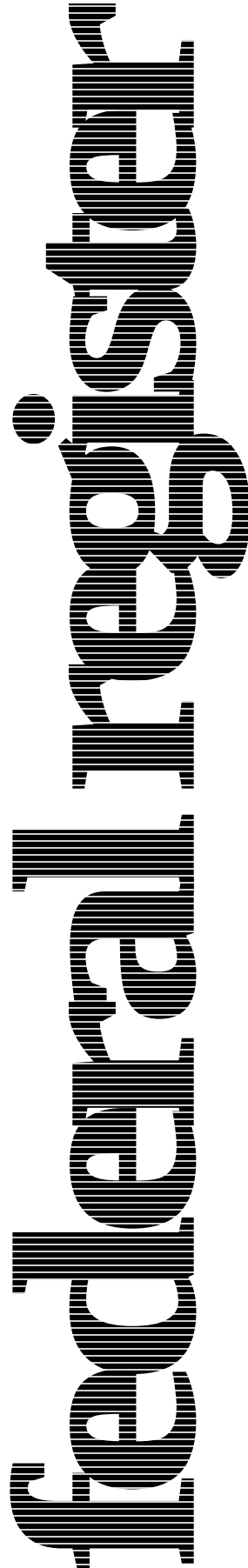
17. Under the authority of 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*, part 644 is removed effective July 1, 1999, except that § 644.21(a) is removed and reserved effective May 24, 1999.

PART 678—ATLANTIC SHARKS [REMOVED]

18. Under the authority of 16 U.S.C. 1801 *et seq.*, part 678 is removed effective July 1, 1999.

[FR Doc. 99-13090 Filed 5-24-99; 3:29 pm]

BILLING CODE 3510-22-F



Friday
May 28, 1999

Part III

**General Services
Administration**

41 CFR Part 301-10 et al.

**Federal Travel Regulation; Airline
Contract City-Pair Fares, Property
Management Services, and Technical
Corrections; Final Rule**

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–10, 302–1, 302–5, 302–6, 302–8, 302–10, 302–11, and 302–15

RIN 3090–AG87

[FTR Amendment 84]

Federal Travel Regulation; Airline Contract City-Pair Fares, Property Management Services, and Technical Corrections

AGENCY: Office of Governmentwide
Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to correct exceptions to the mandatory use requirement of a contract city-pair fare, and to implement technical corrections made by the Travel and Transportation Reform Act of 1998 to chapter 57 of title 5, United States Code. This final rule amends, for purposes of relocation allowances, the definition of “United States”, adds a definition of “Foreign Service of the United States”, allows for property management services when an employee transfers within the continental United States, and for househunting trip expenses to areas within the United States, as amended. It also replaces “United States” with “Government” where the intent is to refer to the Government of the United States. This change will avoid confusion between the phrases “the Government of the United States” and “the United States”, which is defined to mean the several States, the District of Columbia, and certain territories.

DATES: Effective date: The provisions of this final rule are effective May 28, 1999.

Applicability date: Additional contract exception included in the provisions of this final rule relating to part 301–10 (General Services Administration (GSA) airline contract city-pair fares) was effective as a matter of contract on October 1, 1998, and, therefore, the revisions to part 301–10 apply to travel performed on or after October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Harte, Travel and Transportation Management Policy Division, at 202–501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

The primary purpose of this amendment is to establish policy consistent with technical corrections made by Pub. L. 105–264, Travel and

Transportation Reform Act of 1998. This amendment also adds a fifth exception to use of a GSA airline contract city-pair fare, when smoking is permitted on the contract flight, and the nonsmoking section of the aircraft is not acceptable to the traveler.

On October 19, 1998, the President signed the Travel and Transportation Reform Act of 1998 (Pub. L. 105–264) which, among other things, clarifies the definitions of “United States” and “Foreign Service of the United States”, and allows an agency to pay for—

(1) Property management services when an employee transfers within the continental United States; and

(2) Househunting trip expenses to the Commonwealths of Puerto Rico and the Northern Mariana Islands, the territories and possessions of the United States, and the areas and installations in the Republic of Panama that are made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

This amendment also includes miscellaneous technical corrections contained in Section 7 of the Act.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–10, 302–1, 302–5, 302–6, 302–8, 302–10, 302–11, and 302–15

Entitlements and transfers, Government employees, Relocation allowances, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR parts 301–10, 302–1,

302–5, 302–6, 302–8, 302–10, 302–11, and 302–15 are amended to read as follows:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

2. Section 301–10.107 is revised to read as follows:

§ 301–10.107 When must I use a contract city-pair fare?

You must always use a contract city-pair fare (an Internet list of city-pairs is available at <http://pub.fss.gsa.gov/services/citypairs>), if you are a civilian employee of an agency (see § 301–1.1 of this chapter), unless one or more of the following conditions exist(s):

(a) Space or a scheduled contract flight is not available in time to accomplish the purpose of your travel, or use of contract service would require you to incur unnecessary overnight lodging costs which would increase the total cost of the trip; or

(b) The contractor's flight schedule is inconsistent with explicit policies of your Federal department or agency with regard to scheduling travel during normal working hours; or

(c) A non-contract carrier offers a lower fare available to the general public, the use of which will result in a lower total trip cost to the Government, to include the combined costs of transportation, lodging, meals, and related expenses.

Note to paragraph (c): This exception does not apply if the contract carrier offers a comparable fare and has seats available at that fare, or if the lower fare offered by a noncontract carrier is restricted to Government and military travelers on official business and may only be purchased with a GTR, contractor-issued charge card, or centrally billed account (*e.g.*, YDG, MDG, ODG, VDG, and similar fares); or

(d) Rail service is available and such service is cost effective and consistent with mission requirements; or

(e) Smoking is permitted on the contract flight and the nonsmoking section of the aircraft for the contract flight is not acceptable to you.

PART 302–1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

3. The authority citation for part 302–1 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

4. Section 302-1.4 is amended by revising paragraph (b) and adding paragraph (m) to read as follows:

§ 302-1.4 Definitions.

* * * * *

(b) *United States*. United States means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the territories and possessions of the United States, and the areas and installations in the Republic of Panama that are made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979).

* * * * *

(m) *Foreign Service of the United States*. Foreign Service of the United States means the Foreign Service as constituted under the Foreign Service Act of 1980.

§ 302-1.5 [Amended]

5. Section 302-1.5 is amended in the second sentence of paragraph (a), the last sentence of paragraph (b)(1)(iii), and the second sentence of paragraph (c) by removing the words "United States" each time they appear and adding the word "Government" in their place.

§ 302-1.12 [Amended]

6. Section 302-1.12 is amended in paragraphs (e)(1), (e)(5), and in the first sentence of (e)(6) by removing the words "the 50 States, the District of Columbia, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession" and adding the words "the United States" in their place.

§ 302-1.13 [Amended]

7. Section 302-1.13 is amended in paragraph (b)(3) by removing the words "the United States, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, a United States territory or possession," and "the United States, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, or a United States territory or possession" and adding the words "the United States" in their place; and in paragraph (d)(1)(iv)(A) by removing the words "United States" and inserting the word "Government" in their place.

§ 302-1.105 [Amended]

8. Section 302-1.105 is amended in paragraph (a) by removing the words "the United States, the Commonwealth of Puerto Rico or the Commonwealth of

the Northern Mariana Islands, a United States territory or possession, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979))" and adding the words "the United States" in their place.

§ 302-1.228 [Amended]

9. Section 302-1.228 is amended in paragraph (c) by removing the words "under part 302-14" and adding the words "under part 302-15" in their place.

PART 302-5—ALLOWANCE FOR TEMPORARY QUARTERS SUBSISTENCE EXPENSES

10. The authority citation for part 302-5 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-5.4 [Amended]

11. Section 302-5.4 is amended in paragraph (a) by removing the words "the United States, its territories or possessions, the Commonwealths of Puerto Rico or the Northern Mariana Islands, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in 22 U.S.C. 3602(a)))" and adding the words "the United States" in their place.

§ 302-5.17 [Amended]

12. Section 302-5.17 is amended by removing the words "the United States, its territories or possessions, the Commonwealths of Puerto Rico or the Northern Mariana Islands, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in 22 U.S.C. 3602(a)))" and adding the words "the United States" in their place.

PART 302-6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

13. The authority citation for part 302-6 is revised to read as follows:

Authority: 5 U.S.C. 5738; and E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975, Comp., p. 586.

§ 302-6.1 [Amended]

14. Section 302-6.1 is amended in paragraph (a) by removing the words "the 50 States, the District of Columbia, the Commonwealth of Puerto Rico or the Commonwealth of the Northern Mariana Islands, a United States territory or possession, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States under the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979))" and adding the words "the United States" in their place, and in paragraph (g)(1)(ii) by removing the words "the United States, its territories or possessions, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979))" and adding the words "the United States" in their place.

PART 302-8—TRANSPORTATION AND TEMPORARY STORAGE OF HOUSEHOLD GOODS AND PROFESSIONAL BOOKS, PAPERS, AND EQUIPMENT

15. The authority citation for part 302-8 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-8.5 [Amended]

16. Section 302-8.5 is amended in the first sentence of paragraph (b)(2) by removing the words "within or outside the United States".

PART 302-10—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY STORAGE OF A PRIVATELY OWNED VEHICLE

17. The authority citation for part 302-10 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-10.174 [Amended]

18. Section 302-10.174 is amended by removing the words "the United States" and adding the words "the several States and the District of Columbia" in their place.

PART 302-11—RELOCATION INCOME TAX (RIT) ALLOWANCE

19. The authority citation for part 302-11 is revised to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

§ 302-11.8 [Amended]

20. Section 302-11.8 is amended in the second sentence of paragraph (e)(4)(i) by removing the words “United States” and adding the words “U.S. Government” in their place.

§ 302-11.10 [Amended]

21. Section 302-11.10 is amended in paragraph (c) by removing the words “United States” wherever they appear and adding the word “Government” in their place.

§ 302-11.11 [Amended]

22. Section 302-11.11 is amended by removing the words “United States” and adding the word “Government” in their place.

23. Part 302-15 is revised to read as follows:

PART 302-15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES**Subpart A—General Rules for the Employee**

Sec.

302-15.1 What are “property management services”?

302-15.2 What are the purposes of the allowance for property management services?

302-15.3 Am I eligible for payment for property management services under this subpart?

302-15.4 Who is not eligible for payment for property management services?

302-15.5 Is my agency required to authorize payment for property management services?

302-15.6 Under what circumstances may my agency authorize payment under this part?

302-15.7 For what property may my agency authorize payment under this part?

302-15.8 When my agency authorizes payment for me under this part, am I obligated to use such services, or may I elect instead to sell my residence at Government expense?

302-15.9 Must I repay property management expenses my agency paid under this part if I elect to sell my former residence in the United States at Government expense when I am transferred from my current foreign post of duty to an official station in the United States other than the one I left?

302-15.10 How long may my agency pay under this part?

302-15.11 If my agency authorized, and I elected to receive, payment for property management expenses, may I later elect to sell my residence at Government expense?

302-15.12 If my agency is paying for property management services under this part and my service agreement expires, what must I do to ensure that payment for property management services continues?

302-15.13 What are the income tax consequences when my agency pays for my property management services?

Subpart B—Agency Responsibilities

302-15.70 What governing policies must we establish for the allowance for property management services?

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

Subpart A—General Rules for the Employee

Note to subpart A: Use of the pronouns “I” and “you” throughout this subpart refers to the employee.

§ 302-15.1 What are “property management services”?

“Property management services” are programs provided by private companies for a fee, which help an employee to manage his/her residence at the old official station as a rental property. These services typically include, but are not limited to, obtaining a tenant, negotiating the lease, inspecting the property regularly, managing repairs and maintenance, enforcing lease terms, collecting the rent, paying the mortgage and other carrying expenses from rental proceeds and/or funds of the employee, and accounting for the transactions and providing periodic reports to the employee.

§ 302-15.2 What are the purposes of the allowance for property management services?

The purpose is to reduce overall Government relocation costs when used instead of sale of the employee’s residence at Government expense. When authorized in connection with an employee’s transfer to a foreign post of duty, the purpose is to relieve the employee of the costs of maintaining a home in the United States while stationed at a foreign post of duty.

§ 302-15.3 Am I eligible for payment for property management services under this subpart?

Yes, when:

(a) You transfer in the interest of the Government; and

(b) You and/or (a) member(s) of your immediate family hold title to a

residence which you are eligible to sell at Government expense under part 302-6 or 302-12 of this chapter.

§ 302-15.4 Who is not eligible for payment for property management services?

New appointees, employees assigned under the Government Employees Training Act (5 U.S.C. 4109), and employees transferring wholly outside the United States are not eligible. However, relocations wholly outside the United States do not affect previously authorized property management services as long as the employee continues to meet the requirements of § 302-15.6 and any other conditions established by the agency.

§ 302-15.5 Is my agency required to authorize payment for property management services?

No, your agency determines:

(a) When you meet the conditions set forth in § 302-15.3;

(b) When to authorize payment for these services; and

(c) What procedures you must follow when it authorizes such payment.

§ 302-15.6 Under what circumstances may my agency authorize payment under this part?

(a) For a relocation to an official station in the United States, your agency may authorize payment under this part when:

(1) You are being returned from a foreign post of duty to a different official station than the one from which you were transferred for your foreign tour of duty;

(2) Your agency has determined that property management services are more advantageous and cost effective for the Government than sale of your residence;

(3) You have signed a service agreement; and

(4) You meet any other conditions that your agency has established.

(b) For relocations to official stations outside the United States, your agency will authorize payment under this part when you meet conditions set forth in paragraphs (a)(3) and (a)(4) of this section.

§ 302-15.7 For what property may my agency authorize payment under this part?

Payment may be authorized only on your residence at the last official station in the United States from which you transferred.

§ 302-15.8 When my agency authorizes payment for me under this part, am I obligated to use such services, or may I elect instead to sell my residence at Government expense?

You are not obligated to use your authorized property management

services allowance. You have the option of choosing to sell your residence at Government expense or to use the property management services allowance.

§ 302–15.9 Must I repay property management expenses my agency paid under this part if I elect to sell my former residence in the United States at Government expense when I am transferred from my current foreign post of duty to an official station in the United States other than the one I left?

No. The authority for your agency to pay for property management services under this part when you are transferred to a foreign post of duty arises from your transfer to the foreign post of duty and is separate from, and in addition to, the authority to sell your residence at Government expense when you are transferred to an official station in the United States other than the official station from which you were transferred to the foreign post of duty.

§ 302–15.10 How long may my agency pay under this part?

Your agency may pay:

(a) For transfers within the United States, a period not to exceed 2 years from your effective date of transfer, with up to a 1-year extension, under the same conditions required in § 302–6.1(e)(2) of this chapter; or

(b) From the time you transfer to a foreign post of duty until one of the following occurs:

(1) You transfer back to an official station in the United States;

(2) You complete a service agreement at your post of duty and remain there, but do not sign a new service agreement; or

(3) You separate from Government service.

§ 302–15.11 If my agency authorized, and I elected to receive, payment for property management expenses, may I later elect to sell my residence at Government expense?

Yes, provided:

(a) Your agency allows you to change your election of payment for property management expenses to an election of sale of your residence at Government expense; and

(b) Payment for sale of your residence at Government expense is offset in accordance with your agency's policy established under § 302–15.70(d).

§ 302–15.12 If my agency is paying for property management services under this part, and my service agreement expires, what must I do to ensure that payment for property management services continues?

You must sign a new service agreement. (See § 302–1.5 of this chapter.)

§ 302–15.13 What are the income tax consequences when my agency pays for my property management services?

You will be taxed on the amount of expenses your agency pays for property management services whether it reimburses you directly or whether it pays a relocation services company to manage your residence. Your agency must pay you a relocation income tax (RIT) allowance for the additional Federal, State and local income taxes you incur on property management expenses it reimburses you or pays on your behalf. You may wish to consult with a tax advisor to determine whether you will incur any additional tax liability, unrelated to your agency's payment of your property management expenses, as a result of maintaining your residence as a rental property.

Subpart B—Agency Responsibilities

Note to subpart B: Use of the pronouns “we” and “you” throughout this subpart refers to the agency.

§ 302–15.70 What governing policies must we establish for the allowance for property management services?

You must establish policies and procedures governing:

(a) When you will authorize payment for property management services for an employee who transfers in the interest of the Government;

(b) Who will determine, for relocations to official stations in the United States, whether payment for property management services is more advantageous and cost effective than sale of an employee's residence at Government expense;

(c) If and when you will allow an employee who was offered and accepted payment for property management services to change his/her mind and elect instead to sell his/her residence at Government expense in accordance with paragraph (d) of this section; and

(d) How you will offset expenses you have paid for property management services against payable expenses for sale of the employee's residence when an eligible employee who elected payment for property management services later changes his/her mind and elects instead to sell his/her residence at Government expense.

Dated: May 7, 1999.

David. J. Barram,

Administrator of General Services.

[FR Doc. 99–13126 Filed 5–27–99; 8:45 am]

BILLING CODE 6820–34–P

Final Rule

Friday
May 28, 1999

Part IV

Environmental Protection Agency

40 CFR Part 68

List of Regulated Substances and
Thresholds for Accidental Release
Prevention; Stay of Effectiveness for
Flammable Hydrocarbon Fuels; Final Rule

40 CFR Part 68

List of Regulated Substances and
Thresholds for Accidental Release
Prevention; Flammable Hydrocarbon Fuel
Exemption; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 68**

[FRL-6351-1]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Stay of Effectiveness for Flammable Hydrocarbon Fuels**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; stay of effectiveness.

SUMMARY: Pursuant to Clean Air Act (CAA) section 301(a)(1), 42 U.S.C. 7601(a)(1), the Agency is providing a six-month stay of the effectiveness of its Risk Management Plan (RMP) rule under CAA section 112(r) as it applies to processes containing no more than 67,000 pounds of certain flammable hydrocarbon fuels.

Elsewhere in the Proposed Rules section of today's **Federal Register**, EPA is proposing an exemption that mirrors the terms of today's stay. This exemption would result in such processes no longer being subject to the Chemical Accident Prevention requirements of 40 CFR part 68. The exemption would not apply to processes that manufacture the fuel, contain above a threshold quantity of another (non-fuel) regulated substance, or processes connected to, or co-located with, another (non-fuel) covered process at the facility.

This action provides a temporary stay while EPA completes rulemaking on the proposed exemption. While this stay is in effect, processes that would qualify for the proposed exemption are not subject to part 68. Today's stay is in addition to, and does not affect, the stay of the rule for propane processes recently entered by the U.S. Court of Appeals for the D.C. Circuit.

EFFECTIVE DATE: June 21, 1999.

FOR FURTHER INFORMATION CONTACT: John Ferris, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office (5104), 401 M Street S.W., Washington, DC 20460 (202) 260-4043.

SUPPLEMENTARY INFORMATION:**I. Background and Discussion**

In Part IV of today's **Federal Register**, EPA is proposing amendments to the regulations at 40 CFR part 68, establishing a chemical accident prevention program under Clean Air Act section 112(r). Readers should refer to that notice of proposed rulemaking for a complete discussion of the RMP regulations and the proposed amendment.

The proposed amendment, if promulgated, would add an exemption to 40 CFR 68.115 for processes containing up to 67,000 pounds of a listed flammable hydrocarbon fuel (e.g., propane, butane, ethane, etc.), provided that the process does not contain another listed substance over a threshold quantity, is not manufacturing the fuel, and is not co-located or interconnected to another (non-fuel) covered process. As explained in the notice proposing the exemption, EPA believes that such processes probably do not present risks warranting application of the comprehensive accident prevention requirements of the RMP rule. However, it is unlikely that EPA will be able to take final action on this proposal by June 21, 1999, the date by which stationary sources are required to comply with the RMP rule's requirements, including submission of risk management plans. This action provides a stay of the effectiveness of the rule's requirements for processes that would be affected by the proposed amendments, if promulgated, until December 21, 1999. If EPA does not promulgate the provisions of today's proposed rule by then, any source that has a process that would have been subject to the rule but for today's stay, must comply with the provisions of the RMP rule for the process by December 21, 1999. For sources that have multiple processes, only some of which are affected by today's stay, they must comply with the RMP rule by the June 21, 1999 deadline for the processes not affected.

EPA is providing this temporary stay because the Agency is conducting a rulemaking to determine whether the processes and sources affected by today's proposed rule should be subject to RMP requirements. EPA will need to evaluate comments on the proposed rule before taking final action. EPA believes that it has good cause to provide this temporary stay to provide a short period of time for the Agency to decide whether or not to promulgate today's proposed changes. EPA believes that requiring stationary sources to file risk management plans for the processes affected by today's proposal would pose an undue burden on these stationary sources while the Agency is deciding whether such reporting are necessary. EPA also believes that today's temporary stay will not significantly affect public health or welfare because, as explained in the proposal, the processes eligible for the stay meet criteria indicating that such processes are unlikely to pose a significant off-site risk. Furthermore, this temporary stay

does not affect a source's responsibilities under CAA section 112(r)(1), the general duty clause.

II. Related Litigation

Following promulgation of the RMP rule in 1996, several petitions for judicial review of the rule were filed, including one by the National Propane Gas Association (NPGA). At NPGA's request, the U.S. Court of Appeals for the District of Columbia Circuit recently entered a temporary stay of the RMP rule as it applies to propane (*The Chlorine Institute, Inc. v. Environmental Protection Agency*, 96-1279 and consolidated cases (Nos. 96-1284, 96-1288, and 96-1290), Order of April 27, 1999). Until further order of the Court, the RMP rule is not in effect with respect to propane. Any stationary source, or process at a stationary source, subject to the RMP rule only by virtue of propane is not, until further notice, subject to the RMP rule requirements, including those calling for a hazard assessment, accident prevention program, emergency response planning, and submission of (or inclusion in) an RMP by June 21, 1999.

EPA understands the Court's order granting a temporary stay as reaching not only propane in its pure form, but propane mixtures commonly sold as liquefied petroleum gas. The pleadings considered by the Court in entering its stay did not distinguish between pure propane and mixtures commonly sold as "propane." Accordingly, EPA believes the Court's order should not be read as making such a distinction.

It is important to note that the terms of the Court's stay are different in several respects from those of this temporary stay being issued by EPA. The Court's stay applies only to propane, while the temporary stay applies to all flammable hydrocarbon fuels, including propane. The Court's stay includes no caps or conditions; the temporary stay includes a cap and other conditions for eligibility. Finally, the Court's stay will last until further order of the Court. The temporary stay lasts only until December 21, 1999. If the Court lifts its stay before then, propane, along with the other flammable hydrocarbon fuels, would be exempt from the RMP rule in accordance with the terms of the temporary stay.

II. Administrative Requirements**A. Docket**

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because it

allows members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.)

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A99-18, and is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ADDRESSES at the beginning of this document.

B. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that today's action is not a "significant regulatory action" under the terms of E.O. 12866 and is, therefore, not subject to OMB review.

C. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with

representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule change does not impose any enforceable duties on these entities; rather, it stays the effective date for certain processes affected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

E. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the

Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule stays the effective date for certain processes affected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule because it is not subject to the Regulatory Flexibility Act. EPA has also determined that this rule will not have a significant negative economic impact on small entities. This rule does not require any stationary source to report additional elements in the RMP; instead, this rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

G. Paperwork Reduction

This rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act. This rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a

good cause finding, including the reasons therefor, and established an effective date of June 21, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention.

Dated: May 21, 1999.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is amended to read as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661-7661f.

2. Section 68.2 is amended by adding paragraph (c) to read as follows:

§ 68.2 Stayed provisions.

* * * * *

(c) Notwithstanding any other provision of this part, the effectiveness of part 68 is stayed from June 21, 1999 to December 21, 1999 with respect to regulated flammable hydrocarbon substances when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process.

[FR Doc. 99-13539 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 68**

[FRL-6350-9]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Flammable Hydrocarbon Fuel Exemption**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify the rule listing regulated substances and threshold quantities for the Risk Management Program (RMP) issued under section 112(r) of the Clean Air Act as amended. EPA is proposing that a process containing 67,000 pounds or less of a listed flammable hydrocarbon fuel, and no other listed substance above its threshold quantity, be exempt from threshold quantity determination. The exemption will not apply to processes that manufacture the fuel, contain more than a threshold quantity of another (non-fuel) regulated substance, or processes connected to, or collocated with, another covered process at the facility. EPA believes this proposed change will exempt from RMP coverage numerous small fuel users (e.g., farms, restaurants, hotels, etc.) that were not intended to be subject to the RMP requirements and better focus accident prevention activities on stationary source operations that present a greater risk to the community.

DATES: *Comments.* Comments must be submitted on or before June 28, 1999 unless a hearing is requested by June 2, 1999. If a hearing is requested, written comments must be received by July 12, 1999.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than June 2, 1999. If a hearing is held, it will take place on June 14, 1999 at 9:30 am, at the location indicated below.

ADDRESSES: *Comments.* Comments should be mailed or submitted to: Environmental Protection Agency, Air Docket (6102), Attn: Docket No. A-99-18, Waterside Mall, 401 M St. SW, Washington, DC 20460. Comments must be submitted in duplicate. Comments may be submitted on disk in WordPerfect or Word formats. If a public hearing is held, written testimony should be submitted in duplicate at the time of the hearing.

Public Hearing. If a public hearing is held, it will be held at Waterside Mall,

401 M St. SW, Washington, DC 20460, in the Conference Center in a room to be designated. Persons interested in attending the hearing or wishing to present oral testimony should notify by telephone James Belke (see **FOR FURTHER INFORMATION CONTACT**).

Docket. The docket for this rulemaking is A-99-18. This proposed rule would amend a final rule, the docket for which is A-91-74. The docket may be inspected between 8:00 am and 5:30 pm, Monday through Friday at EPA's Air Docket, Room M1500, Waterside Mall, 401 M St. SW, Washington, DC 20460; telephone (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: James Belke, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 401 M St. SW (5104), Washington, DC 20460, (202) 260-7314.

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I. Introduction and Background*A. Statutory Authority*

This notice of proposed rulemaking (NPRM) is being issued under sections 112(r) and 301 of the Clean Air Act (CAA or Act) as amended (42 U.S.C. 7412(r) and 7601).

B. Background

CAA section 112(r) contains requirements related to the prevention and mitigation of accidental chemical releases. The accidental release provisions focus on those chemicals and

operations that pose the greatest risk to public health and the environment in the event of an accidental release. The CAA requires EPA to issue an initial list of at least 100 substances ("regulated substances") that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. The Act identifies 16 substances to be included in the initial list, and specifies the factors to be considered in listing other substances, including (1) the severity of acute adverse health effects associated with accidental releases of the substance, (2) the likelihood of accidental releases of the substance, and (3) the potential magnitude of human exposure to accidental releases of the substance. The CAA also requires EPA to establish a threshold quantity for each chemical at the time of listing. In developing these thresholds, the factors to be considered include toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance, and the amount of the substance which is known to cause or can be reasonably anticipated to cause death, injury, or serious adverse effects in case of a release. Stationary sources that have more than a threshold quantity of a regulated substance are subject to accident prevention regulations issued under CAA section 112(r)(7), including the requirement to develop a risk management program.

EPA issued the rule listing substances and thresholds on January 31, 1994 (59 FR 4478) (the "List Rule"). The List Rule was modified on August 25, 1997 (62 FR 45129) and again on January 6, 1998 (63 FR 639). EPA sought comment on a proposed accident prevention ("risk management program" or "RMP") rule in two notices and promulgated a final rule on June 20, 1996. (See 58 FR 54190, October 20, 1993; 60 FR 13526, March 13, 1995 and 61 FR 31668, June 20, 1996.) EPA proposed modifications to the risk management program rule on April 17, 1998 (63 FR 19216) and finalized these amendments on January 6, 1999 (64 FR 964). For additional information on the requirements of section 112(r) and related statutory provisions, see these notices.

C. Summary of the List Rule

In the final List Rule published on January 31, 1994, EPA promulgated a list that includes 77 acutely toxic substances, 63 flammable gases and volatile flammable liquids, and Division 1.1 high explosive substances as listed by the United States Department of Transportation (DOT) in 49 CFR 172.101. EPA first modified the list on

August 25, 1997 (62 FR 45129) by de-listing hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. EPA further modified the list on January 6, 1998 (63 FR 639) by deleting the category of Division 1.1 explosives, exempting from threshold quantity determination regulated substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to processing, and clarifying the determination of threshold quantity of flammable substance in a mixture.

The List Rule establishes threshold quantities for toxic substances ranging from 500 to 20,000 pounds. For all listed flammable substances, the threshold quantity is 10,000 pounds. The rule sets forth the procedures for determining whether a threshold quantity of a regulated substance is present at a stationary source in a process. Specific exemptions from the threshold determination are also included for mixtures, articles, and certain uses and activities. The rule also outlines the requirements for petitions to the Agency to add substances to, or delete substances from, the list.

In developing the list, EPA selected commercially produced acutely toxic and volatile substances mostly from the list of extremely hazardous substances (EHSs) under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPA chose volatile substances because they are more likely to become airborne and impact the public. EPA also considered accident history associated with a substance. One substance, oleum, was listed because it has a history of accidents that have impacted the public. Because vapor cloud explosions have caused injuries to the public and damage to the environment, EPA also included highly flammable gases and liquids on the list.

At the time the List Rule was promulgated, EPA published a supplemental notice seeking comment on a proposal to exempt flammable substances from the 10,000-pound threshold determination when used solely for facility consumption as fuel (see 59 FR 4500, January 31, 1994). EPA sought additional public comment on the hazards associated with listed flammable substances used as fuel and the appropriateness of the proposed exemption. Based on available information and the comments received, EPA decided not to exempt from the threshold quantity determination flammable substances when used as fuel. This decision was described in the final Risk Management Program rule

promulgated on June 20, 1996 (61 FR 31668).

D. Related Litigation

Several legal challenges were brought to the RMP rule, including one by the National Propane Gas Association (NPGA). At NPGA's request, the U.S. Court of Appeals for the District of Columbia Circuit recently entered a temporary stay of the RMP rule as it applies to propane [*The Chlorine Institute, Inc. v. Environmental Protection Agency*, 96-1279 and consolidated cases (Nos. 96-1284, 96-1288, and 96-1290), Order of April 27, 1999]. Until further order of the Court, the RMP rule is not in effect with respect to propane. Any stationary source, or process at a stationary source, subject to the RMP rule only by virtue of propane is not, until further notice, subject to the RMP rule requirements, including those calling for a hazard assessment, accident prevention program, emergency response planning, and submission of (or inclusion in) an RMP by June 21, 1999.

EPA understands the Court's order granting a temporary stay as reaching not only propane in its pure form, but propane mixtures commonly sold as liquefied petroleum gas. The pleadings considered by the Court in entering its stay did not distinguish between pure propane and mixtures commonly sold as "propane." Accordingly, EPA believes the Court's order should not be read as making such a distinction.

It is important to note that the terms of the Court's stay are different in several respects from those of the exemption being proposed today. The Court's stay applies only to propane, while today's exemption would apply to all flammable hydrocarbon fuels, including propane. The Court's stay includes no upper quantity limit or conditions; today's exemption as proposed includes an upper quantity limit and other conditions for eligibility. Finally, the Court's stay will last until further order of the Court. The proposed exemption, if made final, will be permanent. If the Court lifts its stay at some point in the future, propane, along with the other flammable hydrocarbon fuels, would be exempt from the RMP rule in accordance with the terms of the exemption, unless the exemption is not finalized.

II. Discussion of Proposed Modifications and Alternatives

After promulgating the List and RMP rules, EPA became aware that a significant number of small, commercial sources use regulated flammable substances, particularly propane, as fuel

(e.g., for heating, drying, powering motor vehicles, etc.) in quantities that exceed the applicable threshold quantity (10,000 pounds in a process). As a result, these small sources, including farms, restaurants, hotels, and other commercial operations are covered by the RMP requirements. Many of these sources are in rural locations where other fuel sources (e.g., natural gas) are not available or economical.

The Agency has reexamined whether such sources should be covered by the RMP rule given the relatively small and better known risk they present to their surroundings. As explained in more detail below, EPA believes that fuel use generally does not warrant the detailed prevention program required by the RMP regulation. However, EPA believes that fuel held in large enough quantities still poses a level of risk which warrants a detailed prevention program (including the submission of a risk management plan). While, as EPA previously concluded in the List rule, listed fuels are extremely hazardous and warrant continued listing, the Agency is proposing to exempt processes containing these substances from the RMP requirements when stored in quantities not exceeding 67,000 pounds in a process, because of the decreased risk associated with fuel use.

As noted above, EPA had previously proposed a fuel use exemption, but subsequently decided against it. In considering the original exemption proposal, EPA focused primarily on the inherent hazards of the listed substances when used as fuel. EPA sought but could not locate, and did not receive from commenters, data or information which indicated that the inherently hazardous characteristics of a flammable substance (e.g., flammability, combustibility, volatility, etc.) were any different when that substance was used for fuel. EPA noted that differences in handling and use as well as application of industry safety standards could affect the risk of an accident, but stated that covered sources could take these and other relevant factors into account in developing their risk management programs. Viewed from this perspective, EPA found no basis for granting an exemption.

However, EPA did not fully realize the extent to which listed fuels (particularly propane) are used over threshold quantities in simple processes for heating or drying, mostly in open or rural settings. Concerns raised after the RMP rule was issued led EPA to further investigate the nature and number of sources subject to the rule by virtue of their use of fuel in simple processes.

The Agency had originally projected that, for example, no more than approximately 300 farms would be subject to the rule, but has since estimated that approximately 5,300 such sources are subject to RMP requirements (see section IV.H of this preamble). In light of the purpose of section 112(r)—to focus comprehensive accident prevention requirements on the most potentially dangerous sources—EPA believes that farms and other small fuel users may not warrant federal RMP regulation and that it is appropriate to reconsider this issue.

EPA now believes that relatively small amounts of listed flammable substances (including amounts in excess of 10,000 pounds), when used as fuel, generally do not present sufficient threat to the offsite public to warrant regulation under the RMP program, provided certain conditions are met as described below. EPA has considerable accident data on propane that shows that while accidental releases of small quantities of listed fuel substances certainly can and sometimes do result in significant on-site property damage and/or injuries to workers, they usually do not cause significant offsite impacts. Further, local fire departments are generally well aware of the location and hazards associated with flammable fuels and are equipped to effectively respond to and mitigate emergencies.

EPA is therefore proposing to exempt certain quantities of listed flammable hydrocarbons when used as fuel from RMP requirements because the Agency believes this will better focus accident prevention efforts on those stationary sources with high hazard operations. Today's proposal notwithstanding, owners and operators of facilities where exempt fuels are handled still have a general duty under section 112(r)(1) of the CAA to understand the hazards of their chemicals and processes, design, maintain, and operate a safe facility, and take steps to mitigate the consequences of accidents that do occur.

There are several characteristics associated with listed flammable hydrocarbons when used as fuel which reduce its potential for catastrophic impacts on the public or environment surrounding its location. Among these, EPA believes that no single characteristic is sufficient to justify an exemption for regulated fuels. However, when taken together, they reduce the risk of regulated fuels enough to justify the proposed exemption. These characteristics generally fall into two categories: characteristics that reduce the likelihood of accidental release, and characteristics that reduce the likelihood that a release will result in

severe offsite consequences, particularly vapor cloud explosions. As EPA explained in the List Rule, the Agency selected flammable substances and their threshold quantity based on their potential to cause vapor cloud explosions, which generate blast overpressures that travel much farther from the source than the radiant heat of fires, thus making offsite consequences more likely.

A. Characteristics of Fuel Use That Reduce the Likelihood of Accidental Release

Taken together, processes that are relatively simple, involve little manipulation and handling, are covered by other state or federal regulations, and are separate from other RMP covered processes are generally less likely to undergo a significant accidental release that can harm the public or environment. Fuel-use processes generally have these characteristics, as further explained below.

1. Simple Process

EPA believes that simple processes are generally less likely to suffer accidental releases than complex processes. When compared to the many different types of industrial chemical manufacturing operations at sources covered by the RMP rule, most fuel processes at commercial locations are relatively simple to operate and maintain. The majority of fuel uses of listed flammable hydrocarbons are for comfort heating, space heating, or drying. Typical process configurations involve minimal amounts of equipment (e.g., fuel storage tanks, transfer piping, and fuel burners), and instrumentation and process controls generally are few (perhaps only a thermostat). Complex or exotic equipment is generally not present, startups and shutdowns are usually easy to perform (many homeowners perform similar operations with no special training), and operations are often fairly routine. However, since fuel processes related to fuel manufacturing may be quite complex, EPA proposes not to extend the fuel exemption to processes associated with the manufacture of regulated fuel substances.

2. Little Manipulation and Handling

EPA believes that processes involving little hazardous chemical handling, manipulation, and transfer are generally less prone to accidental releases than processes which involve frequent handling, manipulation, and transfer. Fuel-use processes typically do not involve a lot of manipulation and handling of regulated flammable

substances. In most heating fuel processes, fuel storage tanks are filled infrequently (e.g., at monthly or longer intervals). Once a fuel storage tank is filled, fuel substances generally do not undergo numerous changes of state, and processes do not require frequent valving, piping connections and disconnections, or substance transfers into or out of the process. And as discussed above, fuel-use process operations are typically routine, with few start-ups and shut-downs. Although today's proposed exemption contains no explicit criterion which limits the exemption to processes involving little manipulation and handling, and therefore the exemption could be applied to sources (i.e., fuel retailers and distributors) which may not have this characteristic, EPA believes that another explicit criterion for today's exemption (i.e., 67,000 pound upper quantity limit) effectively prevents it from being applied to such sources.

3. Regulated Under State Law

EPA has estimated that the vast majority of fuel-use processes covered by the RMP rule consist of liquefied petroleum gas (principally propane) processes. To a lesser extent, covered fuel-use processes consist of liquefied or gaseous natural gas (methane) processes. The National Fire Protection Association (NFPA) has developed consensus standards for the design, construction, installation, and operation of liquefied petroleum gas and liquefied natural gas systems (i.e., NFPA 58 LP-Gas Code, NFPA 59 Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants, and NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)), and these standards apply to most fuel processes covered by the RMP rule. NFPA Standard 58, the standard applicable to most propane processes covered by the RMP rule, has been incorporated (or substantially equivalent requirements have been incorporated) into regulations in all 50 U.S. states. Although to EPA's knowledge no existing industry standard or state regulation duplicates all of the hazard assessment, accident prevention, emergency response, and information submission requirements of the RMP rule, these standards and regulations do contain some requirements which are either identical or generally consistent with certain RMP requirements. EPA therefore believes that implementation of safety practices required by these NFPA standards and state laws, as applicable, helps to reduce the likelihood of accidental releases at fuel-use processes.

4. Not Near or Combined With Other Regulated Substances or Processes

At the majority of sources eligible for the proposed fuel exemption, the process where the listed flammable substance is used as a fuel is the only covered process at the site and involves no other listed substances. It thus cannot be impacted by any other covered process in a way that could lead to an accidental release. And an accidental release involving the fuel process would not cause the release of another hazardous substance.

However, some facilities may have multiple processes or interconnected operations that use other listed flammable or toxic substances along with a listed flammable hydrocarbon used as fuel. For example, a process heater that uses a listed flammable hydrocarbon substance as fuel in a chemical reaction system handling other RMP listed substances could be adversely affected by a process upset or emergency, leading to a catastrophic fuel release. Conversely, an accident involving the fuel could lead to the secondary release of another substance, with offsite effects potentially equal to or greater than those resulting from release of the fuel itself. To ensure that today's proposed exemption is not inappropriately applied to processes where other regulated substance processes could be involved in an accidental fuel release, EPA proposes not to extend the fuel exemption to cases where the process containing the listed flammable hydrocarbon fuel contains another regulated substance, or is interconnected or collocated with another RMP-covered process.

B. Characteristics of Fuel Use That Reduce the Likelihood of Severe Offsite Consequences

Taken together, there are certain characteristics of the listed flammable hydrocarbons when used as a fuel that serve to reduce the likelihood of offsite consequences, particularly vapor cloud explosions, should an accidental release of the fuel occur. Some of these characteristics also reduce the magnitude of a vapor cloud explosion, should one occur. Specifically, fuel-use processes are typically in a less congested environment, involve small quantities of regulated substances, and use odorants as a means of rapid release detection.

1. Less Congested Environment

EPA's primary concern in listing flammable substances was the possibility that accidental releases of these substances could result in vapor

cloud explosions. As noted earlier, vapor cloud explosions generate blast overpressures that travel much further from the source of the explosion than the radiant heat generated by a large fire. Other types of flammable substance accidents, such as boiling liquid expanding vapor explosions (BLEVEs), can also result in severe offsite consequences, but primarily when very large quantities are involved. A vapor cloud explosion of the same quantity involved in a BLEVE generates a far greater impact distance and could potentially affect a larger number of people.

While vapor cloud explosions are infrequent events in general, experimental studies and accident investigations have shown that the likelihood and force of a vapor cloud explosion increase dramatically if flammable vapor is released into a highly congested environment (i.e., containing numerous obstacles, parallel-plane surfaces, and other obstructions). The presence of congestion in the volume occupied by a combusting vapor cloud creates turbulence in the vapor cloud, and turbulence is a necessary condition for blast overpressure to be generated in a combusting vapor cloud (factors other than physical congestion can also result in blast-generative turbulence, but congestion is generally the most common factor). Furthermore, greater turbulence (which can be caused by more and denser congestion) can dramatically increase the force of an explosion. Vapor clouds that ignite without turbulence generally burn, resulting in a flash fire or fireball, but do not explode.

The influence of congestion in the dynamics of vapor cloud explosions causes certain sources to be more susceptible to vapor cloud explosions than others. Sources such as petroleum refineries are often highly congested and therefore may present conditions conducive to a vapor cloud explosion should an accidental flammable vapor release occur. Small fuel-use sources, on the other hand, are generally not highly congested. Consequently, accidental releases from fuel-use processes are not as likely to result in vapor cloud explosions. Furthermore, if an accidental release at a fuel-use source does result in a vapor cloud explosion, the explosion is likely to be less powerful than that resulting from a similar release at a refinery or petrochemical plant.

2. Small Quantities

Studies have shown that small hydrocarbon vapor clouds, even if they ignite, are not likely to explode. The

probability of a vapor cloud explosion increases with the size of the vapor cloud. The great majority of fuel-use processes contain relatively small quantities of regulated fuels. Typical fuel-use situations involve 500- or 1000-gallon propane tanks, either individually or in multiple tank configurations. For this reason, the potential size of an accidental release from a fuel-use process, even a release consisting of the entire quantity of the process, is generally likely to be relatively small in relation to the amount of fuel necessary to generate a large vapor cloud.

When establishing the threshold quantity for listed flammable substances, EPA was aware that certain sources were more susceptible to vapor cloud explosions than others, and the Agency therefore used conservative modeling assumptions in setting that threshold. These assumptions were necessary in order to accommodate the full range of covered sources, including sources such as petroleum refineries where large quantities of regulated flammable substances may be held in environments and under conditions conducive to vapor cloud explosions. However, EPA believes, for reasons stated above, that these assumptions are overly conservative for most fuel use situations. EPA believes that a fuel-use source can store significantly more than 10,000 pounds of fuel in a process without the threat of significant offsite impacts from accidental releases.

Historically, flammable substance accidents with significant offsite impacts have involved either vapor cloud explosions at refineries and chemical plants, or BLEVE's at sources storing large quantities of flammable substances. In terms of loss of life, perhaps the most severe flammable substance accident ever at a stationary source occurred at an LP-gas terminal in Mexico City where nearly 4 million gallons of liquefied petroleum gas were stored. The accident involved the BLEVE or rupture of 48 large LP-gas storage containers, and reportedly resulted in more than 600 fatalities, most of whom were members of the offsite public. Other accidents with offsite impacts have occurred at fuel distribution sources in the United States and other countries where quantities of fuel much smaller than the quantity involved in the Mexico City accident were stored. In view of the large amount of fuel stored at fuel distribution facilities, as well as the frequent handling and transfer involved in fuel distribution, EPA believes that these facilities generally pose a significant risk of offsite consequences.

EPA proposes to establish the upper limit for the fuel exemption at 67,000 pounds, which is approximately the maximum amount, expressed in pounds, of liquefied petroleum gas normally stored in a standard 18,000 gallon propane tank (i.e., according to NFPA Standard 58, an 18,000 gallon propane tank may be filled to a maximum of 88% of nominal water capacity at 60°F). This proposed upper limit on the fuel exemption acknowledges the fact that even in environments not conducive to vapor cloud explosions, such events can still occur if a sufficient quantity of flammable vapor is released.

EPA derived this number in two steps. First, EPA used blast modeling methods to determine the amount of fuel necessary to result in a vapor cloud explosion that could cause potentially lethal effects on people from the indirect effects of an explosion at a distance of 100 meters from the source. In performing this analysis, EPA used TNT-equivalent and multi-energy blast modeling approaches. For TNT-equivalent modeling, EPA evaluated values for blast yield factor and flash fraction that the Agency considers to be representative of typical fuel-use situations. EPA evaluated blast yield factors ranging from one to three percent and determined flash fraction on the basis of actual thermodynamic data. The Agency also reviewed case studies relevant to the proposed exemption. Next, since the majority of fuel-use processes covered under the RMP rule contain propane, EPA reviewed the sizes of widely-used propane tanks, and set the proposed exemption limit to coincide with the tank size which best represented the range of quantities derived using blast modeling. Additional technical background information and calculations used to derive the proposed exemption limit are available for review at the docket for this rulemaking (see **ADDRESSES**).

EPA believes that 67,000 pounds represents a reasonable upper limit for the exemption, and believes that this limit is consistent with accident history, which indicates that flammable substance accidents with the most serious offsite impacts generally have occurred at sources storing large quantities of flammable substances for manufacturing, distribution or resale. The 67,000 pound upper quantity limit should also distinguish between fuel users and distributors. As noted earlier, fuel distribution involves very frequent transfer and handling that make accidental releases more likely. Based on available information, EPA believes that a 67,000 pound upper quantity

limit would exclude the vast majority of fuel distributors from eligibility for the proposed exemption. EPA requests comment on this approach, the proposed upper quantity limit for the exemption, related accident data, and whether an upper limit is necessary. Is relevant accident data available that the Agency may not have considered? Should EPA consider a different limit? If so, what would be the basis for that limit? Should EPA express the upper limit in terms of tank capacity (i.e., 18,000 gallons) instead of quantity in a process (i.e., 67,000 pounds)? Commenters are encouraged to provide supporting methodology for any other limit proposed, as well as accident data if available.

3. Fuels Are Odorized

The final characteristic of flammable hydrocarbon fuels that reduces the likelihood and/or magnitude of offsite consequences resulting from accidental releases is the fact that most regulated flammable fuel substances are odorized. The most commonly used fuel substances covered by the RMP rule, propane and methane, have no natural odor. An odorant is generally added to these fuels as a warning agent such that the gases are detectable, by a distinct odor, well below the lower limit of flammability. EPA believes that the presence of the odorant increases the likelihood that accidental fuel releases can be detected and stopped or mitigated before the release generates sufficient vapor to cause a vapor cloud explosion or results in other significant offsite impacts. Furthermore, even if the release itself cannot be halted or mitigated, the presence of the warning odor may allow the public to evacuate to a safe distance from a fuel release. EPA recognizes that the presence of a warning odor, by itself, is not effective in every circumstance, and even if the odor is detected, human intervention is often still required to stop or mitigate an accidental release. Nevertheless, EPA believes that accidental releases of odorized fuels are often likely to be less severe, either in terms of the quantity released or its consequences, or both, than accidental releases of non-odorized flammable substances. EPA requests comment on this issue as it relates to other listed flammable hydrocarbon substances used as fuel that are not odorized.

EPA requests comment on the preceding characteristics and whether they are appropriate as the bases for today's proposed exemption.

C. Alternative Approaches

While EPA believes that today's proposed exemption would effectively exempt only those fuel using sources that present little risk to the offsite public, the Agency requests comment on whether alternative approaches might better serve this purpose. Specifically, EPA requests comment on the following alternative approaches:

1. Restrict Exemption to Processes Where Flammable Substances are Used On-site as Fuel; No Upper Quantity Limit on Exemption

The approach proposed today is based on the analysis above, which indicates that fuel-use processes pose lower risk than other covered processes, so long as the quantity of fuel in the process does not exceed 67,000 pounds. However, for the sake of administrative simplicity, both for the regulated sources and the regulating agency (including state implementing agencies), EPA is not proposing to include fuel-use as an eligibility criterion for the exemption. EPA's data show that relatively few sources that store fuel for other than on-site use (e.g. fuel distributors and retailers) hold quantities of 67,000 pounds or less in a process. And, to the extent that such sources exist, they are often in relatively remote locations, serving as small depots to rural customers. The Agency thus believes that a fuel-use criterion is probably unnecessary to assure proper application of the proposed exemption.

Nevertheless, the first alternative to today's approach would restrict the exemption to only those sources where the presence of the fuel is only for actual on-site consumption. This alternative is virtually identical to the fuel-use exemption provided by OSHA under 29 CFR part 1910, Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents. Under the OSHA exemption (and this alternative to today's approach), no upper quantity limit restricts its applicability. In consideration of the aforementioned factors which differentiate fuel use from other flammable substance uses (or other factors that the Agency may not have considered), EPA requests comments on whether or not this alternative to the proposed exemption better accomplishes its stated purpose (i.e., to exempt from RMP coverage numerous small fuel users and better focus accident prevention activities on stationary source operations that present a greater risk to the community).

2. Restrict Exemption to Processes Where Flammable Substances Are Consumed On-site as Fuel; Retain Upper Quantity Limit on Exemption

This alternative is identical to the first alternative, but retains the upper quantity limit on applicability for the exemption. This would ensure that the exemption would not be applied at sources that consume very large quantities of fuel on-site. As previously indicated, EPA believes that even in fuel-use situations that are less susceptible to vapor cloud explosions, such events can still occur if a sufficient quantity of fuel is released. In consideration of the factors which differentiate fuel use from other flammable substance uses, EPA requests comments on whether or not this alternative to the proposed exemption better accomplishes its stated purpose.

3. Restrict Exemption to Regulated Substances in Liquefied Petroleum Gas and/or Natural Gas

In EPA's view, an important justification for providing a fuel exemption is that in the event of an accidental release of a small quantity of fuel (less than 67,000 pounds), significant offsite consequences are not likely. In deriving the proposed 67,000 pound upper quantity limit for the exemption, EPA incorporated some modeling assumptions that represent the characteristics of propane, the most widely used listed fuel substance. EPA believes these assumptions are also reasonably conservative when applied to modeling of methane, the primary component of natural gas. However, other listed flammable fuel substances, such as acetylene and propylene, have inherent characteristics for which these assumptions may be unsuitable (e.g., acetylene is much more reactive than propane). EPA believes that such substances are generally not stored for fuel use in quantities approaching 67,000 pounds. Therefore, EPA believes that the proposed exemption does not, as a practical matter, present any unintended additional risk to the public from such substances. However, EPA requests comment on whether or not the proposed exemption, or any of the proposed alternatives, should apply only to regulated substances in liquefied petroleum gas and natural gas, the flammable mixtures for which the exemption is, in large part, specifically intended.

D. Other Issues

Comments are requested on the proposed exemption and alternatives and the other specific issues addressed

(e.g., distinguishing characteristics of fuel-use, methodology for determination of upper quantity limit for the proposed exemption, whether or not to restrict the exemption to certain regulated fuel substances, etc.). This rulemaking does not otherwise concern the listing and threshold quantities of flammable substances; comments received on issues outside the scope of today's proposal will not be considered. EPA may conduct final rulemaking on any of today's proposed alternatives without requesting further public comment.

III. Summary of Proposed Revisions to the Rule

EPA is proposing to amend subpart F, § 68.115(b) of title 40 of the Code of Federal Regulations to add a new paragraph (6):

(6) Fuels. Regulated flammable hydrocarbon substances need not be considered in determining whether more than a threshold quantity is present when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process."

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because it allows members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The official record for this rulemaking has been established for this rulemaking under Docket No. A-99-18, and is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ADDRESSES at the beginning of this document.

B. Public Hearing and Written Comments

A public hearing will be held, if requested, to discuss the proposed amendments in accordance with section 307(d)(5) of the Clean Air Act. If a public hearing is requested and held, the EPA will ask clarifying questions

during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. Persons wishing to present oral testimony or to inquire as to whether a hearing is to be held should contact the EPA (see **FOR FURTHER INFORMATION CONTACT**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each.

Any member of the public may file a written statement on or before July 12, 1999. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A-99-18. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center.

C. Executive Order 12866

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal

government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule change does not impose any enforceable duties on these entities. This action proposes changes that will exempt from part 68 requirements certain small fuel users, which may include some sources that are owned and operated by State, local or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action proposes changes that will exempt certain small fuel users, which may include communities of Indian tribal governments, from part 68 requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Regulatory Flexibility

EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule proposes changes that will exempt many small fuel users from part 68 requirements.

H. Paperwork Reduction

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1656.07) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by

calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. The information requirements are not effective until OMB approves them.

The Office of Management and Budget (OMB) has approved the information collection requirements (ICR) contained for the RMP rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0144. Under the current approved ICR No. 1656.05, EPA estimated the regulated universe as 69,485 sources with an annualized burden of 1.2 million hours. This revision of the rule reduces reporting burden on small fuel users (hotels, restaurants, farms, etc.), thereby reducing the regulated universe estimated by EPA in the approved ICR No. 1656.05.

EPA originally estimated that 12,500 propane retailers, 16,100 propane users, (see Economic Analysis in support of Final Rule, June 1996, available at EPA's Air Docket, Docket A-91-73) and about 5,300 farms (see ICR No. 1656.05) would be subject to part 68 requirements because they handled more than 10,000 pounds of propane. EPA reviewed data from a number of states and determined that only New Jersey had sufficient data that provided detailed information on propane retailer and users (including farms) and the quantity held. Using these data, EPA estimates that, under the 67,000 pound threshold in this proposed rule, the number of propane retailers would decrease by 10 percent to 11,250, and the number of users would decrease by 83 percent, to 2,700. EPA estimated the percentage of farms exempted under the 67,000 pound threshold by averaging data from New Jersey and North Carolina (data from North Carolina was used to estimate number of farms in the current approved ICR No. 1656.05). The farms would decrease by 85 percent, to 780. Overall, the universe of regulated sources under the proposed rule is now estimated to decrease from 69,485 to 50,300.

The public reporting burden will depend on the regulatory program tier into which sources are categorized. The public reporting burden for rule familiarization is estimated to range between 12 to 35 hours per source. The public reporting burden to prepare and submit a new RMP is estimated to take 6.0 hours for retailers to 10.0 hours for non-chemical manufacturers. RMP revisions are estimated to require 3.0 hours for wholesalers to 8.6 hours for chemical manufacturers. The public record keeping burden to maintain on-site documentation is estimated to range

from 2.8 hours for retailers to 279 hours for chemical manufacturers. The public reporting burden for CBI claims is estimated to be 9.5 hours for certain chemical manufacturing sources. In this action, EPA is not providing an exemption to sources that manufacture any of the flammable fuels, therefore, the original estimate for the CBI burden will not be changed with this rule. The public reporting burden for individuals filing petitions to amend the list of regulated substances is estimated to be 138 hours.

EPA estimates (ICR no. 1656.07) that the total annual public reporting burden to become familiar with the rule, complete and submit (or revise) the risk management plan, maintain on-site documentation, substantiate claims for confidential business information, and prepare and submit petitions to amend the list of regulated substances is estimated to be about 1.1 million annual burden hours for the remaining 50,300 sources subject to part 68 under the proposed rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St.,

N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 28, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by June 28, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year, rather it reduces burden for certain small fuel

users. Today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule proposes changes to exempt certain small fuel users which may include small governments.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Clean Air Act, Extremely hazardous substances, Intergovernmental relations, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 21, 1999

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Subchapter C, part 68 of the Code of Federal Regulations is proposed to be amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS [AMENDED]

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601, 7661-7661f.

2. § 68.115 is amended by adding a new paragraph (b)(6) to read as follows:

§ 68.115 Threshold determination.

* * * * *

(b) * * * * *

(6) Fuels. Regulated flammable hydrocarbon substances need not be

considered in determining whether more than a threshold quantity is present when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process.

* * * * *

[FR Doc. 99-13540 Filed 5-27-99; 8:45 am]

BILLING CODE 6560-50-P

Final Rule

Friday
May 28, 1999

Part V

**Department of
Education**

34 CFR Part 685

**William D. Ford Federal Direct Loan
Program; Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840-AC57

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the William D. Ford Federal Direct Loan (Direct Loan) Program regulations, 34 CFR Part 685. This amendment deletes Appendix A of these regulations and cross-references to Appendix A within Part 685. Future updates to the information in Appendix A of 34 CFR Part 685 will be published in the **Federal Register** as an annual notice.

EFFECTIVE DATE: These regulations take effect July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Watson, U.S. Department of Education, Room 3045, ROB-3, 400 Maryland Avenue, SW, Washington, DC 20202-5400. Telephone: (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Direct Loan regulations (34 CFR Part 685) are amended to delete Appendix A "Income Contingent Repayment," and to delete all references to Appendix A. All references to Appendix A are currently in § 685.209, which implements provisions of the income contingent repayment (ICR) plan. The calculation of monthly payments under the ICR plan utilizes a factor that varies with the amount of the borrower's income. This number is called the income percentage factor and is affected by annual changes in the Consumer Price Index (CPI). Appendix A contains a table of the income percentage factors; therefore, Appendix A must be revised annually to reflect the updated income percentage factors.

In addition to the income percentage factors, Appendix A provides supplementary charts and information illustrating how the ICR payments are calculated. Specifically, it includes case examples of the calculation of a borrower's monthly payment based on individual borrower information, a

constant multiplier chart that shows various interest rates factors, and a chart of sample first-year monthly repayment amounts for borrowers at various income and debt levels. Because these charts use data derived from the income percentage factors, the charts, and therefore Appendix A, must be revised annually.

Appendices included with regulations may only be revised by amending the regulations. Since 1996, the amendments to Appendix A have been published annually as final rules.

The regulations for implementing the ICR plan are in § 685.209. The information in Appendix A merely gives the data necessary to calculate a monthly ICR payment and provides examples illustrating the requirements prescribed in § 685.209. Therefore, the Secretary has concluded that the information contained in Appendix A need not be included in the Code of Federal Regulations. Consequently, the Secretary has decided to delete Appendix A and all references to it in the Direct Loan Program regulations. Beginning in 1999, the Secretary will publish the income percentage factors, case examples of calculations, a constant multiplier chart, and sample first year monthly repayment tables for various income and debt levels in an annual notice in the **Federal Register**.

This change to the regulations does not have a substantive effect on the Direct Loan Program regulations; it simply provides interested parties with updates of ICR plan information in an annual notice, rather than in the Code of Federal Regulations. Because publication of a notice is not as complex a process as publishing amendments to the Direct Loan Program regulations, this change ensures that annual updates will be provided to the public in a more timely and cost-effective manner.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the practice for the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the changes in this document do not establish any new substantive rules. The regulatory changes in this document are procedural amendments only. Therefore, the Secretary has determined that publication of a notice of proposed rulemaking is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B) and is also exempt under 5 U.S.C. 553(b)(A). For the same reasons, the Secretary has determined, under section 492(b)(2) of the Higher Education Act of 1965, as amended, that

these regulations should not be subject to negotiated rulemaking.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have significant economic impact on a substantial number of small entities. The regulations provide illustrative information about repaying Direct Loans and will not affect institutions participating in the Direct Loan Program. The Regulatory Flexibility Act does not include individuals in its definition of "small entities." Thus, the changes will not have a significant economic impact on any small entities under the Regulatory Flexibility Act.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the World Wide Web at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512-1530 or, toll free at 1-888-293-6498.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

<http://www.access.gpo.gov/nara/index.html>

List of Subjects in 34 CFR Part 685

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

(Catalog of Federal Domestic Assistance Number 84.268 William D. Ford Federal Direct Loan Program)

Dated: May 24, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 685 of title 34 of the Code of Federal Regulations as follows:

**PART 685—WILLIAM D. FORD
FEDERAL DIRECT LOAN PROGRAM**

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

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

Appendix A to part 685—[Removed]

2. Appendix A to part 685 is removed.

§ 685.209 [Amended]

3. In § 685.209, paragraph (a)(2)(i) is amended by removing “appendix A to this part” and adding, in its place, “a notice published annually by the Secretary in the **Federal Register**”; paragraph (a)(4) is amended by removing “Appendix A”, and adding, in its place, “the annual notice published

by the Secretary”; paragraph (a)(5) is amended by removing “appendix A” and adding, in its place, “the annual notice published by the Secretary”; and paragraph (a)(9) is amended by removing “appendix A to this part”, and adding, in its place, “the annual notice published by the Secretary”.

[FR Doc. 99-13583 Filed 5-27-99; 8:45 am]

BILLING CODE 4000-01-U

Final Rule

Friday
May 28, 1999

Part VI

Department of Labor

Pension and Welfare Benefits
Administration

Department of Health and Human Services

Health Care Financing Administration

29 CFR Chapter XXV

45 CFR Subtitle A

Coverage for Breast Reconstruction and
Related Services After a Mastectomy;
Proposed Rule

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Chapter XXV**

RIN 1210-AA75

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****45 CFR Subtitle A**

RIN 0938-AJ44

Coverage for Breast Reconstruction and Related Services After a Mastectomy

AGENCIES: Pension and Welfare Benefits Administration, Department of Labor; and Health Care Financing Administration, Department of Health and Human Services.

ACTION: Solicitation of comments.

SUMMARY: This document is a request for information regarding issues under the Women's Health and Cancer Rights Act of 1998 (WHCRA). The Department of Labor and the Department of Health and Human Services (collectively, the Departments) have received numerous inquiries from the public on a number of issues arising under WHCRA. Further comments from the public are welcome.

DATES: Comments should be submitted on or before June 28, 1999.

ADDRESSES: Written comments should be submitted with a signed original and 2 copies to the Pension and Welfare Benefits Administration (PWBA) at the address specified below. PWBA will provide copies to the Department of Health and Human Services for its consideration. All comments will be available for public inspection and copying in their entirety. Comments should be sent to: Health Care Task Force, Pension and Welfare Benefits Administration, Room N-5677, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attn: WHCRA Solicitation of Comments. Written comments may also be sent by Internet to the following address: whcra-comments@pwba.dol.gov.

All comments received will be available for public inspection and copying at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW, Washington, DC 20210, on Monday through Friday of each week from 8:30 a.m. to 4:30 p.m. Comments received timely will also be available for

public inspection approximately 3 weeks after the end of the comment period, in Room 443-G of the Department of Health and Human Services offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone (202) 690-7890).

FOR FURTHER INFORMATION CONTACT: Mila Kofman, Department of Labor, Pension and Welfare Benefits Administration, at 202-219-8671 (not a toll-free number); or Suzanne Long, Health Care Financing Administration, at 410-786-1565 (not a toll-free number) for inquiries regarding WHCRA.

Customer service information. To assist consumers and the regulated community, the Departments have issued questions and answers concerning the Women's Health and Cancer Rights Act. Individuals interested in obtaining a copy of the Department of Labor's publication may call a toll free number, 800-998-7542, or access the publication on-line at www.dol.gov/dol/pwba, the Department of Labor's website. Questions and answers pertaining to WHCRA are also available on-line at www.hcfa.gov/hipaa, HCFA's website.

SUPPLEMENTARY INFORMATION:**Background**

The Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted on October 21, 1998 (Pub. L. 105-277). WHCRA amended the Employee Retirement Income Security Act of 1974, as amended, (ERISA) and the Public Health Service Act (PHS Act) to provide protection for patients who elect breast reconstruction in connection with a mastectomy. WHCRA applies to both employment-based health coverage (group coverage) and individual (non-employment based) health insurance. WHCRA amended ERISA and the PHS Act by adding new requirements to Part 7 of Subtitle B of Title I of ERISA and to Title XXVII of the PHS Act. Part 7 and Title XXVII (health insurance reform provisions) were previously added to ERISA and the PHS Act by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). While those HIPAA provisions amended the Internal Revenue Code (Code) as well, WHCRA did not amend the Code.

WHCRA is intended to provide new protections for mastectomy patients. Group health plans and health insurance issuers, e.g., insurance companies or health maintenance

organizations (HMOs),¹ offering medical and surgical benefits for a mastectomy are subject to WHCRA.

Under WHCRA, group health plans and health insurance issuers must provide coverage for reconstructive surgery if an individual who is receiving benefits in connection with a mastectomy elects breast reconstruction. WHCRA requires group health plans and health insurance issuers to provide coverage for—

- Reconstruction of the breast on which the mastectomy has been performed;
 - Surgery and reconstruction of the other breast to produce a symmetrical appearance; and
 - Prostheses and physical complications at all stages of a mastectomy, including lymphedemas.
- WHCRA requires coverage to be provided in a manner determined in consultation with the attending physician and the patient.

WHCRA's requirements apply only to group health plans and health insurance issuers that provide coverage for a mastectomy. However, WHCRA does not require such entities to provide coverage for a mastectomy. WHCRA also does not prohibit group health plans and health insurance issuers from imposing deductibles or coinsurance requirements for health benefits relating to reconstructive surgery in connection with a mastectomy as long as such requirements are consistent with those established for other benefits under the plan or coverage. Additionally, WHCRA does not require mastectomy patients to undergo reconstructive surgery.

WHCRA also prohibits certain compensation arrangements. Specifically, WHCRA prohibits group health plans and health insurance issuers from providing incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual in a manner inconsistent with the law.

¹ WHCRA was added to the existing health insurance reform provisions in Part 7 of Title I of ERISA and Title XXVII of the PHS Act and is subject to the definitions in Part 7 and Title XXVII. The term *group health plan* is defined in 29 CFR 2590.701-2 (1997) and 45 CFR 144.103 (1997) ("* * * an employee welfare benefit plan * * * to the extent that the plan provides medical care * * * to employees or their dependents * * * directly or through insurance, reimbursement, or otherwise."). The term *health insurance issuer* is defined in 29 CFR 2590.701-2 (1997) and 45 CFR 144.103 (1997) ("* * * an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance * * *"). These terms also apply to the Newborns' and Mothers' Health Protection Act and the Mental Health Parity Act and the regulations implementing these laws.

WHCRA also prohibits group health plans and health insurance issuers from penalizing or otherwise reducing or limiting the reimbursement of an attending provider because such provider provided care to an individual in accordance with the law.

Additionally, WHCRA prohibits group health plans and health insurance issuers from denying a patient eligibility or continued eligibility to enroll or renew coverage under the terms of the plan or policy solely to avoid the requirements of WHCRA. WHCRA further requires group health plans and health insurance issuers to notify participants, and in the individual market, policyholders, of their rights under the law upon enrollment and annually thereafter.

The requirements under WHCRA apply to group health plans and health insurance issuers offering coverage in connection with such plans, for plan years beginning on or after October 21, 1998 (the date of enactment of WHCRA). For health insurance issuers in the individual market, the requirements apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after October 21, 1998. Accordingly, the Departments are working actively to develop and promulgate regulations implementing WHCRA.

Economic Analysis/Paperwork Reduction Act Information/Regulatory Flexibility Act Information

Executive Order 12866 requires that the Departments assess the costs and benefits of a significant rule making action and the alternatives considered, using the guidance provided by the Office of Management and Budget. These costs and benefits are not limited to the Federal government, but pertain to the affected public as a whole. Under Executive Order 12866, the Departments must also determine whether implementation of WHCRA will be economically significant. A rule that has an annual effect on the economy of \$100 million or more is considered economically significant.

In addition, the Regulatory Flexibility Act may require the Departments to prepare an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. An analysis under the Regulatory Flexibility Act must generally include, among other things, an estimate of the number of small entities subject to the regulations (for this purpose, plans, employers, and issuers and, in some contexts small governmental entities), the expense of the reporting and other

compliance requirements (including the expense of using professional expertise), and a description of any significant regulatory alternatives considered that would accomplish the stated objectives of the statute and minimize the impact on small entities. The Departments seek additional information from small entities regarding any special problems they might encounter in implementing the requirements of WHCRA and any regulatory guidance that might minimize those problems.

The Paperwork Reduction Act requires that the Departments estimate how many "respondents" will be required to comply with any "collection of information" aspects of the regulations and how much time and cost will be incurred as a result. A collection of information includes record-keeping, reporting to governmental agencies, and third-party disclosures.

The Departments are requesting comments that may contribute to the analyses that will be performed under these requirements.

Comments

Comments have been received from the public on a number of issues arising under WHCRA. These comments include questions about the notice requirements under WHCRA. More specifically, the Departments have been asked what information must be included in the annual notice and the enrollment notice required by WHCRA. To assist the regulated community and individuals, the Departments are considering whether to include in the regulation a model notice which will describe the information that must be included in these notices. The model notice would include information on the benefits required by WHCRA and permitted deductibles and coinsurance limitations. Comments are invited on whether a model notice would be helpful.

In addition to the questions relating to the notice requirements, the Departments have received questions regarding the timing of the requirements under WHCRA. For example, the Departments have received questions on whether, to what extent, and how WHCRA applies if an individual had a mastectomy, but not breast reconstruction, before changing health plans or coverage. Similarly, questions have been raised about whether there is a specific time period following a mastectomy after which WHCRA requirements no longer apply. Additional comments are welcome.

The Departments have also received questions concerning how WHCRA

would interact with State law. Under WHCRA, State law protections continue to apply to certain health coverage if the State law in effect on October 21, 1998 (date of enactment of WHCRA) "requires coverage of at least the coverage of reconstructive breast surgery otherwise required" by the federal requirements under WHCRA. The Departments have been asked which State laws would continue to apply. Additional questions are invited, and in particular, the Departments are interested in comments from State regulators on the scope of specific State laws.

The Departments welcome any and all comments related to WHCRA. However, the Departments are particularly interested in receiving comments on the aforementioned questions and those related to the following specific topics. While the information supplied by the public related to these specific topics will be used to formulate overall policy, it will also be used for analyses under Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act.

Specific areas with respect to the Departments' responsibilities and analysis under Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act in which the Departments are interested include:

1(a). Prior to WHCRA's enactment, what proportion of group health plans and/or health insurance issuers had excluded, restricted, or limited coverage of reconstructive surgery following mastectomies?

1(b). What specific exclusions, restrictions, or limits applied?

1(c). Did patient cost sharing for such surgery differ from that for other covered benefits?

1(d). Did coverage for such surgeries vary depending on whether they were performed immediately following mastectomies or later as a separate procedure?

2. How did group health plans and health insurance issuers covering such surgery compensate providers for their related services?

3. Were small group health plans more or less likely than large group health plans to exclude, restrict, or limit coverage for such surgery?

4(a). Among group health plans and health insurance issuers covering such surgery at a level consistent with WHCRA, what was the incidence and cost of such surgery?

4(b). Do group health plans and health insurance issuers currently notify participants and beneficiaries of their coverage consistent with WHCRA's notification requirements?

5(a). Among group health plans and health insurance issuers that must increase coverage of such surgery to comply with WHCRA, what are the anticipated claims or premium cost associated with that increase?

5(b). What is the anticipated administrative cost to amend plan documents and/or insurance contracts?

5(c). Will some group health plans and health insurance issuers make other amendments to offset WHCRA's cost?

5(d). Will plans' costs and responses vary with plans' size?

6. Does the extent and nature of coverage for such surgery affect the

likelihood that patients will elect it and/or the timing of such surgery?

7. What are the benefits of coverage for reconstructive surgery following mastectomy?

The purpose of this announcement is to advise the public that further comments and suggestions concerning any area or issue pertinent to the assessment and development of regulatory guidance regarding WHCRA are welcome.

All submitted comments will be made part of the official record and will be available for public inspection.

Signed at Washington, DC this 17th day of March 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

Signed at Washington, DC this 22nd day of March 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration, Department of Health and Human Services.

[FR Doc. 99-13625 Filed 5-27-99; 8:45 am]

BILLING CODE 4510-29-P; 4120-01-P

**Revised
Final
Notice**

Friday
May 28, 1999

Part VII

Department of Education

National Institute on Disability and
Rehabilitation Research; Final Funding
Priority for Fiscal Year 1999; Notice

Office of Special Education and
Rehabilitative Services, National Institute
on Disability and Rehabilitation Research;
Inviting Applications and Pre-Application
Meeting for a New Disability and
Rehabilitation Research Project for Fiscal
Year 1999; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priority for Fiscal Year 1999 for a Disability and Rehabilitation Research Project

AGENCY: Department of Education.

SUMMARY: The Secretary announces a final funding priority for a Disability and Rehabilitation Research Project (DRRP) by the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year 1999. The Secretary takes this action to focus research attention on areas of national need. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on June 28, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, SW., Room 3418, Switzer Building, Washington, DC. 20202-2645. Telephone: (202) 205-5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-2742. Internet: Donna_Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Waiver of Rulemaking

Pursuant to section 437(d)(1) of the General Education Provisions Act, the Secretary has determined that this priority is exempt from the Administrative Procedure Act (5 U.S.C. 553). Section 437(d)(1) exempts from rulemaking the first grant competition under a new or substantially revised program authority. This is NIDRR's first grant competition under Section 21(b)(2)(A) since that Section was amended by the Rehabilitation Act Amendments of 1998.

SUPPLEMENTARY INFORMATION: This notice contains a final priority under the Disability and Rehabilitation Research Projects and Centers Program for a DRRP on Building Research Capacity. There is a reference in the proposed priority to NIDRR's Long-Range Plan (LRP). The LRP can be accessed on the World Wide Web at: <http://www.ed.gov/legislation/FedRegister/announcements/1998-4/102698a.html>.

This final priority supports the National Education Goal that calls for every adult American to possess the

skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priority.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13-350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this priority.

*Priority: Building Research Capacity**Introduction*

The Rehabilitation Act Amendments of 1998 modified Section 21, Traditionally Underserved Populations. Section 21 is based on Congressional findings that the demographic profile of the United States is changing to include higher proportions of individuals from racial and ethnic minorities and that the prevalence of disability is disproportionately high among racial and ethnic minorities. At the same time, there have been documented patterns of inequitable treatment for minorities in the vocational rehabilitation process; and there is a need to have more qualified individuals from traditionally

underserved populations working in the field of rehabilitation.

Section 21 provides for a set-aside of one percent of appropriations for programs under certain Titles of the Act to address these problems through activities carried out under those programs. This priority, announced under Section 21(b)(2)(A), is to support an award to a minority entity or Indian tribe to carry out activities authorized under Title II of the Act. As defined by the Act in Section 21(b)(5)(B), a minority entity means a Historically Black College or University (HBCU), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Section 204(a)(2)(B)(vi) of Title II authorizes NIDRR to support "related activities which hold the promise of increasing knowledge and improving methods in the rehabilitation of individuals with disabilities . . . particularly individuals . . . who are members of populations that are unserved or underserved by programs under this Act." Section 202(h)(2)(F) requires that the LRP "specify plans for widespread dissemination of the results of covered activities that concern individuals with disabilities who are members of minority groups or of populations that are unserved or underserved by programs carried out under this Act."

The LRP, published in proposed form in the **Federal Register** on October 26, 1998, recognizes the existence of unique issues for disabled individuals from minority backgrounds, and also commits NIDRR to implement capacity building activities to address these problems. The LRP is based on a "new paradigm of disability" that defines disability as a product of the interaction between individual factors and the characteristics of the natural, built, cultural, and social environments. Two implications of the new paradigm for research are the need to understand and assess the contextual variables that, in part, comprise disability, and the concomitant need to develop the capacity of the research field to address these factors. These contextual variables include demographics, culture, income, education, familial supports, community accessibility, and attitudinal variables, among other factors.

The LRP also identifies an "emerging universe of disability," defined as an increasingly disproportionate distribution of disability, and its causes and consequences, among different social and economic groupings in

American society. In particular, the increasing importance of poverty, isolation, and low educational levels—all of which are strongly correlated with minority status—as both causes and consequences of disability has important implications for how research is conducted and for the development of the capacity of researchers to conduct studies of these factors.

The LRP also commits NIDRR to advance the capacity for rigorous qualitative and quantitative research and use of state-of-the-art methodologies by providing advanced training for researchers, including those with disabilities and those from minority backgrounds; develop the capacity of researchers to explicate disability as a contextual phenomenon; and to prepare researchers to conduct disability studies that incorporate the cultural context of disability. The LRP also includes a specific provision for increasing the disability research capacity of institutions of higher education that serve primarily minority students. NIDRR has a history of and commitment to making research an inclusive, collaborative, and coordinated undertaking. Adherence to this principle has resulted in on-going capacity building efforts that involve training those who participate in all aspects of the disability and rehabilitation research field.

NIDRR recognizes the need to expand the scope of its capacity building activities to increase the participation of persons from minority backgrounds and to increase awareness of minority issues among all NIDRR researchers. NIDRR believes that the quality and benefits of research related to minorities with disabilities can be enhanced by providing information, training, collaborations, and linkages to expertise for both minority and other researchers in the disability field.

Priority:

The Secretary will establish a DRRP to improve the quality and utility of research related to minority individuals with disabilities by (a) building capacity of researchers, especially those from minority backgrounds, to conduct disability research, especially related to rehabilitation of minorities, and (b) enhancing knowledge and awareness of issues related to minority individuals with disabilities among disability and rehabilitation researchers generally. The project must:

(1) Identify barriers to collaboration and information exchange among minority entities, Indian tribes, and other disability researchers, especially NIDRR-funded projects and centers, and

develop strategies to overcome those barriers;

(2) Facilitate on-going communication, collaboration, and exchange of expertise between minority entities—including Indian tribes—and researchers, especially NIDRR grantees, to implement the strategies identified in paragraph (1); and

(3) Develop and provide training activities, including but not limited to conferences, workshops, in-service training, and distance education, that will: (a) expand knowledge about minorities with disabilities; (b) improve research skills and familiarity with appropriate methodologies, including the skills of researchers from minority populations; and (c) enhance the capacity for appropriate dissemination of information about and to underserved populations with disabilities.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>.

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512-1530 or, toll free at 1-888-293-6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

<http://www.access.gpo.gov/nara/index.html>

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760-762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Dated: May 25, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99-13646 Filed 5-27-99; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A-15]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications and Pre-application Meeting for a New Disability and Rehabilitation Research Project for Fiscal Year 1999

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for a fiscal year 1999 competition by the National Institute on Disability and Rehabilitation Research. The purpose of the Disability and Rehabilitation Research Project (DRRP) is to improve the effectiveness of services authorized under the Act. Section 21 of the Rehabilitation Act of 1973, as amended, requires that NIDRR reserve a portion of its appropriated funds for a fiscal year to carry out certain activities. Section 21(b)(2)(A) authorizes NIDRR to make awards to minority entities and Indian tribes to carry out activities authorized under Title II of the Act.

This notice also invites interested parties to participate in a pre-application meeting to discuss the funding priority and receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting for the DRRP will be held on June 25, 1999 at the Department of Education, Office of Special Education and Rehabilitative Services, Room 3065, Switzer Building, 330 C Street, SW., Washington, DC between 9:00 a.m. and 11:00 p.m. NIDRR staff will also be available at this location from 12:00 p.m. to 3:00 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information contact Dr. Constance Pledger, U.S. Department of Education, Room 3423, Switzer Building, 600 Maryland Avenue, SW., Washington, DC 20202. Individuals who use a telecommunications device (TDD) may call the TDD number at (202) 205-5516. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening

device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

This notice supports the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

Deadline for Transmittal of

Applications: July 13, 1999.

Applications Available: May 28, 1999.

Maximum Award Amount Per Year: \$500,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimates of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 36 months.

Eligible Applicants: Parties eligible to apply for a grant under this program are minority entities and Indian tribes. Minority entities are defined as a Historically Black College or University (a Part B institution, as defined in Section 322(2) of the Higher Education Act of 1965), a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose minority

student enrollment is at least 50 percent.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350 (see particularly Subpart B). The notice of final funding priority on Building Capacity for Research on Underserved Populations with Disabilities is published elsewhere in this issue of the **Federal Register**.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205-8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-9860. The preferred method for requesting information is to FAX your request to (202) 205-8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT:

Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202-2645. Telephone: (202) 205-5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-2742. Internet: Donna_Nangle@ed.gov.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

<http://www.access.gpo.gov/nara/index.html>

Program Authority: 29 U.S.C. 718.

Dated: May 25, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99-13647 Filed 5-27-99; 8:45 am]

BILLING CODE 4000-01-U

FRIDAY
MAY 28, 1999

Friday
May 28, 1999

Part VIII

**Department of
Commerce**

Economic Development Administration

**National Technical Assistance, Training,
Research, and Evaluation—Request for
Grant Proposals; Notices**

DEPARTMENT OF COMMERCE**Economic Development
Administration**

[Docket No. 990506121-9121-01]

RIN 0610-ZA11

**National Technical Assistance,
Training, Research, and Evaluation—
Request for Grant Proposals****AGENCY:** Economic Development
Administration (EDA), Department of
Commerce (DoC).**ACTION:** Request for Grant Proposals
(RFP) upon availability of funds.

SUMMARY: A total of \$368,379,000 is available to EDA for all its programs in FY 1999 (See Notice of Funding Availability for FY 1999 at 64 FR 9221), of which approximately \$1,601,000 will be available for National Technical Assistance, Training, Research, and Evaluation. EDA is soliciting proposals for the specific projects described herein: (1) Evaluation of EDA's University Center Program; (2) Evaluation of EDA's Local Technical Assistance Program; (3) Identifying Technology Infrastructure Needs in America's Distressed Communities; (4) Handbook for Local Technology Strategic Planning, (5) Reviews of Economic Development Literature and Practice, and (6) Determining a Methodology for Estimating Infrastructure Demand. These projects will be funded if acceptable proposals are received. Remaining funding, if any, may be used to fund additional projects. EDA issues this Notice describing the conditions under which eligible applications for these National Technical Assistance, Training, Research, and Evaluation projects under 13 CFR part 307, subpart C (64 FR 5347, 5428-5429) will be accepted and selected for funding.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on June 17, 1999, at 10 a.m. EDT in the Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW, Washington, DC 20230, Room 1414, at which time questions on these projects can be answered. Potential applicants are encouraged to provide written questions (See Address section below) by June 10, 1999. Prospective applicants unable to attend this pre-proposal conference may participate by telephone conference. Teleconference information may be obtained by calling (202) 482-4085 between 8:30-5 EDT on June 16, 1999.

Proposals for funding under this program will be accepted through July 2, 1999. Proposals received after 5 p.m. EDT, on July 2, 1999, at the address provided below, will not be considered for funding.

By July 21, 1999, EDA will advise successful proponents to submit full applications, OMB Control Number 0610-0094.

Completed applications must be submitted to EDA by August 5, 1999, at the address below. EDA will make these awards no later than September 30, 1999.

ADDRESS: Send proposals to John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John J. McNamee (202) 482-4085.

SUPPLEMENTARY INFORMATION:**I Introduction***A. Authority*

The Public Works and Economic Development Act of 1965, as amended (Pub. L. 89-136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105-393) (PWEDA) authorizes EDA to make grants for training, research, and technical assistance, including grants for program evaluation and project impact analyses, that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (42 U.S.C. 3147, section 207). This RFP is dependent upon the availability of funds in FY 1999 for this program. Pub. L. 105-277 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development
Technical Assistance.

11.312 Research and Evaluation.

C. Program Description

For a description of this program see PWEDA and 13 CFR chapter III, part 307 (64 FR 5347).

EDA assistance is focused on areas experiencing significant economic distress, defined principally as per capita income of 80 percent or less of the national average, or an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average.

D. Costs

Ordinarily, the applicant is expected to provide a 50% non-federal share of project costs. However, the Assistant Secretary may waive the required 50% matching share of the total project costs, provided the applicant can demonstrate: (1) The project is not feasible without, and the project merits such a waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50 percent non-federal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient (See 13 CFR 307.9; 64 FR 5429).

E. Briefings and Reports

Unless otherwise noted, each award includes a requirement that the applicant conduct a total of up to seven briefings and/or training workshops for individuals and organizations interested in the results of this project. Potential applicants should be aware that the completion dates set forth below are for completion of the project and submission of the final written report. Briefings/workshops will take place no later than one year after submission of the final report. Locations and dates of the briefings/workshops are at EDA's discretion. Usually, these consist of at least one briefing in Washington, DC, with the other briefings/workshops held in conjunction with one or more of EDA's regional conferences.

Unless otherwise noted, each award includes a requirement that the applicant submit 200 copies of the final report.

II. Areas of Special Emphasis

- *Evaluation of EDA's University Center Program*

EDA invites proposals to evaluate the effectiveness of EDA's University Center Program.

Background

EDA's University Center Program funds selected colleges and universities to help them address economic development problems and opportunities in the states they serve, especially in distressed areas. The centers provide technical assistance to clients outside the university, conduct applied research, and disseminate information. The centers complement other forms of technical assistance by helping local communities mobilize diverse public and private resources.

Many centers cover an entire state; others cover a substantial portion of the state's population or geographic area.

The proposed research is intended to evaluate the degree to which EDA's University Center Program has helped centers identify local needs, alleviate economic distress, disseminate information, and increase local economic development capacity. This research examines the overall program and should not be confused with the evaluation of individual university centers required under section 506 of PWEDA. It may be necessary to examine and consult with individual centers in order to determine overall program effectiveness.

EDA will not accept proposals for this project from current EDA-funded centers or their representatives. Other organizational units within universities and colleges hosting centers may be funded, providing they demonstrate independence between themselves and the center.

Scope of Work

The successful applicant will: (1) Evaluate the effectiveness of EDA's University Center Program in addressing economic development problems and opportunities in the centers' service areas; (2) make recommendations as needed for improving the University Center Program; (3) review the EDA evaluation guidelines (currently under development) that will be used to assess individual centers, as required under Section 506 of PWEDA; and (4) conduct briefings and/or training workshops as set forth in I.E. above.

In its evaluation of the University Center Program, EDA anticipates the successful applicant will examine output, client satisfaction, cost-effectiveness, and ability to leverage other sources of funding for economic development. Potential measures of output may include numbers of short and long-term services provided, number of clients served, newsletters published, conferences held, etc.

In evaluating EDA's University Center Program, relevant questions include (but are not restricted to):

- a. Is the number and distribution of centers appropriate given overall budget constraints?
- b. Are the centers effective in meeting economic development needs?
- c. Does the University Center Program serve a unique role, or is it duplicative of programs offered by other federal agencies?
- d. Does the program effectively target distressed areas?

Cost

The total EDA share of the cost of this project may not exceed \$200,000.

Timing

The project should be completed and the final report submitted by September 30, 2000.

• *Evaluation of EDA's Local Technical Assistance Program*

Background

EDA's Local Technical Assistance Program provides funding to help communities solve specific economic development problems, respond to development opportunities, and build and expand local organizational capacity in distressed areas. Often, Local Technical Assistance projects consist of feasibility studies, support for other economic development providers, or similar projects necessary to prepare a community for further EDA support. In recent years, funding for the program has been approximately \$1.5 million per year, with the average grant size approximately \$25,000. The program was last evaluated in 1990.

Scope of Work

The successful applicant will: (1) Examine selected projects funded in FY's 1996-1997, provided they have been completed no later than September 30, 1998, to identify common and variable features of representative projects; (2) where appropriate, make site visits to obtain more detailed project information; (3) evaluate the effectiveness of the Local Technical Assistance Program in fulfilling its goals; (4) make recommendations as needed for improving the program; and (5) conduct briefings and/or training workshops as set forth in I.E. above. In evaluating program effectiveness, relevant questions include (but are not restricted to):

- a. Has the program helped communities undertake or eliminate specific economic development projects from their overall strategy?
- b. Has the program influenced the design, implementation, or timing of local projects?
- c. Has the program helped communities build long-term economic development capacity?
- d. Has the program supported innovative approaches and/or given local officials needed expertise?
- e. To what extent has the program targeted distressed areas?
- f. Were projects completed in a timely and cost-effective fashion?
- g. Were there common features that contributed to project success or failure?

Cost

The total EDA share of the cost of this project may not exceed \$150,000.

Timing

The project should be completed and the final report submitted by August 31, 2000.

• *Identifying Technology Infrastructure Needs in America's Distressed Communities*

EDA seeks proposals to assess the technology infrastructure needs of America's distressed communities to support critical economic development activities, including: Integration of new technologies into existing economic activities; ongoing technology and skills upgrading at the local level; development and commercialization of new technologies; and dissemination of information about new technologies.

Background

Most experts agree that the future prosperity of American firms and workers will depend on their abilities to identify, develop, assess, manage and integrate new technologies. However, some communities have far greater cumulative resources to undertake these tasks than others. We refer to these resident, cumulative community resources as "technology infrastructure," recognizing that they are as important to future economic development as sewers, roads, schools and other traditional forms of infrastructure. EDA is committed to helping distressed communities pursue technology-led economic development. To pursue this goal most effectively, the agency must understand the technology infrastructure needs of these communities as precisely as possible. Possible examples of technology infrastructure include fiber optic networks; geographic information systems; smart buildings; specialized training facilities; smart water supply systems, water and waste water treatment systems, transportation systems, etc. This project will complement and build on, but should not duplicate, current EDA-sponsored research to assess technology infrastructure needs in Native American and Alaska Native communities, and to identify best practices of technology transfer and commercialization.

Scope of Work

The successful applicant will: (1) Broadly outline the types of technology infrastructure needed for ongoing economic development in U.S. communities; (2) determine which types of technology are most needed by, and

appropriate for, America's distressed communities; (3) identify the major constraints to improving the state of technology infrastructure in America's distressed communities; (4) prepare a final written report of findings, including recommendations regarding how EDA can most effectively use its limited resources to help distressed communities upgrade their technology infrastructure; and (5) conduct briefings and/or training workshops as set forth in I.E. above.

As part of Task (1), EDA anticipates the successful applicant will develop a working definition of technology infrastructure, as well as a list of representative types of technology infrastructure. These should include cutting-edge technology improvements to traditional forms of infrastructure. In Task (2), EDA expects the researchers may wish to conduct case studies in communities that meet EDA's definitions of distress. The researchers would consider the resources and skills available in these communities, as well as acknowledged weaknesses in such economies that would have an impact, either positively or negatively, on the various types of technology infrastructure that are identified. In Task (3), the successful applicant should consider barriers to both private and public investment.

Costs

The total EDA share of the cost for this project may not exceed \$200,000.

Timing

The project should be completed and the final report submitted by August 31, 2000.

● *Handbook for Local Technology Strategic Planning*

EDA seeks proposals to create a handbook for use by local economic development practitioners in preparing technology strategic plans.

Background

In recent years, state and local economic development agencies have implemented a rapidly growing number and variety of technology-based economic development policies. As a result, it is becoming increasingly important that these policies be integrated smoothly into overall economic development planning (including EDA's required Comprehensive Economic Development Strategy). Among other things, economic development practitioners need to: identify technology-based economic development needs and opportunities; determine which kinds of

projects are most appropriate for their community; recognize possible constraints on technology-based development strategies; and understand how technology strategies affect other aspects of economic development. In accordance with section 502 of PWEDA, EDA seeks to support the efforts of practitioners by developing a handbook that will help them undertake strategic planning for technology-based economic development. The handbook should provide practitioners with information regarding: what is typically included in a technology plan; how this content might vary in different contexts; how to prepare these plans; how to integrate these plans with other local or regional development plans, such as EDA's Comprehensive Economic Development Strategy; and how to maximize the likelihood the plan will be implemented. The handbook should also identify potential sources for funding and technical assistance for preparing technology strategic plans. This project builds on earlier EDA-sponsored research which identified best practices and assessed the general status of technology strategic planning at the state level.

Scope of Work

The successful applicant will: (1) Review prior literature and other materials documenting practical experience with technology strategic planning for economic development; (2) consult with experts in developing the contents and organization of the handbook; (3) prepare a detailed outline of the handbook's contents and circulate it among the experts for comment; (4) prepare the handbook; and (5) conduct briefings and/or training workshops as set forth in I.E. above.

Costs

The total EDA share of the cost for this project may not exceed \$150,000

Timing

The project should be completed and the final handbook submitted by July 31, 2000.

● *Reviews of Economic Development Literature and Practice*

EDA seeks proposals to review the literature and practical experience regarding issues of critical importance to economic development practitioners nationally.

Background

One of EDA's main functions is to disseminate information about economic development policies, issues, strategies, and techniques to

practitioners. EDA fulfills this function by a number of means, including newsletters, conferences, use of the Internet, and targeted research. This project would help present important and emerging theoretical issues to practitioners and policy makers. Compared to most other EDA research, this project also gives researchers greater latitude to choose the topic of study.

As appropriate, EDA expects that the reviews selected will describe and critically analyze: key debates in the literature, analytical techniques of broad importance to practitioners, and the range of experience with specific economic development strategies. Where possible, reviews should identify important policy implications of the research. The subject, content, and writing style of proposed reviews should be targeted at practitioners and policy makers rather than academics. EDA expects proposals to be for original research, and proposed reviews should not have been submitted for publication elsewhere.

EDA is especially interested in reviews of literature on issues related to EDA's core programs. Examples include: Costs of job creation; economic development in Native American and Alaska Native communities; innovative public infrastructure financing; and international trade impacts on regional economies. EDA, however, welcomes a broader range of topics of importance to domestic economic development.

EDA expects researchers to demonstrate familiarity with the proposed topic and ability to conduct a timely, thorough, and objective review. EDA anticipates making multiple awards, but will not make multiple awards to any individual researcher.

Scope of Work

Successful applicants will: (1) Prepare a paper of length and quality suitable for publication in a peer-reviewed journal, and (2) conduct one presentation as described in I.E. above. Authors are encouraged to submit the final review paper for publication.

Cost

EDA may provide funding up to \$100,000 for all reviews funded under this RFP. The total EDA share of the cost for any single review may not exceed \$20,000. EDA anticipates that most proposals will be in the range of \$10,000 to \$15,000.

Timing

EDA anticipates that most reviews will take 6 months or less, but recognizes that this will vary with the

nature of the research. A presentation may take place up to one year after the final paper is submitted.

● *Determining a Methodology for Estimating Infrastructure Demand*

EDA requests proposals to determine whether a methodology exists to estimate the nature and approximate cost of the infrastructure that is needed for the economic development of distressed areas.

Background

Under its Public Works program, EDA grants assist distressed communities generate long-term, private sector jobs and diversify local economies by growing new industry, and by encouraging private investment and business expansion. EDA funds critically-needed infrastructure such as water and sewer facilities and modern technological improvements for industry and commerce, access roads to industrial sites, business incubators, and skill training facilities. EDA is cognizant of the fact that infrastructure investment needs grow out of a local planning process where the community or region identifies, among other needs, the type of infrastructure that is needed for the economic development of the area. Under this request, EDA is interested in determining whether there is a methodology for assessing the infrastructure needs of these economically-distressed areas that is valid and cost-effective. The availability of comprehensive data on local infrastructure investments and the causal relationship between the level of infrastructure investment and regional development must be established.

Scope of Work

The successful applicant will: (1) Bring together a roundtable panel of experts to determine whether there is a valid and cost-effective methodology to determine the demand for economic development infrastructure; (2) prepare

a report on the findings, conclusions, and recommendations; and (3) conduct up to two presentations as described in I.E. above.

Cost

The total EDA share of the cost for this project may not exceed \$25,000.

Timing

The project should be completed and the final report of the findings, conclusions, and recommendations submitted by December 31, 1999.

III. How To Apply

A. Eligible Applicants

See EDA's interim final rule at 13 CFR § 300.2 (64 FR 5347). Eligible applicants are as follows: areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states; institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals.

EDA encourages submission of proposals by a broad spectrum of potential applicants, including minority institutions and individuals.

B. Proposal Submission Procedures

Proposals submitted by potential applicants should include: (1) A description of how the researcher(s) intend(s) to carry out the scope of work (not to exceed fifteen pages in length); (2) a proposed budget and accompanying explanation; (3) resumes/qualifications of key staff (not to exceed two pages per individual), and (4) a proposed time line. EDA will not accept proposals submitted by FAX or email. Proposals received after 5 p.m. EDT, on

July 2, 1999, at the address provided above, will not be considered.

IV. Selection Process and Evaluation Criteria

Proposals will receive initial review by EDA to assure that they meet all requirements of this announcement and 13 CFR Chapter III (64 FR 5347), including eligibility and relevance to the specified project as described herein. All proposals must meet EDA's statutory and regulatory requirements. If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610-0094). EDA will carry out its selection process using the following criteria:

(1) The quality of a proposal's response to the scope of work proposed; and

(2) The ability of the prospective applicant to successfully carry out the proposed activities.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

V. Additional Information and Requirements

See 64 FR 9221-9226, Part II for additional information and requirements (available on the Internet at <http://www.doc.gov/eda/html/notice.htm>, under the heading "Economic Development Programs—Availability of Funds").

Dated: May 24, 1999.

Phillip A. Singerman,
Assistant Secretary for Economic Development.

[FR Doc. 99-13611 Filed 5-27-99; 8:45 am]

BILLING CODE 3510-24-P

Executive Order

Friday
May 28, 1999

Part IX

The President

Executive Order 13122—Interagency Task
Force on the Economic Development of
the Southwest Border

Presidential Documents

Title 3—**Executive Order 13122 of May 25, 1999****The President****Interagency Task Force on the Economic Development of the Southwest Border**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide a more rapid and integrated Federal response to the economic development challenges of the Southwest Border region, it is hereby ordered as follows:

Section 1. *Establishment of an Interagency Task Force on the Economic Development of the Southwest Border.* (a) There is established the “Interagency Task Force on the Economic Development of the Southwest Border” (Task Force) that reports to the Vice President, as Chair of the President’s Community Empowerment Board (PCEB), and to the Assistant to the President for Economic Policy, as Vice Chair of the PCEB.

(b) The Task Force shall comprise the Secretary of State, Secretary of Agriculture, Secretary of Commerce, Secretary of Defense, the Attorney General, Secretary of the Interior, Secretary of Education, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Energy, Secretary of Labor, Secretary of Transportation, Secretary of the Treasury, Director of the Office of Management and Budget, Director of National Drug Control Policy, Administrator of General Services, Administrator of the Small Business Administration, Administrator of the Environmental Protection Agency, or their designees, and such other senior executive branch officials as may be determined by the Co-Chairs of the Task Force. The Secretaries of the Treasury, Agriculture, and Labor shall Co-Chair the Task Force, rotating annually. The agency chairing the Task Force will provide administrative support for the Task Force.

(c) The purpose of the Task Force is to coordinate and better leverage existing Administration efforts for the Southwest Border, in concert with locally led efforts, in order to increase the living standards and the overall economic profile of the Southwest Border so that it may achieve the average of the Nation. Specifically, the Task Force shall:

(1) analyze the existing programs and policies of Task Force members that relate to the Southwest Border to determine what changes, modifications, and innovations should be considered;

(2) consider statistical and data analysis, research, and policy studies related to the Southwest Border;

(3) develop and recommend short-term and long-term options for promoting sustainable economic development;

(4) consult and coordinate activities with State, tribal, and local governments, community leaders, Members of Congress, the private sector, and other interested parties, paying particular attention to maintaining existing authorities of the States, tribes, and local governments, and preserving their existing working relationships with other agencies, organizations, or individuals;

(5) coordinate and collaborate on research and demonstration priorities of Task Force member agencies related to the Southwest Border;

(6) integrate Administration initiatives and programs into the design of sustainable economic development actions for the Southwest Border; and

(7) focus initial efforts on pilot communities for implementing a coordinated and expedited Federal response to local economic development and other needs.

(d) The Task Force shall issue an interim report to the Vice President by November 15, 1999. The Task Force shall issue its first annual report to the Vice President by April 15, 2000, with subsequent reports to follow yearly and a final report on April 15, 2002. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order. The Task Force shall terminate 30 days after submitting its final report unless a Task Force consensus recommends continuation of activities.

Sec. 2. *Specific Activities by Task Force Members and Other Agencies.* The agencies represented on the Task Force shall work together and report their actions and progress in carrying out this order to the Task Force Chair 1 month before the reports are due to the Vice President under section 1(d) of this order.

Sec. 3. *Cooperation.* All efforts taken by agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with organizations that represent the Southwest Border and with State and local governments.

Sec. 4. (a) "Agency" means an executive agency as defined in 5 U.S.C. 105.

(b) The "Southwest Border" or "Southwest Border region" is defined as including the areas up to 150 miles north of the United States-Mexican border in the States of Arizona, New Mexico, Texas, and California.

Sec. 5. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
May 25, 1999.

Federal Register

Friday
May 28, 1999

Part X

The President

Notice of May 27, 1999—Continuation of
Emergency With Respect to the Federal
Republic of Yugoslavia (Serbia and
Montenegro)

Presidential Documents

Title 3—**Notice of May 27, 1999****The President****Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)**

On May 30, 1992, by Executive Order 12808, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Governments of Serbia and Montenegro, blocking all property and interests in property of those Governments. President Bush took additional measures to prohibit trade and other transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro) by Executive Orders 12810 and 12831, issued on June 5, 1992, and January 15, 1993, respectively. On April 25, 1993, I issued Executive Order 12846, blocking the property and interests in property of all commercial, industrial, or public utility undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro), and prohibiting trade-related transactions by United States persons involving those areas of Bosnia and Herzegovina controlled by Bosnian Serb forces and the United Nations Protected Areas in the Republic of Croatia. On October 24, 1994, because of the actions and policies of the Bosnian Serbs, I expanded the scope of the national emergency by issuing Executive Order 12934 to block the property of the Bosnian Serb forces and the authorities in the territory that they control within Bosnia and Herzegovina, as well as the property of any entity organized or located in, or controlled by any person in, or resident in, those areas.

On December 27, 1995, I issued Presidential Determination 96-7, directing the Secretary of the Treasury, *inter alia*, to suspend the application of sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to the above-referenced Executive orders and to continue to block property previously blocked until provision is made to address claims or encumbrances, including the claims of the other successor states of the former Yugoslavia. This sanctions relief, in conformity with United Nations Security Council Resolution 1022 of November 22, 1995 (hereinafter the "Resolution"), was an essential factor motivating Serbia and Montenegro's acceptance of the General Framework Agreement for Peace in Bosnia and Herzegovina initialed by the parties in Dayton on November 21, 1995, and signed in Paris on December 14, 1995 (hereinafter the "Peace Agreement"). The sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) were accordingly suspended prospectively, effective January 16, 1996. Sanctions imposed on the Bosnian Serb forces and authorities and on the territory that they control within Bosnia and Herzegovina were subsequently suspended prospectively, effective May 10, 1996, also in conformity with the Peace Agreement and the Resolution. Sanctions against both the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs were subsequently terminated by United Nations Security Council Resolution 1074 of October 1, 1996. This termination, however, did not end the requirement of the Resolution that those blocked funds and assets that are subject to claims and encumbrances remain blocked, until unblocked in accordance with applicable law. Until the status of all remaining blocked property is resolved, the Peace Agreement implemented, and the terms of the Resolution met, the national emergency declared on May 30, 1992, as expanded in scope on October 25, 1994, and the measures

adopted pursuant thereto to deal with that emergency must continue beyond May 30, 1999.

On June 9, 1998, following attacks and repression directed by the government in Belgrade against the people of Kosovo, I issued Executive Order 13088, "Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting New Investment in the Republic of Serbia in Response to the Situation in Kosovo." Since then, the government of President Milosevic has rejected the international community's efforts to find a peaceful settlement for the crisis in Kosovo and has launched a massive campaign of ethnic cleansing that has displaced a large percentage of the population and been accompanied by an increasing number of atrocities. In light of President Milosevic's brutal assault against the people of Kosovo, his complete disregard for the requirements of the international community and the threat his actions pose to regional peace and stability, I have determined that it is necessary to maintain in force these emergency authorities beyond June 9, 1999.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared on May 30, 1992, as expanded on October 24, 1994, and the national emergency declared on June 9, 1998, with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro). This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 27, 1999.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

H.R. 432/P.L. 106-29

To designate the North/South Center as the Dante B. Fascell North-South Center. (May 21, 1999; 113 Stat. 54)

H.R. 669/P.L. 106-30

To amend the Peace Corps Act to authorize appropriations for fiscal years 2000 through 2003 to carry out that Act, and for other purposes. (May 21, 1999; 113 Stat. 55)

H.R. 1141/P.L. 106-31

1999 Emergency Supplemental Appropriations Act (May 21, 1999; 113 Stat. 57)

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